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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th July 2011

No. 6319—li/1-(B)-61/2008-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd July 2011 in I. D. Case No. 25/2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Shree Gopal Krishna Gosala, Cuttack and its workman Shri Ashok Kumar Behera represented through the General Secretary, Cuttack Gosala and Dairy Farm Shramik Sangha, Nayabazar, Cuttack was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 25 of 2008

The 2nd July 2011

Present :

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

Between :

The Management of M/s. Shree Gopal Krishna Gosala, Cuttack. . . First-party Management

And

Its workman Shri Ashok Kumar Behera, represented through the General Secretary, Cuttack Gosala and Dairy Farm Shramik Sangha, Nayabazar, Cuttack. . . Second-party Workman

Appearances :

Shri R. N. Rath	. .	For the First-party Management
Shri S. B. Mohanty, Advocate	. .	For the Second-party Workman
Shri S. K. Das, Advocate		
Shri S. Mohapatra, 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 Order No. 9675—li/1(B)-61/2008-L.E., dated the 10th September 2008 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the action of the management of M/s. Shree Gopal Krishna Gosala, Nayabazar, Cuttack in terminating the services of Shri Ashok Kumar Behera, workman by way of refusal of employment for different period i. e. on and from the 1st September 2007 to 11th November 2007 on the 16th December 2007 and on and from the 29th January 2008 is legal and/or justified ? If not, what should be exact date/dates of his termination and what relief Shri Behera is entitled to ?"

3. The case of the workman in brief is that he was engaged by the management in its establishment on the 1st June 2001 as grass cutter and continued as such without any interruption. The establishment of the management is an industrial establishment and an unit of producing milk and milk products by the help of machine and manpowers and more than 100 workers are working there. The workers are getting monthly salary, bonus, *ex gratia*, gratuity etc. While the workman was working, he was terminated from service for his being an active member of the Union and for raising demands for workers. Subsequently the management solved the dispute and reinstated the workman in a bi-partite settlement on the 12th November 2007. Due to ill-health the workman remained on leave from the 1st December 2007 to 15th December 2007 and resumed to his duty on the 16th December 2007, but the management did not allow him to discharge his duties. There was an accident of a co-worker namely Tharpa Hembram who lost his palm in the Grass Cutter Machine and the workman had taken all the responsibility for treatment with the help of other co-workers. Being aggrieved by such action, the management has put to trouble the workman some how or other. However the workman raised an industrial dispute before the labour authority for his illegal termination of service by way of refusal of employment without following the mandatory provisions of the Industrial Disputes Act. During the conciliation the management has declared that the workman has been terminated from service with effect from the 29th January 2008. However, when the conciliation failed, the matter was informed to the Government and this reference has been received from the Government and this I. D. Case has been initiated wherein the workman has prayed for his reinstatement in service with all consequential service benefits.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management the establishment of the management is a charitable instituion originally formed in the year 1937-1938 in the nomenclature "Shree Victoria

Gorakhyani Sabha, Cuttack" and it was registered under the Societies Registration Act. The said name was subsequently changed to Shree Gopal Krishna Gosala (the present management) by issuing by the competent authority. It is a voluntary social organisation. It was registered as a charitable institution under Societies Registration Act with a view to object of preservation and protection of and duty to divine population which are blind, old, diseased and disabled cows including heaper, bullocks and bulls. The management has simply engaged some stray servants on hire for manual and technical work and accordingly the workman was engaged as a grass cutting machine operator on honorarium. Therefore the provisions of the Industrial Disputes Act is not applicable to the establishment of the present management. The workman was residing inside the gosala premises with his family. For providing seva the workman was also provided free water and electricity facilities. The workman was independently performing his seva work and enjoying all facilities with family without any cost paid to the management. The workman was assigned the work to look after Dana, Kunda where the cattle were feeded by the management. The milk which were procured from the milche cows were being used by the sevayats who were looking after the cattle. The workman without any information or intimation or prior approval, left the premises of the management from the 1st September 2007 to 11th November 2007. In his absence the cattle were not provided grasses properly or timely for which the cattle were suffered starvation. The workman turned-up on the 16th December 2007 but within a few hours he again left the premises of the management with an intention to drag the management into different problems. Till yet the workman was unauthorised in occupation of the accomodation of the management for which an F. I. R. was lodged at Madhupatna Police Station, Cuttack. However in this back ground the management has prayed to answer the reference in negative.

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

ISSUES

- (i) "Whether the action of the management of M/s. Shree Gopal Krishna Gosala, Nayabazar, Cuttack in terminating the services of Shri Ashok Kumar Behera, workman by way of refusal of employment for different periods i. e. on and from the 1st September 2007 to 11th November 2007 on the 16th December 2007 and on and from the 29th January 2008 is legal and/or justified ?
- (ii) If not, what should be exact date/dates of his termination and what relief Shri Behera is entitled to ?"

6. In order to substantiate their plea, the workman examined two witnesses altogether out of whom as W. W. 1 is the workman himself and W. W. 2 is his co-worker and proved documents marked as Exts. 1 to 9. similarly, the management has examined his Manager as M. W. 1 and proved documents marked as Exts. A to I.

