

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1971 CUTTACK, TUESDAY, AUGUST 30, 2011/BHADRA 8, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th August 2011

No. 7669—li/1 (B)-51/2008-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th June 2011 in Industrial Dispute Case No. 26 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Orissa Co-operative Marketing Federation Ltd., Bhubaneswar and its Workman Shri Pramod Kumar Patra, was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 26 OF 2008

Dated the 29th June 2011

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of M/s. Orissa
Co-operative Marketing Federation
Ltd., Bhubaneswar.

.. First Party—Management

And

Its Workman
Shri Pramod Kumar Patra

.. Second Party—Workman

Appearances :

Shri P. K. Pattnaik . . . For the First Party—Management

Shri P. K. Patra . . . For the Second Party—Workman himself

AWARD

The Government of Orissa in exercise of the powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act have referred the matter in dispute to this Court vide Order No. 9667-li/1-B-51/2008-LE., Dt. 10-9-2008 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

“Whether the retrenchment order Dt. 28-4-2001 of the MARKFED, Bhubaneswar retrenching Shri Pramod Kumar Patra with effect from 1-5-2001 as against the provisions of Section 25-F of the I.D. Act, 1947 is legal and/or justified ? If not, to what relief the workman is entitled ?”

3. The case of the workman in brief is that he was employed under the management since 2-10-1995 and was continuing in service in different posts in different places in the State of Orissa. On 28-4-2001 he was retrenched from service basing on the false allegation and by that time he was drawing salary of Rs. 1,100 per month. The management had paid Rs. 5,100 towards retrenchment benefit, but the workman is entitled to get Rs. 5,35,200 from the management under different heads as per Annexure-A attached to the statement of claim. So in this background the workman has raised an industrial dispute before the labour authority and when the conciliation failed, the matter was informed to the Government and this reference has been received and this I.D. case has been initiated wherein the workman has prayed for his reinstatement in service and to pay his claimed amount.

4. The management appeared and filed written statement partly admitting and partly denying the claim of the workman. According to the management, the workman was appointed as Sales Assistant on temporary basis on 5-10-1995 vide Order No. 47, Dt. 5-10-1995 as Godown Incharge. The workman continue as such in different godowns of the management till he was retrenched due to financial crunch faced by the management and as a policy decision of the committee of the management supported by the Government in Co-operation Department. Due to continuous loss in drastic reduction in its business and trading activities, the management sustained heavy loss for which a special committee was constituted for determining the surplus staff position of the management. The committee submitted its report for disengagement of 99 N.M.R./D.L.R. employees and 29 staffs working under defunct Indo Italian Project of the management out of whom the workman

was one of them. The workman was retrenched from service with effect from 30-4-2001 on complying the Section 25-F of the Industrial Disputes Act.. He was issued with retrenchment letter along with retrenchment benefit of Rs. 5,100 vide cheque No. 050096 of Bank of India, Bhubaneswar. But the retrenchment benefits could not be paid to the workman due to his absence. But subsequently on the request of the workman, the management sent the retrenchment benefits to his native address given by him. It is false to say that the workman was drawing Rs. 1,100 per month but actually he was drawing Rs. 1020 as wages per month at the time of retrenchment. So in this background the management has prayed that the workman is not entitled to get any relief in this case.

5. In view of the above pleadings of the parties, the following issues are settled :

ISSUES

- (i) Whether the retrenchment order, Dt. 28-4-2001 of the MARKFED, Bhubaneswar retrenching Shri Pramod Kumar Patra, with effect from 1-5-2001 as against the provisions of Section 25-F of the Industrial Disputes Act is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?

6. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved documents marked as Exts. 1 to 7. Similarly the management has examined its Manager, Establishment as M.W.1 and proved documents marked as Exts. A to H and H/1.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience.

W.W.1 deposes that he was working as Sales Assistant on N.M.R.basis under the management with effect from 5-10-1995 but in the statement of claim, he has mentioned that he was serving under the management since 2-10-1995. However the management has admitted that the workman was working since 5-10-1995. Further W.W.1 deposes that from 5-10-1995 he was continuously working the management till the date of his illegal termination on 28-4-2001. The Xerox copy of the said document has been marked as Ext.1, which discloses about the clear calculation of his dues regarding retrenchment compensation. He deposes that his last wage was Rs. 1,100 per month at the time of termination of his service. But the management has calculated his retrenchment benefits basing on the last wage drawn at the rate of Rs. 1020 per month. The management has not followed the principle of “last come first go” in compliance of Section 25-G of the Industrial Disputes Act. The management has terminated his service by adopting the pick and choose method. Number of N.M.Rs. were re-engaged/re-employed under the management in the meantime ignoring the case of the workman which is clear violation of Section 25-H of the Industrial Disputes Act. So according to W.W.1, his termination of service is illegal as submitted.

