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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th January 2011

No. 410—li/1(B)-97/1993-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd November 2010 in Industrial Dispute Case No. 59 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Utkal Galvanizers Pvt. Ltd., Jagatpur, Cuttack and its workman Shri Narayan Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 59 OF 2008 (PREVIOUSLY REGISTERED
AS I. D. CASE No. 35 OF 1995 IN THE FILE OF THE P.O., LABOUR COURT, BHUBANESWAR)

The 3rd November 2010

Present :

Shri Raghubir Dash, o.s.J.s. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of M/s. Utkal Galvanizers . . . First Party—Management
Pvt. Ltd., Jagatpur, Cuttack.

And

Its workman Shri Narayan Das, . . . Second Party—Workman
S/o Baishnab Das,
Vill Ahiyaspatri, P.O. Khosalpur,
Via Dasarathpur, Dist. Jajpur.

Appearances :

For the First Party—Management . . . Shri S. T. Ullah, Authorised Representative

For the Second Party—Workman . . . Shri T. Lenka, Authorised Representative

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') made by the Government of Orissa in Labour & Employment Department vide their Order No. 1500—li-1(B)-97/1993-LE., dated the 28th January 1995 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-LE., dated the 4th April 2008. The Schedule of reference runs as follows :—

“Whether the action of the management of M/s Utkal Galvanisers (P) Ltd., Jagatpur, Cuttack in terminating the services of Shri Narayan Das, Watchman with effect from the 14th May 1991 is legal and/or justified ? If not, what relief Shri Das is entitled to ?”

2. The story in the claim statement, in short, is that in 1987 the workman joined with the first party as Helper. In November 1990 on being asked to work as a Watchman at Constuction Sites of Transmission Line of Choudwar and Bidanasi, he complied with the verbal orders. He first joined at Bidanasi Site and then with effect from the 13th March 1991 at Choudwar Site. He was forced to watch single-handedly the materials lying at the Site day and night and without availing any holiday. On the 15th March 1991 night at 2-30 A.M. five to six miscreants reached at the Site, beat him, gagged him, wrongfully restrained him and by entering inside they took away some materials. After their departure he could not leave the place as other materials were lying at the Site. Next day when the Managing Director of the first party came to the site he gave information about the incident. After that incident he was asked to work inside the factory. A few days after his joining in the Factory he was chargesheeted vide letter No. 191, dated the 21st March 1991. On consideration of his explanation to the chargesheet, the Management intimated him to face a domestic enquiry scheduled to be held on the 13th April 1991 by a Disciplinary Committee. No enquiry was held on the 13th April 1991. Subsequent date(s) of enquiry was not intimated to him. On dated the 8th May 1991 when he went to attend to his duties he was not allowed. Instead, he was handed over to the Police. He was detained by the Police till the 14th May 1991. As no incriminating circumstances were found by the Police, he was released. On the 15th May 1991 when he went to the Factory, the Manager compelled him to sign on two sheets of blank papers to which he refused. Then he was driven-out being told that his services had been terminated. Then he raised an industrial dispute. Thereafter, the management vide letter No. 333, dated the 14th May 1991 intimated him that he had been dismissed from service. Neither second Show-Cause Notice nor the copy of the enquiry report was supplied to him. Principle of natural justice was not followed before dismissing him from service.

3. In the written statement it is stated that on a theft committed on the 14th March 1991 night at the site the workman gave a suspicious story. The matter was reported to the Police by the management. After making a preliminary enquiry the management suspected foul play committed by the workman. So, on the 21st March 1991 chargesheet was served on him. The workman's explanation to the chargesheet was found unsatisfactory. So, the management decided to hold an enquiry. It appointed a five men Enquiry committee. The workman did not appear before the Committee though duly informed. The Committee submitted its report on the 16th April 1991. Taking the facts and circumstances into consideration the management was convinced that the workman had made a cock-and-bull story of theft. So, losing confidence in the workman the management dismissed him.

4. The following issues have been framed :—

ISSUES

- (i) “Whether the action of the management of M/s Utkal Galvanisers (P) Ltd., Jagatpur, Cuttack in terminating the services of Shri Narayan Das, Watchman with effect from the 14th May 1991 is legal and/or justified ?
- (ii) If not, what relief Shri Das is entitled to ?”

