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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th October 2011

No. 9566—li/1-(B)-13/2008-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th April 2011 in I. D. Case No. 4/2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Biratunga Service Co-operative Society Ltd., Biratunga, Puri and its Workman Shri Sindhu Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 4 OF 2008

Dated the 16th April 2011

Present :

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

Between :

The Management of
Biratunga Service Co-operative
Society Ltd., Biratunga, Puri. First-party—Management

And

Its Workman
Shri Sindhu Behera. Second-party—Workman

Appearances :

None For First-party—Management

Shri S. C. Behera Second-party—Workman himself

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. 6145—li/1(B)-13/2008-LE., dated the 27th May 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 Biratunga Service Co-operative Society Ltd., Biratunga, Dist. Puri by dismissing Shri Sindhu Behera, Cashier-*cum*-Clerk from service with effect from the 18th March 2004 is legal and/or justified ? If not, to what relief Shri Behera is entitled ?"

3. The case of the workman in brief is that he joined as Cashier-*cum*-Clerk under the management on 18-11-1995 with a consolidated pay of Rs. 350 per month as per Letter No. 43, dated the 13th November 1995 of the management. He continued as such to the best of the abilities and to the best satisfaction of the authorities of the management. But all of a sudden, the workman was placed under suspension with immediate effect by the management on the alleged charges of manipulation of records and misappropriation of funds. But the workman was not asked to explain any charges made against him. The workman protested such illegal suspension of his service and subsequently, the management vide its Order, dated the 11th April 2003 revoked the order of suspension. Thereafter the workman resumed his duties and discharged the assigned duties to the best of his abilities. When the workman pointed out certain irregularities in the management of Society Fund, the superior authority of the management harassed the workman and the Secretary of the management threatened him to terminate his service, if he would not admit his guilty of charges of alleged misappropriation of funds. The management adopted unfair labour practice, restrained the workman to enter into the office premises of the management with effect from the 25th May 2003 and issued a charge-sheet alleging unauthorised absence from duty with effect from the 25th May 2003 and alleging misappropriation of deposits of 15 Nos. of depositors. The management with an ulterior motive framed charge-sheet vide Order, dated the 7th August 2003 alleging unauthorised absence from duty and alleging misappropriation of the deposits of depositors. A sum of Rs. 1,25,000 was sanctioned by the management in favour of the workman towards a S.B. Loan. If the workman was alleged to have been involved in the charges of misappropriation of depositor's money, how such huge amount was sanctioned in his favour. The workman was not aware of any conducting of domestic enquiry prior to passing of dismissal order of the workman with effect from the 18th March 2004 which clearly violates the principles of natural justice. At the time of dismissal of the workman from service, he was drawing wages at the rate of Rs. 1,440 per month. If at all any enquiry was conducted by the management against the workman, it was a mere eye wash and intended only to punish the workman. So in this background, the workman 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 reinstatement in service with full back wages.

4. The management though appeared and took time to file the written statement did not file any written statement and was set *ex parte*.

5. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 to 7.

6. The workman has submitted his affidavit evidence in support of his statement of claim and proved documents marked as Exts. 1 to 7. Ext. 1 is the xerox copy of the appointment order of the workman whereas Ext. 7 is the xerox copy of the details of charge. It has been stated by the

workman that no domestic enquiry was conducted against him before dismissing him from service. The management has been set *ex parte*. There is no material on record to show that any domestic enquiry was held or not. So without holding any domestic enquiry, imposing of punishment of dismissal is no way attract the principle of natural justice. There is also material on record to show that at the time of dismissal/termination of the service of the workman, the provisions of Section 25-F of the Industrial Disputes Act has been duly followed which is a mandatory and precondition one. So basing on the materials available in the case record and on careful consideration of the same, I am of the opinion that the action of the management by dismissing the workman from service with effect from the 18th March 2004 is neither legal nor justified. The workman is entitled for reinstatement in service.

7. 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, I am of the opinion that instead of granting full back wages, a lump sum amount of Rs. 30,000 as compensation will meet the ends of justice in this case.

8. Hence, it is ordered :

That the action of the management of M/s Biratunga Service Co-operative Society Ltd., Biratunga, Dist. Puri by dismissing Shri Sindhu Behera, Cashier-*cum*-Clerk from service with effect from the 18th March 2004 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 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 *ex parte*.

Dictated and corrected by me.

S. K. DASH
16-4-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
16-4-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government