8. M.W.1 deposes that as per the direction of the Registrar of Co-operative Societies of Orissa who is the controlling authority, the management retrenched 92 N.M.R. employees and 61 other staffs vide its letter No. 21430, Dt. 27-11-2000 due to incur loss by the management and out of them, the workman is one of them. The xerox copy of such letter has been marked as Ext. A. The workman was communicated with the retrenchment order vide Ext. E after complying all the procedures of the labour law. The workman did not receive the retrenchment benefits but subsequently he received the same which was sent to him in his permanent address by registered post with A.D. Exts. E and A are the same document. Perused the documents marked as exhibits on behalf of both the parties.

9. According to the management the amount of wages last drawn by the workman at the time of retrenchment was Rs. 1020 per month, whereas the workman has claimed that he was drawing salary of Rs. 1100 per month at the relevant period. In order to ascertain such truth, the workman has prayed to call for certain documents as per his petition, Dt. 6-1-2011 wherein he has prayed to call for the documents vide Sl. Nos. i to x in Para. 3 of the said petition. On that date the management agreed to produce such documents and filed a memo accordingly. Therefore the management was directed to produce such documents which includes seniority list/gradation list of N.M.R. Sales Assistant, names of N.M.R. employees who were engaged after 1-10-1995, name of N.M.R. employees who were retrenched in April, 2001 along with their dates of joining names of N.M.R. employees who are on roll at present and names of N.M.R. employees who are re-engaged/ re-employed under the management after 28-4-2001 and true copy of document relating to last wage drawn of the workman. But the management did not produce such documents rather he has filed some other documents which are irrelevant for this purpose. If the management has filed such documents, the last wage drawn of the workman could have been known. Similarly when other documents are not filed, it can not be said that the principle of "last come first go" has been duly followed by the management at the time of retrenching the workman from service, no juniors to the workman are continuing in service and no employees are employed after retrenching the workman from service. In this background relying upon the authority reported in 2008 L.L.R. 549, it has been argued by the workman that adverse inference should be drawn against the management for non-production of relevant documents as called for. In such authority it has been held that certain records may be under exclusive custody of the employer and the workman may not be able to lay their hands thereupon and prove that they worked for requisite number of days. If the employer withholds those records, adverse inference may be drawn. The adverse inference may be expressed or implied. In the instant case the non-production of relevant documents as discussed above an adverse inference should be drawn against the management for non-production of such documents. In the cross-examination M.W.1 has also admitted that in spite of direction of the Court the management failed to produce the last wage drawn particulars of the workman to ascertain the truth for the reasons best known to the management. So basing on the materials available in the case record, it can safely be concluded that the workman was getting Rs. 1,100 per month at the time of retrenching him from service. So the retrenchment benefits as calculated by the management vide Exts. 1-E is not correct and the workman is entitled to get more amount. So the provisions of

Section 25-F of the Industrial Disputes Act has not been duly complied with. Similarly for non-production of the relevant document it can also safely be concluded that Sections 25-G and 25-H have not been followed properly. Hence on careful consideration of all the materials available in the case record as discussed above, I am inclined to hold that the retrenchment order Dt. 28-4-2001 of the management retrenching the workman with effect from 1-5-2001 against the provisions of Section 25-F of the Industrial Disputes Act is neither legal nor justified. The workman is entitled to be reinstated in service.

9. Regarding back wages, the workman while deposing in the Court has disclosed that he is working as private servant under a contractor. So he has been gainfully employed elsewhere. Furthermore, he has not worked for the management during the relevant period. It is now well settled by reason of catena of decisions of the Hon'ble Supreme Court that the relief of full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further as per settled principle of law reported in 2004 (Supp.) OLR 694 that when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. So, on careful consideration of all the materials available in the case record, as discussed above, I am the opinion that the workman is not entitled to get any back wages in this case. Hence both the issues are answered accordingly.

10. Hence ordered :

That the retrenchment order, Dt. 28-4-2001 of the MARKFED, Bhubaneswar retrenching Shri Pramod Kumar Patra with effect from 1-5-2001 as against the provisions of Section 25-F of the Industrial Disputes Act is illegal and unjustified. The workman Shri Patra is entitled to be reinstated in service but without any back wages. The management is directed to implement that Award within a period of one month from the date of its publication.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
29-6-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
29-6-2011
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
T. K. PANDA
Under-Secretary to Government