5. Neither side has adduced any evidence.

6. Basing on the pleadings of the parties it can be held that the workman had been working with the first party since 1987 and his services were terminated on the 14th May 1991 by way of dismissal. The first party admits that since the workman himself committed the theft on the 14th March 1991 the first party lost confidence in him and dismissed him from service. It is further pleaded in the written statement that on the theft incident the management after a preliminary enquiry issued chargesheet to the workman on the 21st March 1991 and when his explanation was found unsatisfactory, the management decided to hold an enquiry and for that appointed five persons to constitute an Enquiry Committee and when the workman failed to appear before the Committee on the on the scheduled date, the Committee submitted a report on the 16th April 1991. But, there is no specific plea that the Enquiry Committee had conducted an enquiry in accordance with the Standing Orders which were applicable to the parties and in the enquiry the charges were found established. In the absence of such pleadings, it is to be presumed that no domestic enquiry into the charges levelled against the workman was conducted in accordance with the standing orders. Therefore, the order of dismissal without a domestic enquiry is illegal. On the basis of the pleadings only this Tribunal can record a finding that the order of dismissal is illegal.

7. But, a question arises as to whether the workman who has challenged the validity of the order of dismissal having failed to produce any evidence can get any relief in view of the settled position of law that in a judicial proceeding if no evidence is produced the party challenging the validity of the order must fail. In this context, it is worth mentioning that though the management claims to have dismissed the workman, it has not taken a clear stand as to whether a domestic enquiry was conducted in a fair manner and in accordance with the standing orders and yet the management did not take a plea in the written statement reserving its right to adduce evidence before this Tribunal to prove the charges. There is no pleading in the written statement as to whether the management relies on the domestic enquiry and does not want to adduce additional evidence to prove the charges, nor did it ask for an opportunity during pendency of the proceeding to adduce evidence to establish the charges. In *wokmen of Firestone Tyre & Rubber Co., Vrs. management*, reported in 1973 (26) FLR 359 (S.C.), it is held that if there is no enquiry or the enquiry held is found to be defective, the Tribunal has to give an opportunity to the employer and the employee to adduce evidence before it and it is open to the employer to adduce evidence for the first time justifying his action and it is open to the employee to adduce evidence to the contrary. It is further observed that an employer who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify its action it should ask for it at the appropriate stage and if such an opportunity is asked for, the Tribunal has no power to refuse. In *Karnatak State Road Transport Corporation Vrs. Smt. Laxmidevamma*, AIR 2001 (S.C.) 2090, it is held that in order to avoid unnecessary delay and multiplicity of proceeding the management has to seek leave of the Court/ Tribunal in the written statement itself to lead evidence to support its action in the alternative and without prejudice to its right and contentions. However, it is observed, the Court/Tribunal has got

the power requiring or directing the parties to lead additional evidence at any stage of the proceeding before they are concluded if on facts and circumstances of the case it is deemed just and necessary in the interest of justice. The Hon'ble Supreme Court in so many judgements have held that the Court/Tribunal cannot invite *suomotu* the management to adduce evidence to justifying its action.

In the case at hand, the management did never make a praper seeking leave of the Tribunal to adduce evidence/additional evidence to establish the charges against the workman. As neither party has taken the stand that the domestic enquiry was conducted before dismissal of the workman, the workman could not have adduced any evidence on the fairness of the domestic enquiry. Therefore, when the workman abstained from taking part in the proceeding before this Tribunal, the management ought to have adduced evidence to prove the charges against the workman by availing the opportunity of adducing additional evidence before this Tribunal. As per Rule 10-B (9) of th Orissa Industrial Dispute Rules, 1959 if the workman fails to appear at any stage the Tribunal, instead of dismissing the reference, shall proceed with the reference *ex parte* and decide the reference in the absence of the defaulting workman. So, the management even in the absence of the workman was required to take part in the proceeding and to adduce evidence to establish that the dismissal was legal. In a case of termination of services otherwise than by way of dismissal, the burden is on the workman to prove that the impugned order is illegal. But, in a case of dismissal, the burden is on the management to prove that it had conducted a domestic enquiry observing the principles of natural justice and the charges found proved justified the order of dismissal. Therefore, in my considered view failure on the part of the workman to lead evidence is immaterial. On the other hand, failure on the part of the management to show that the orde of dismissal was preceded by a fairly conducted domestic enquiry entails the workman to the relief of reinstatement with back wages.

8. In the result, the action of the management in terminating the services of the second party with effect from the 14th May 1991 by way of dismissal is illegal and unjustified. Since the workman was a regular employee of the first party and since he has been dismissed without any domestic enquiry, he be reinstated with full back wages and other service benefits. In case the workman has reached the age of superannuation, then he be paid back wages till the date of his attaining the age of superannuation with all other service benefits.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH

3-11-2010

Presiding Officer

Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH

3-11-2010

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

P. K. PANDA

Under-Secretary to Government