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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th August 2011

No. 7852—li/1(B)-95/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th July 2011 in I. D. Case No. 35 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Ramadevi Chhatrinivas (Ladies Hostel No. II), Utkal University, Bhubaneswar and its workman Shri Tankadhar Digal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 35 OF 2004

The 20th July 2011

Present :

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

Between :

The Management of Ramadevi
Chhatrinivas (Ladies Hostel No. II),
Utkal University, Bhubaneswar.

.. First party—Management

And

Their workman,
Shri Tankadhar Digal.

.. Second party—Workman

Appearances :

Shri Sadanand Kheti, Advocate

.. For the First party—Management

Shri Ashok Kumar Rath, Advocate

.. For the Second party—Workman

Shri Chinmaya Kumar Pattanayk, Advocate

AWARD

The Government of Orissa in exercise of 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 their Order No. 3769—II/1 (B)-95/2003-LE., Dt. 1-5-2004 of the Labour & Employment Department for adjudication.

2. The terms of reference is as follows :

“Whether the action of management of Ramadevi Chhatrinivas (Ladies Hostel No. II), Utkal University, Bhubaneswar in terminating the services of Shri Tankadhar Digal, Watchman with effect from the 30th September 2000 is legal or justified ? If not, what relief is Shri Digal entitled to ?”

3. The case of the workman in brief is that he was appointed as Watchman under the management vide Order, Dt. 31-1-1998 and such appointment was on temporary basis with a consolidated pay of Rs. 900 per month with effect from the 1st February 1998. But actually the workman joined in the post on 31-1-1998. Subsequently his pay was enhanced to Rs. 1,250 per month. On 30-9-2000 he was refused employment verbally by the management without any notice or assigning any reason for which his termination of service was illegal. He immediately met the Superintendent of the Hostel of the management on 1-10-2000 and requested him to allow to perform his duty but it was in vain. Though the Superintendent assured the workman to give extension of his service but later on directed the workman to work in his residence inside the Campus, instead of working in the Chhatrinivas of the management. However, the workman performed his duty in the residence of the Superintendent but his wage was not paid. Again the workman was directed to work in his private residence. During the time of termination of service of the workman, the provisions of Section 25-F of the Industrial Disputes Act has not been followed at all. Further similarly situated employees and junior to the workman are still continuing in the employment in the said post. The principle of natural justice has not been followed while terminating the service of the workman by the management. 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 with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. The management has challenged the maintainable of the reference on the ground of barred by limitation and its cause of action. The management has admitted the workman to be his workman. Further the management has agreed regarding the salary of the workman as Rs. 1,250 per month. According to the management, the workman was never asked to perform the duty in the residence of the Superintendent of the management. Basing on the allegations of the inmates of the Chhatrinivas and their guardians against the workman, the management was compelled to change the employment of the workman to Gardener and to that respect passed Order No. 83, Dt. 8-9-2000. Since the workman has not been refused his employment, therefore, there is no need of any notice or show cause and there is also no necessity of compliance of Section 25-F of the Industrial Disputes Act. The allegation in respect of regularisation of service of juniors to the workman is false and denied. The workman did not turn up to the duty entrusted to him as Gardener on the same monthly pay of Rs. 1,250 which he was getting as Watchman and he forcibly wanted to do the duty of Watchman in violation of the Office Order of the management. The workman was cautioned to amend himself in respect of his behaviour

towards higher authorities but it was yielded no result. On 18-10-2000 at about 9-30 A.M. the workman abused the management (Superintendent and Warden of the Hostel) in filthy language and threatened to do away with their lives for which the management reported the matter to the Sahidnagar Police Station vide Letter No. 87, Dt. 23-10-2000. The workman being a daily wager and payment has been made monthly calculating the days of his work he has no right to choose the work as per his sweet will. It is the employer/management to decide to entrust which work to the workman. The workman refused to work as Gardener deliberately. The management has lost confidence on the workman and apart from this it affects the reputation of the Hostel of the management. So in this background the management has prayed that the workman is not entitled to get any relief as prayed for.

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

ISSUES

- (i) "Whether the action of the management of Ramadevi Chhatrinivas (Ladies Hostel No. II), Utkal University, Bhubaneswar in terminating the services of Shri Tankadhar Digal, Watchman with effect from the 30th September 2000 is legal or justified ?
- (ii) If not, what relief is Shri Digal 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 the Reader in Zoology of the management as M.W. 1 and proved document marked as Exts. A to C.

FINDINGS

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

Initially the case was disposed of an *ex parte* Award on 3-11-2007 wherein it was held that the workman is not entitled to get any relief whatsoever. But such order was set aside by the Hon'ble Court vide Order No. 10, Dt. 23-3-2011 passed in W.P. (C) No. 3557 of 2008. The order was passed that the matter is remitted back to this Court with direction to give an opportunity to the workman to prove that he has worked at least 240 days in twelve calendar months preceding the date of his termination of service and also to the opposite party to rebut the same and after assessing the evidence and hearing the counsel for both the parties shall pass appropriate order.

