The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 213 CUTTACK, TUESDAY, JANUARY 25, 2011/MAGHA 5, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th January 2011

No. 390—Ii/1(B)-41/1992-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th November 2010 in I. D. Case No. 109 of 1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s Prasad Industries, Bhubaneswar and its workman Shri Prasanna 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. 109 OF 1992

Dated the 12th November 2010

Present :

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

Between :

The Management of M/s Prasad Industries, Bhubaneswar.	. .	First Party—Management
And		
Its Workman Shri Prasanna Kumar Patra.	. .	Second Party—Workman

Appearances :

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

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, 1947, have referred the matter in dispute to this Court vide Order No. 12089—Ii/1(B)-41/1992-LE., dated the 21st September 1992 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

> "Whether the termination of services of Shri Prasanna Kumar Patra, Typist by the management of M/s Prasad Industries, Industrial Estate, Rasulgarh, Bhubaneswar with effect from the 12th August 1991 is legal and/or justified ? If not, what relief he is entitled to ?"

3. The case of the workman in brief is that he was working as a Typist under the management from the 1st March 1989 to the 6th August 1991. He was working to the utmost satisfaction of the management. All of a sudden on the 7th August 1991 he suffered from serious ailments affecting his stomach and availed leave with due permission up to the 10th August 1991 and was undergone medical treatment. When the workman approached to join in his work on the 12th August 1991, the Managing Partner of the management did not allow him to work and refused to work without any reason or without any fault on the part of the workman. The workman had rendered almost two and half years of continuous and uninterrupted service under the management. He was getting salary of Rs. 530 per month. While terminating the service of the workman, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act and Rules made thereunder regarding notice or notice pay, retrenchment compensation, etc. On the 12th August 1991 when the workman was refused employment by the management, many other juniors were retained by the management in employment in violating the principle of last come first go. The workman has claimed certain monetary benefits from the management for his work. So in this background the workman raised an industrial dispute before the labour authority and when the conciliation failed the matter has been informed to the Government and a reference has been received from the Government and this I. D. Case was instituted 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. It is admitted that the workman has taken leave from the 7th August 1991 to the 10th August 1991 which was granted by the management but after the 10th August 1991 till date the workman has not turned up to join in his duty. So the denial of work to the workman by the management does not arise at all. On repeated approach the workman has managed to get an appointment against the post by floating an expected salary of Rs. 550 per month, but as he was a trainee he was getting Rs. 530 per month and the workman has never raised any objection to it. The workman has also provided with the

Provident Fund and E. S. I. which comes more than Rs. 570 per month. The management has not terminated the service of the workman for which complying with the provisions of Section 25-F of the Industrial Disputes Act is not required. Due to absence of the workman the management faced a lot of trouble and has managed to do the work. There is no requirement of Typist as the industry of the management is running as a sick one. The management has not regularised the service of the workman and from the date of joining of the workman was only under probation and his tenure of service was only extended intermittently at the behest of his earnest requests. The workman has now opened a grocery shop at his residence and is managing the same out of which he is earning a good sum and is also getting a considerable return from agricultural property. On this background the management has prayed for answering the reference in negative.

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

ISSUES

(i) "Whether the termination of services of the workman with effect from the 12th August 1991 amounts to retrenchment or voluntary abandonment of service or covered under any excluded category ?

(ii) Is he entitled to any relief ?"

6. In order to substantiate his plea, the workman has examined himself as W. W. 1 and proved documents marked as Exts. 1 and 2. Similarly the management has examined his Managing Partner as M. W. 1 and proved documents marked as Exts. A to E.

FINDINGS

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

It has been argued by the workman that he was serving under the management from the 1st March 1989 to the 6th August 1991 as Typist on a monthly salary of Rs. 530. Thereafter he availed leave from the 7th August 1991 to the 10th August 1991 on medical ground and when he went to join in his service on the 12th August 1991 the management did not allow him to work and terminated his service by way of refusal of employment. On the other hand, it has been argued by the management that the workman abandoned his service and after availing leave he did not resume to his duty for which complying the provisions of Section 25-F of the Industrial Disputes Act is not required at all. The management has issued two letters, the xerox copies of which has been marked as Exts. D and E directing the workman to join in his duty but it was in vain. The admitted fact remains that the workman was working under the management from the 1st March 1989 to the 6th August 1991 on a monthly salary of Rs. 530 and availed leave on medical ground from the 7th August 1991 to the 10th August 1991.

