

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2091 CUTTACK, FRIDAY, SEPTEMBER 9, 2011/BHADRA 18, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th August 2011

No. 7857—li/1 (BH)-41/1995-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th July 2011 in Industrial Dispute Case No. 22 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. IPI Steel Ltd., Gundichapada, Dhenkanal and its Workman Shri Ganeswar Ojha, was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 22 OF 1996

Dated the 19th July 2011

Present :

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

Between :

The Management of IPISTEEL Ltd.,
Gundichapada, Dhenkanal.

.. First Party—Management

And

Its Workman Shri Ganeswar Ojha,
At Jayagopal Sahi,
Dhenkanal.

.. Second Party—Workman

Appearances :

Shri A. K. Rout . . . For the First Party—Management

Shri G. Ojha . . . 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. 18888-li/1-BH-41/1995-LE., Dt. 28-12-1995 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

“Whether the action of the management of IPISTEEL Ltd., Gundichapada, Dhenkanal in dismissing Shri Ganeswar Ohja, ex-Blacksmith-*cum*-Fitter from services with effect from 4-8-1993 is legal and/or justified ? If not, what relief he is entitled to ?”

3. The case of the workman in brief is that the establishment of the management is a steel manufacturing unit of Joint Sector and is also growing and prospering unit functioning at Dhenkanal. It is a unique manufacturing undertaking having financial stability and earning huge profit per year. It has employed different categories of technical and skilled employees for its manufacturing process. The workman being a technical and high skilled experienced workman was appointed by the management in Production Wing of the factory of the management and subsequently he was confirmed in his service due to his brilliant service career. The workman of the industry to putforth grievances formed an union and subsequently registered it under the Provisions of the Trade Union Act, 1926 and submitted the grievances of the workers before the management for its early statement. When the management came to know that the workers have formed an union, they immediately planned and designed to victimise the worker-members of the union. As the workman was the acting member of the union, the management had an eye on him for which they tried to suppress the union leaders by falsely implicating them in different false charges and also drawing departmental proceedings. When the workman was working in the establishment all of a sudden on 8-2-1993 the management issues a charge-sheet alleging certain misconduct with a direction to submit explanation on charges. The workman submitted his explanation denying the allegations stating *inter alia* that the false charges have been framed to victimise him for his trade union activities. The workman has also submitted that he should be granted opportunity to produce sufficient materials in his defence but the management without granting any opportunity and making proper enquiry by following the principles of natural justice dismissed the workman from service with effect from 4-8-1993. The management has dismiss the workman by violating the certified standing order

which was prevailing in the establishment of the management and also the principles of natural justice. The allegation of misconduct for which the workman has been dismissed from service are false and baseless. After dismissal of the workman the manufacturing process of the establishment is going on by the help of newly recruited persons in place of the workman. The workman is now starving due to forced unemployment as no gainful employment has been available to him. 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. According to the management, due to unlawful and violent activities of the workmen, the management declared a lockout in the factory with effect from 1-10-1992 and the said lockout was lifted on 2-2-1993. The management pasted notices and appeals on the main gate of the factory and on the management noticeboard inviting/directing them to join in their duties forthwith. The workman did not join in his duty inspite of repeated directions. On 5-2-1993 when the workers were going to join in their duties, the present workman obstructed them and threatened them with severe physical assault and directed them not to join in their duties. Hearing all this the Assistant Manager (P&A) submitted a report to the Manager (P&A) on 8-2-1993. Accordingly the management basing on this report framed charges against the workman on the same day and sent to the workman by registered post which came undelivered as the workman avoided to receive the same. However the workman received the same on 22-3-1993 and submitted his written explanation on 9-4-1993. A domestic enquiry was conducted against the workman and he was given full opportunities to defend himself in the enquiry. He admitted all the charges levelled against him and signed in the enquiry proceeding. When the workman admitted his guilt no detailed enquiry is necessary. So the punishment imposed on the workman is proportionate to the misconduct committed by the workman. 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 action of the management of IPISTEEL Ltd., Gundichapada, Dhenkanal in dismissing Shri Ganeswar Ojha, ex-Blacksmith-cum-Fitter from service with effect from 4-8-1993 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 9. The management has neither adduced any evidence nor proved any document in support of its plea.

FINDINGS

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

At the initial stage the workman has argued that the domestic enquiry conducted against him was not fair and proper. The management in its pleading has disclosed that the domestic enquiry conducted against the workman was fair and proper and principles of natural justice has been duly followed. So both the parties have knowledge about the domestic enquiry. But though no specific issues has been framed in this regard, I feel it proper to decide the issue regarding the fairness of the domestic enquiry first before proceeding to the other issues. According to the workman due to his trade union activities he was victimised by the management and no enquiry was conducted by the management or Enquiry Officer, but he was dismissed from service without following the principles of natural justice. The management has not adduced any evidence in this regard. Perused the documents marked as exhibits on behalf of the workman.

8. Ext.2 is the xerox copy of the dismissal order which discloses about the charge-sheet No. 914, Dt. 8-2-1993 and the explanation of the workman Dt. 2-4-1993 and the workman has also admitted about the framing of charges and submission of his show cause/explanation. But the charge-sheet has not been filed by the workman in this case. According to the settled principle of law as reported in AIR 1963 S.C. 1914 it has been held that :

“An enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and (v) the enquiry officer records his findings with reasons for the same in his report. “

In the instant case the workman has taken the plea that he has not given any scope in the enquiry to defend his case properly. The proceeding file of the enquiry has not been filed by the management to know the details about the enquiry procedure adopted by the management. The principles as laid down in the above noted authority has also not been followed. According to the settled principles of law furnishing of enquiry report to a delinquent employee giving opportunity to submit his explanation before awarding punishment will imperative on the part of the employee. The principles of natural justice is required for supply of enquiry report in order to enable to the delinquent workman to submit proper explanation to prove his innocence. In the instant case nothing is been brought in the case record regarding supply of enquiry report and second show cause notice before dismissing the workman from service. So in this background on careful consideration of all the materials available in the case record as discussed above and view of the above authorities I am inclined to hold that the domestic enquiry held against the workman as alleged is not fair and proper.

9. The management has also not proved its case on merit against the workman. The provisions of Section 25-F of the Industrial Disputes Act has also not been complied with while terminating the service of the workman which is a mandatory and pre-condition one. So in this background on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the action of the management in dismissing the workman with effect from 4-8-1993 is neither legal nor justified and is entitled to be reinstated in service.

10. Regarding back wages, it is now well settled by reason of catena of decisions of the Hon'ble Supreme Court that 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. 50,000 will meet the ends of justice in this case. Hence, both the issues are answered accordingly.

11. Hence ordered :

That the action of the management of IPISTEEL Ltd., Gundichapada, Dhenkanal in dismissing Shri Ganeswar Ojha, ex-Blacksmith-cum-Fitter from service with effect from 4-8-1993 is illegal and unjustified. The workman Shri Ojha is entitled to be reinstated in service with a lump sum amount of Rs. 50,000 (Rupees fifty 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
19-7-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
19-7-2011
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government