8. Basing on such direction of the Hon'ble Court the workman adduced further evidence and proved documents in support of his claim. Similarly the management has also adduced evidence and proved documents in support of its plea.

The management has taken the plea that the reference is not maintainable as the management being an educational institution, it does not come under the purview of the Industrial Disputes Act. But "industry" has been defined in Section 2 (j) of the Industrial Disputes Act. In the authority reported in (1978) 2 Supreme Court 213 'industry' as defined in Section 2(j) and explained has a wide import.

- (a) Where (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is chimerical), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss e.g. making on a large scale prasad or food), *prima facie*, there is an 'industry' in that enterprise.

- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.
- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

In the instant case it is an admitted fact that the workman was serving under the management as Watchman. According to the workman, his service was terminated without following the provisions of Section 25-F of the Industrial Disputes Act and without following the principles of natural justice. The management has taken the plea that the workman is not entitled to get any relief in this case. However, basing on the materials available in the case record and in view of the above authority on careful consideration of the same, I came to the finding that the establishment of the management is an industry and the reference is maintainable. Though the management has challenged the reference on the point of limitation, no evidence has been put forth in this regard and this matter has not been raised during argument. So basing on the materials available I also found nothing barred bylaw of limitation.

9. It has been argued by the advocate for the workman that the workman has completed 240 days of service in twelve calendar months preceding to the date of termination of his service on 30-9-2000. The management in his affidavit evidence has stated that when the police interrogated the workman by coming to the Police Station the workman thereafter never joined in his duty from 19-10-2000. But that evidence has not been substantiated with other corroborating evidence. In support of his argument, the workman has relied upon the documents marked as Exts. 6 and 7 which are the xerox copies of attendance register and acquittance roll for the period from October, 1999 to September, 2000. It has been obtained under Right to Information Act vide letter marked as Ext. 4. So it is a document of the management. From this document it clearly shows that the workman has completed more than 240 days of service in twelve calendar months preceding to the date of his termination of service. Perused all the documents marked as exhibits on behalf of both the parties.

10. The management has taken the plea that vide Ext. A the workman was intimidated to work as Gardener instead of Watchman, failing which he will be terminated from service. But such notice was not handed over to the workman as revealed from Ext. C. The bearer of the letter Ext. A has not been examined in the Court to ascertain the truth that the workman had actually refused to receive the same. Section 25-F of the Industrial Disputes Act deals with the condition precedent to retrenchment of workman and according to it no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer mentioned therein. In the instant case it clearly shows that the workman has completed 240 days of service in twelve calendar months preceding to the date of his termination from service as mentioned earlier. The management has taken the plea that it is not a case of termination but a voluntary abandonment of service by the workman. According to the settled principles of law as reported in 2001 LLR 54 when a workman fails to report for duty, the management cannot presume that the workman has left the job despite being called upon to report, failing which his name will be removed from the rolls. When the workman remained absent and failed to report for duty it was imperative to follow the principles of natural justice by giving the opportunity. In the authority reported in 1993 LLR 876 termination on ground of absence without holding enquiry or serving any charge-sheet in violation of principles of natural justice and holding of enquiry is imperative. In the authority reported in 2010-IV-LLJ-795 (Delhi) it has been held that the termination

of service on ground of abandonment by the workman was held on facts not justified. In the authority reported in 2011 LLR 312 it is held that it is well settled that while drawing the presumption that the workman has abandoned the job of his own accord, holding of enquiry is imperative. The allegation against the workman according to the management amounts to misconduct. But in the instant case no enquiry has been conducted for such misconduct either remaining absent from duty or against his action as alleged regarding misbehaviour to the management, etc. The compliance of provisions of Section 25-F of the Industrial Disputes Act is a mandatory and precondition one. According to the authority reported in 2000 LLR 425 abandonment of workman amounted to retrenchment and compensation not paid at the time of termination will render the termination illegal. So on careful consideration of all the materials available in the case record as discussed above and in view of the above authorities, I came to the finding that the action of management in terminating the service of the workman with effect from the 30th September 2000 is neither legal nor justified and the workman is entitled to be reinstated in service.

11. Regarding back wages, according to the settled principle of law the relief of reinstatement with 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 according to the settled principle of law as reported in 2004 (Supp.) OLR 694 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. However, on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of granting full back wages, a lump sum amount of Rs. 40,000 will meet the ends of justice in this case. So both the issues are answered accordingly.

12. Hence Ordered :

That the action of management of Ramadevi Chhatrinivas (Ladies Hostel No. II), Utkal University, Bhubaneswar in terminating the services of Shri Tankadhar Digal, Watchman with effect the 30th September 2000 is illegal and unjustified. The workman Shri Digal is entitled to be reinstated in service with a lump sum amount of Rs. 40,000 (Rupees forty thousand) only in lieu of back wages. The management is directed to implement this Award within a period of one month from the date of its publication, failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
20-7-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
20-7-2011
Presiding Officer
Labour Court
Bhubaneswar

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