When the workman argued that it is a case of termination of service by way of refusal of employment, it is argued by the management that it is a case of abandonment of service by the workman. It has been pleaded by the management that the workman was a trainee and his joining was under probation and his tenure of service was only extended intermittently on his request. In the affidavit evidence it has been stated that on sympathetic grounds the management allowed the workman to work as Typist on trial basis but all the benefits of Provident Fund and E. S. I. has been extended to the workman. But according to the settled principle of law as reported in 2003 LLR 731 that there is no difference in regular and casual employees and apprentices also included within the definition of workman. But in the instant case the workman was working for the period from the 1st March 1989 to the 6th August 1991 and availed leave from the 7th August 1991 to the 10th August 1991. Further it has been argued by the management that the management is relying upon the authority reported in (1998) and Supreme Court Cases 733, the provisions of Section 25-F of the Industrial Disputes Act is not applicable in case of the present workman. In that authority it has been held that daily rated workman himself ceasing to report for duty and remaining absent for about three long years and employer having done nothing whatsoever to put an end to his employment such a case held does not fall within the meaning of retrenchment under Section 2 (oo) of the Industrial Disputes Act. But the facts and circumstances of this case, it is not applicable to the present case in hand as the workman of this case was getting monthly salary of Rs. 530 and was appointed as a Typist in a particular post. According to the authority reported in 2004 (Supp.) OLR 694 that to constitute abandonment of service there must be total or complete giving up of duties and/or expression of the intention not to serve any further. This being a question of fact onus lay on the management which took such a plea to prove with cogent evidence that in fact the workman had abandoned his service. But in the instant case nothing has proved clearly regarding such abandonment of service. Though the management has taken the plea that he has issued the letters vide Exts. D and E, nothing has been proved to show that such letters were actually issued to the workman and he has received the same. On the other hand in the cross-examination it has been admitted by M. W. 1 that those were sent by ordinary post. Perused all the documents marked as exhibits by both the parties. According to the settled principle of law as reported in 2001 LLR 54, the Hon'ble Supreme Court has 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. It was imperative to follow the principles of natural justice. But in the instant case the workman has taken the plea that he was not allowed to resume his duty. Similarly in the authority reported in 1993 LLR 876 it has been held that the termination of service on ground of absence from duty constitutes termination by misconduct. No termination is permissible on the ground of misconduct unless proper enquiry is held according to the principles of natural justice. But in the instant case it is wanting. In the authority reported in 2010 LLR 1175 the same principles as has already been held that order of termination

without opportunity of domestic enquiry is clearly arbitrary and violative of Articlles 14 and 21 of Constitution of India. It has been argued by the management that the workman was remained on leave frequently and sometimes he submitted application after completion of leave but when the management has allowed the workman to continue in service without taking any disciplinary action against him, that plea will no way helpful to the management in the instant case. It has been further argued by the management that the workman was asked to produce the medical fitness certificate before rejoining in service since he was given benefit under the provision of the Employees State Insurance Act, but this plea of producing of medical fitness certificate has neither been pleaded nor any evidence has been adduced in this regard and such plea is also contrary to the earlier pleading and evidence that after availing leave the workman was never joined in his duty. According to the settled principle of law retrenchment of an employee without following the mandatory provisions of Section 25-F of the Industrial Disputes Act is not only unsustainable but also illegal. The plea of the management as regards abandonment of service by the management has not been well proved. It has been argued by the workman that he has worked continuously under the management from the 1st March 1989 to the 6th August 1991 and he was permitted to avail leave from the 7th August 1991 to the 10th August 1991 which was also admitted by the management. So it clearly shows that the workman has completed more than 240 days in 12 calendar months preceding to the date of termination and admittedly the management has not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act while terminating the service of the workman. So now on careful consideration of entire evidence available in the case record as discussed above, I came to the finding that the termination of service of the workman by the management with effect from the 12th August 1991 is neither legal nor justified.

8. The workman has argued for reinstatement in service with full back wages. But according to the settled principles of law 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. It has been argued by the management that the work of the workman was not satisfactory and by virtue of computerisation the work of the workman as Typist is no more required. According to the settled principle of law indisputedly, the Industrial Court exercises a discretionary jurisdiction but such discretion is required to be exercised judiciously. Relevant factors therefore were required to be taken into consideration. The nature of appointment, the period of appointment, the availability of the job, etc. should be weigh with the court for determination of compensation regarding reinstatement and back wages. But on careful consideration of all the materials available in the case record as discussed above I am of the opinion that it is a fit case to award compensation in lieu of reinstatement and back wages and in my opinion a sum of Rs. 40,000 as compensation will meet the ends of justice in this case. Hence both the issues are answered accordingly.

9. Hence ordered :

That the termination of service of Shri Prasanna Kumar Patra, Typist by the management of M/s Prasad industries, Industrial Estate, Rasulgarh, Bhubaneswar with effect from the 12th August 1991 is illegal and unjustified. The workman Shri Patra is entitled to get a lump sum amount of Rs. 40,000 (Rupees Forty thousand) only as compensation in lieu of reinstatement and back wages. The management is directed to implement this Award within a period of one month from the date of its publication in the official Gazette, 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
12-11-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
12-11-2010
Presiding Officer
Labour Court, Bhubaneswar

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

Printed and published by the Director, Printing, Stationery and Publication, Orissa, Cuttack-10
Ex. Gaz. 1959–193+11