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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th October 2011

No. 9541—li/1(B)-78/2008-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th April 2011 in I. D. Case No. 12/2009 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Sutan Service Co-operative Society Ltd. and its Workman Smt. Anasuya Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 12 OF 2009

Dated the 6th April 2011

Present :

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

Between :

The Management of
M/s Sutan Service Co-operative
Society Ltd. First-party—Management

And

Its Workman
Smt. Anasuya Behera Second-party—Workman

Appearances :

Shri B. K. Swain, Secretary For First-party Management

Smt. Anasuya Behera Second-party Workman herself

AWARD

The Government of Odisha 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. 5682—li/1(B)-78/2008-LE., dated the 29th June 2009 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 Sutan Service Co-operative Society Ltd., At Tarkor, P.O. Khalakata Patna, Dist. Puri by terminating Smt. Anasuya Behera, Cashier with effect from the 12th July 2007 is legal and/or justified ? If not, what relief she is entitled to ?"

3. The case of the workman in brief is that she was working as a Cashier under the management from the 29th September 1994 with a consolidated pay of Rs. 1,200 per month. But her service was illegally terminated with effect from the 12th July 2007 vide Order No. 5, dated the 2nd July 2007 of the management without assigning any reason thereon. On receiving such illegal termination order for the management, the workman was highly depressed and 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 quash the illegal termination order.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, it is a Society, registered Co-operative Society and its administration, business and construction have been regulating under Orissa Co-operative Societies Act and Rules. In the Society a Mini Bank was opened on Dt. 26-9-1994 for the benefit of the members of the Society as per the direction of the Registrar and financing Bank and the workman was appointed as a Cashier on temporary basis and she joined on Dt. 3-10-1994. The Mini Bank was continued to function till Dt. 20-7-2006 and as per the decision of the Managing Committee on account of continuous loss, the said Bank was closed on Dt. 21-7-2006. While continuing in her service, the workman without any application remained absent from duty with effect from the 29th August 2006. Due to absence of the workman from her duty without any application a resolution was passed by the management on Dt. 18-6-2007 directing the Secretary of the management to issue show-cause notice to the workman. The Secretary of the management issued a show-cause notice on Dt. 19-6-2007 to the workman. But on receiving the said notice the workman failed to give any reply to the said show-cause notice. The workman has also availed loan of Rs. 10,000 on Dt. 31-3-2003 from the management but was defaulted in payment of loan amount with interest and accordingly a separate demand notice was issued. So it is felt by the management that the workman does not want to continue in her service for which her service was terminated and directed the Secretary of the management to communicate the decision of the management to the workman that she is no longer in her service. She served under the management for eleven years five months and twenty-six days and gratuity was counted amounting to Rs. 7,615 as per Orissa Shops and Commercial Establishments Act as the payment of Gratuity Act is not applicable to the management and it was decided to pay the said amount. It was further decided as the workman was liable to pay substantial sum towards agricultural loan and other loan dues to the management, the above amount was adjusted towards her loan dues and was directed to pay a

further amount of Rs. 44,623 after adjustment of the gratuity amount. So on this background, it has been prayed by the management that the workman is not entitled to get any benefit in this case and prayed for answering 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 Sutan Service Co-operative Society Ltd., At Tarkor, P.O. Khalakata Patna, Dist. Puri by terminating Smt. Anasuya Behera, Cashier with effect from the 12th July 2007 is legal and/or justified ?
- (ii) If not, what relief she is entitled to ?"

6. In order to substantiate her plea, the workman has examined herself as W.W. 1 and proved the documents marked as Exts. 1 and 2. Similarly the management has examined his Secretary as M.W. 1 and proved the documents marked as Exts. A to F.

FINDINGS

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

According to W.W. 1, she joined under the management on Dt. 26-9-1994 on a consolidated pay of Rs. 1,200 per month as a Cashier and was discharging her duty perfectly and to the best of her abilities with dedication and honestly to the establishment and for the best satisfaction of the management. But the management issued a letter on Dt. 19-6-2007 for show-cause explanation regarding her unauthorised absence from duty and regarding non-payment of her personal loan to the management. Though the workman has filed her explanation but was not accepted by the management. But no such document has been marked as exhibit on behalf of the workman. The management without initiating any proceeding passed the order of termination vide Order No. 5, dated the 12th July 2007 vide Ext. 2. She has completed more than 240 days of work in preceding twelve calendar months from the date of her termination and the provisions of Section 25-F of the Industrial Disputes Act has not been followed at all. On the other hand, according to M.W. 1 due to continuous absence of the workman in her duty without any application a show-cause notice was issued to her on Dt. 19-6-2007 but she failed to give any explanation to the said show-cause notice. Thereafter the management of the Society took a decision in its meeting, Dt. 12-7-2007 that the workman without any reason and on her own will absent in her duty since Dt. 29-3-2006. So it is felt that the workman herself does not want to continue in her service and her service was terminated and it was communicated to her by M.W. 1 that she is no longer in service. The management also demanded Rs. 44,623 from the workman after adjusting the gratuity amount towards loan dues against the workman. Perused the documents marked as exhibits on behalf of both the parties.

8. Admittedly the workman had worked under the management for more than eleven years. According to the settled principle of law as reported in 2001 LLR 54 Supreme Court of India 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. Admittedly no domestic enquiry was held in this case. The management has not produced the attendance register to know the exact absence of the workman from duty. The workman denied to have remained absent from duty voluntarily in her cross-examination and is silent regarding absence in her pleading. Further according to the settled principle of law even when the workman remained absent failed to report for duty, it was imperative to follow the principle of natural justice by giving the opportunity but in this case it is wanting. The workman has taken the plea that she was working continuously and completed 240 days of service preceding twelve calendar months from the date of termination. According to the settled principle of law as reported in AIR 2010 S.C. 1236 that the workman would have difficulty in having access to all official documents, muster rolls etc. in

connection with his service which the workman claimed and deposed that he had worked for 240 days which the statutory requirement, the burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. The management has not produced any document regarding her period of service rendered. While terminating the service of the workman admittedly the management has not followed the provisions of Section 25-F of the Industrial Disputes Act which is a mandatory and pre-condition one. So now 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 by terminating the workman from service with effect from the 12th July 2007 is neither legal nor justified and the workman is entitled for reinstatement in service.

9. Regarding back wages, as per the 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 that 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.

10. Hence it is ordered :

That the action of the management of M/s Sutan Service Co-operative Society Ltd., At Tarkor, P.O. Khalakata Patna, Dist. Puri by terminating Smt. Anasuya Behera, Cashier with effect from the 12th July 2007 is illegal and unjustified. The workman Smt. Behera is entitled for reinstatement 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
06-04-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
06-04-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government