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LABOUR & EMPLOYMENT DEPARTMENT NOTIFICATION

The 13th October 2011

No. 9101—li/1-(B)-98/2006-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th July 2011 in I. D. Case No. 2 of 2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Orissa Fibres, Satsankha, Puri and its workmen Shri Gadadhar Behera and 3 others represented by the President, Aerocom (P) Ltd., Employees Union was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 2 of 2007

The 4th July 2011

Present :

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

Between :

The Management of M/s. Orissa Fibres . . First-party Management
Satsankha, Puri.

And

Its Workman Shri Gadadhar Behera, . . Second-party Workman
and 3 others represented by the President,
Aerocom (P) Ltd., Employees Union.

Appearances :

Shri H. K. Panda, Dy. Manager. . . For the First-party Management

Shri G. Behera . . Second-party Workman themselves.

Shri P. K. Mohapatra

Shri S. Parida

Shri R. Ch. Swain

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. 11446—li/1(B)-98/2006-L.E., dated the 29th December 2006 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. Orissa Fibre, Satasankha, Puri in dismissing the services of Shri Gadadhar Behera, Shri Prafulla Kumar Mohapatra, Shri Sanatan Parida and Shri Ramesh Ch. Swain workmen with effect from the 30th July 2005 is legal and/or justified ? If not, to what relief Shri Behera, Shri Mohapatra, Shri Parida and Shri Swain are entitled ?"

3. The workmen have submitted their statement of claim separately

The case of the workmen in brief is that they were working under the management since 1979. The Aerocom Private Limited and M/s. Orissa Fibres are under the common management. On 13th the April 2005 the management submitted a false charge-sheet against them on the ground that on the 5th April 2005 while they were on 'A' shift duty planned to commit theft of 2 Kg. copper wire in collusion with one Bijay Kumar Panda, a casual worker and accordingly Shri Panda under their abetment threw the stolen article to outside campus of the management through a hole meant for an exhausted fan at about 10.30 A. M. On this allegation the management placed the workmen under suspension with effect from the 6th April 2005 and charge-sheeted on the 13th April 2005 as discussed which was illegal, arbitrary and whimsical. In order to deprive the workmen to get their legitimate claim, hastily on the same day took decision for domestic enquiry and appointed a person namely Shri Bigyan Bhusan Pattnaik as Enquiry Officer to enquire into the matter. During course of enquiry not a single witness for the management deposed against the workmen, rather they stated the truth and proved their innocence. Despite of this truth, the Enquiry Officer hold that the workmen were guilty of committing of theft on the 5th April 2005. On the basis of the enquiry report, the workmen were dismissed from the service. So in this back ground the workmen 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 workmen have prayed for 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, the workmen were working under the management. But on the 5th April 2005 while they were in 'A' shift duty, they were caught red handed by the security guard of the management for stealing/lifting two Kg. of copper wire from the factory premises of the management. Thereafter the managements suspended them from their work with effect from the 6th April 2005 and for their involvement in theft, they were charge-sheeted on the 13th April 2005 for the charges of theft and dereliction of duty and called upon to submit their explanations within seven days on receipt of charge-sheet. The workmen submitted their explanations. As their explanations were found not satisfactory, the management decided to hold a domestic enquiry and accordingly on the 23rd April 2005 one Mr. Bigyan Bhusan Pattnaik an outsider was appointed as Enquiry Officer. The workmen have attended and participated in the enquiry. After conclusion of the enquiry, the Enquiry Officer submitted his report to the management holding

the workmen guilty of the charges. The management before inflicting punishment, second show cause notice was issued to them. On the 23rd July 2005 the workmen although submitted their show cause reply but requested to supply the enquiry report. On the 27th July 2005 the management granted permission for inspection of enquiry report in the office of the management. The management after a careful consideration and taking into the nature and gravity of misconduct committed by the workmen decided to dismiss them and accordingly they were dismissed from service with effect from the 30th July 2005. The principle of natural justice has been duly followed by the management in respect of the domestic enquiry. Out of the workmen, the workmen namely Shri Prafulla Kumar Mohapatra and Shri Sanatana Parida have admitted their guilt and during pendency of the case both of them have settled their dispute and received their full and final amount from the management. So 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. Orissa Fibre, Satasankha, Puri in dismissing the services of Shri Gadadhar Behera, Shri Prafulla Kumar Mohapatra, Shri Sanatan Parida and Shri Ramesh Ch. Swain, workmen with effect from the 30th July 2005 is legal and/or justified ?
- (ii) If not, to what relief Shri Behera, Shri Mohapatra, Shri Parida and Shri Swain are entitled ?"

6. In order to substantiate their plea, the the workman namely Shri Ramesh Ch. Swain has examined himself as W. W. 1 whereas the workman Shri Gadadhar Behera has examined himself as W.W. 2 but no document has been marked as exhibit on behalf of the workmen. The management neither adduced any evidence nor proved any document on its behalf.

FINDINGS

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

Though no specific issue regarding fairness of domestic enquiry conducted by the management against the workman, both the parties have knowledge about such domestic enquiry. The workmen have taken the plea that principle of natural justice has not been followed by the management during the domestic enquiry and not a single witness of the management has stated against the workmen. The management has not examined any witness including the Enquiry Officer to unfold the truth. According to the settled principle of law as reported in A. I. R. 1963 S. C. 1914 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, enquiry proceeding and enquiry report have not produced by the management in this case. So from the materials available it cannot be said that all the relevant and mandatory provisions as discussed above are duly followed. The management has also admitted in its written statement that no enquiry report was supplied to the workmen, but the workmen were only granted

permission for inspection of enquiry report in the office of the management. So on careful consideration of all the materials available in the case record, I came to the finding that the domestic enquiry conducted by the management against the workmen was not fair and proper.

8. The workmen were dismissed from service on the allegation of theft of copper wire. The management has not proved this fact even on merit. There is no material to show that the provisions of Section 25-F of the Industrial Disputes Act has also been followed while terminating the services of the workmen which is a mandatory and precondition one. Though in the written statement the management has taken the plea that the workmen namely Shri Prafulla Kumar Mohapatra and Shri Sanatana Parida have settled their dispute with the management, nothing has been proved in this regard. So in this back ground, on careful consideration of all the materials available in the case record as discussed above, the action of the management in dismissing the services of the workmen with effect from the 30th July 2005 is neither legal nor justified. Therefore, the workmen are entitled to be reinstated in service.

9. 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.) O. L. R. 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. 30,000 will meet the ends of justice in this case. Hence both the issues are answered accordingly.

10. Hence Ordered :

That the action of the management of M/s. Orissa Fibre, Satasankha, Puri in dismissing the services of Shri Gadadhar Behera, Shri Prafulla Kumar Mohapatra, Shri Sanatan Parida and Shri Ramesh Chandra Swain workmen with effect from the 30th July 2005 is illegal and unjustified. The above named four workmen are entitled to be reinstated in service with a lump sum amount of Rs. 30,000 (Rupees thirty thousand) only each in lieu of back wages. The management is directed to implement that 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
4-7-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
4-7-2011
Presiding Officer
Labour Court, Bhubaneswar

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