FINDINGS

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

According to W. W. 1 he was appointed by the management in June 2001 as Machine operator and working continuously and uninterruptedly. He was terminated from service by way of refusal of employment on the 1st September 2007 without any reason. However, in a bi-partite

settlement the matter was settled and he was reinstated in service on the 12th November 2007. Due to his illness, he remained on leave from the 1st December 2007 to 15th December 2007 by submitting leave application and after recovery when he went to join in his duty on the 16th December 2007 the management did not allow him to discharge his normal duty. W. W. 2 claims himself to be the co-worker of the workman being an Helper and the General Secretary of Cuttack Gosala and Diary Farm Shramik Sangha, Nayabazar, Cuttack. But the management has challenged to it and W. W. 2 has not filed any document in support of his plea. Hence this evidence is no way helpful to the workman as he is found to be a stranger for want of document. M. W. 1 deposes that the workman was the seva under the management which is a charitable institution and seva works include providing of fodder by cutting grass to the cattle of the Gosala. No appointment order was issued to the workman. He further deposes that the workman without any intimation or information or prior approval left the campus of the management from the 1st September 2007 to 11th November 2007 for which the management suffered a lot of difficulties. Thereafter on the intervention of the local M. L. A., the workman turned on the 12th November 2007 and he was assigned to work as a Supervisor to look after the Dana, Kunda where the cattles were feeded. He worked up to the 16th November 2007 and then from the 17th November 2007 he *suo motu* started his work like grass cutting in the farm and while doing his work on 26th November 2007 he with an ill motive engaged unauthorisedly another sevayat namely Tharpa Hembram and an accident took place and from the 27th November 2007 the workman remained absent till 15th December 2007. On the 16th December 2007 the workman turned to the farm and he was told to meet the General Secretary, but without meeting the General Secretary of the management he left the place. Perused the documents marked as exhibits on behalf of the both the parties.

8. It has been argued by the management that the establishment of the management is a charitable institution and the workman along with others were doing seva work. Therefore, the establishment of the management does not come under the purview of the "industry" and this reference is not maintainable. The "industry" has been defined in Section 2 (j) of the Industrial Disputes Act. According to the settled principle of law, as reported in 2010 (Supp.-1) OLR 772 Section 2 (j) defines the word "industry" and takes in its fold a systematic activity organised by co-operation between the employer and the workman for the production, supply and/or distribution of goods or services with a view to satisfy human wants or wishes. In the instant case the workman along with other workers were receiving their salary from the management as revealed the documents filed by both the parties. The workman deposes that the management used to sale milk, milk products cowdungs, male calf etc. to others and earn huge profit out of it. In the cross-examination the workman has taken the plea that the establishment of the management is not a charitable institution but a profitable institution. The management used to maintain the attendance register relating to the workman and other workers as revealed from Ext. N., M. W. 1 has also clearly admitted in his cross-examination that the workman was receiving his salary for his work. In the authority reported in (1978) 2 SCC 213 it has been held that :

'Industry' as defined in Section 2 (j) 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, 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."

So on careful consideration of all the materials available in the case record, I came to the finding that the establishment of the management is an "industry" and the present reference is maintainable.

9. W. W. 1 has deposed that his service was terminated on the 1st September 2007. But the reference has been received from the Government in the Labour & Employment Department, Orissa, Bhubaneswar that the termination of services of the workman from the 1st September 2007 to 11th November 2007, on the 16th December 2007 and on and from the 29th January 2008. Regarding termination of services of the workman with effect from the 1st September 2007 to 11th November 2007, the M. W. 1 has admitted that the workman joined in duty on the 12th November 2007 at the intervention of local M. L. A. and was entrusted to his duty. From the 27th November 2007 to 15th December 2007 the workman remained absent without any information, intimation or prior approval of the management and on the 16th December 2006 he came to the management Gosala but did not work and went away. The attendance registers marked as exhibits also disclose that from the 12th November 2007 to 26th November 2007 the workman was present and marked attendance as "P". So when he has already resumed in duty the termination of the workman from service, if any, during that period should not be taken into consideration. Regarding termination of service of the workman with effect from the 29th January 2008, nothing has been disclosed by both the parties by adducing any evidence. So basing on the materials available in the case record it is presumed that the termination of services of the workman by way of refusal of employment was with effect from the 16th December 2007.

10. Admittedly no departmental enquiry was held against the workman for any misconduct like remaining absent from duty or by any other illegal acts. Further the provisions of Section 25-F of the Industrial Disputes Act has not been followed at all by the management which is a mandatory and pre-condition one. The workman has taken the plea that he was working continuously from the date of his joining till the date of his termination. The management is silent in this regard. In the authority reported in AIR 2000 S. C. 1080 it has been held that the order terminating services of the petitioner on the ground of unsatisfactory work is a stigmatic and regular enquiry and opportunity of hearing is a must, and it is wanting in this case even if the workman was a regular worker. In the authority reported in 2001 LLR 54 it has been held that even 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. It is also wanting in the present case. Further in the authority reported in 1993 LLR 876 termination on ground of absence and without holding enquiry or serving any chargesheet is violation of principle of natural justice and holding of enquiry is imparative. So in the instant case all the principles of natural justice have not been followed by the management. So, now on careful consideration of all the materials available in the case record as discussed above, I am inclined to hold that the action of the management in terminating the services of the workman by way of

refusal of employment only for the period from the 16th December 2007 and not from the 1st September 2007 to 11th November 2007 and from the 29th January 2008 is neither legal nor justified. The workman is entitled for reinstatement in service.

11. Regarding back wages, as per 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 authority 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. But 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. 30,000 will meet the ends of justice in this case. Hence both the issues are answered accordingly.

12. Hence Ordered :

That the action of the management of M/s. Shree Gopal Krishna Gosala, Nayabazar, Cuttack in terminating the services of Shri Ashok Kumar Behera, workman by way of refusal of employment with effect from the 16th December 2007 but not from the 1st September 2007 to 11th November 2007 and from 29th January 2008 is illegal and unjustified. The workman Shri Behera is entitled to be reinstated in service with a lump sum amount of Rs. 30,000 (Rupees thirty 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
2-7-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
2-7-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government