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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th October 2011

No. 9620—li/1-(BH)-15/2002-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th May 2011 in I. D. Case No. 74/2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial Dispute between the Management of M/s. Birla Tyres, Chhanpur, Balasore and its Workman Shri Radha Ranjan Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 74 of 2002

The 17th May 2011

Present :

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

Between :

The Management of M/s. Birla Tyres, . . . First-party Management
Chhanpur, Balasore.

And

Their Workman . . . Second-party Workman
Shri Radha Ranjan Das

Appearances :

Shri Subrat Ku. Behera	..	For the First-party Management
Shri R. R. Das	..	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 have referred the matter in dispute to this Court vide Order No. 7657—li/1(BH)-15/2002-L.E., dated the 22nd June 2002 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the termination from services of Shri Radha Ranjan Das, Assistant (Stores) with effect from the 13th July 1994 by the Management of M/s. Birla Tyres by way of resignation under duress is legal and/or justified ? If not, what relief the workman is entitled to ?"

3. The case of the workman in brief is that he was appointed by the management as a Graduate Trainee on the 26th November 1991 for a period of one year and after completion of training period, he was confirmed as an Assistant (Stores) with effect from the 5th December 1992 and continued in the service. While he was in service, suddenly on the 4th July 1994, Shri Deepak Tondon, General Manager called him to his chamber through an officer. The workman was surrounded by a group of security personnels and some officers and as per direction of Shri Tondon under threatening, he submitted his resignation letter on the ground of his personal and family disturbances. But he has submitted the same under force. After such incident, he was performed his duty as usual. On the 12th July 1994, the departmental Deputy Manager, Shri P. K. Karan asked him not to come to the factory as his resignation letter has been accepted by the management. He was asked to sign in the acceptance of resignation letter to which he refused. Thereafter apprehending termination from the service by the management, the workman sent one F. I. R. to the Sadar Police Station on the 16th July 1994 about the incident but the police did not registered his case. Thereafter he sent a copy of the same to the Superintendent of Police, Balasore who also did not take any action. On the 26th July 1994, he was refused to enter into the factory premises to resume his duty on the ground that he was no longer in service. He sent a registered letter to the management challenging the forceful resignation taken from him by the management which was returned unserved. The workman has not been relieved from the service and he has not made over charge. Thereafter the workman raised an industrial dispute before the labour authority by filing a complaint petition dated the 11th April 2001 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 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 and challenged it on the ground of cause of action and law of limitation. According to the management, the workman was engaged as an Assistant (Stores) which was a

supervisory post and was drawing salary of Rs. 2029/- per month and was vested with the power of supervision and was not a workman as per Section 2 (s) of the Industrial Disputes Act. So he is not entitled to get any relief in this case. While the workman was in service, he voluntarily submitted a written resignation letter on the 4th July 1994 to the General Manager (Commercial) of the management stating that he has resigning from his service due to some of his family problems and requested to relieve him immediately. Accordingly, his resignation was accepted and relieved from his service with effect from the 12th July 1994. He was also advised to collect his dues from the Accounts Department immediately but the workman did not turn up to collect his legal dues and remained silent over the matter for years together and after lapse of 7 years from the date of his resignation, the workman at the instigation of some local touts lodged a false complaint before the District Labour Officer, Balasore on the 11th April 2001. There was absolutely no reason to give threats and coercion to the workman, but the workman with *mala fide* intention has raised the present dispute after lapse of seven years from the date of his resignation and suppressing the fact that he was appointed as an Assistant (Stores) which was in supervisory capacity and was not a workman as per the Industrial Disputes Act. So in the circumstances the management has 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 termination from services of Shri Radha Ranjan Das, Assistant (Store) with effect from 13th July 1994 by the management of M/s. Birla Tyres by way of resignation under duress is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?".

6. In order to substantiate their plea, the workman has examined himself as W. W. 1 and proved documents marked as Exts. 1 to 6. Similarly, the management has examined two witnesses altogether out of whom M. W. 1 is the General Manager (Commercial) of the management and M. W. 2 is the Senior Officer, Personnel of the management and proved documents marked as Exts. A to H.

FINDINGS

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

W. W. 1 in his affidavit evidence has clearly stated that he was working as Assistant (Stores) under the management after completion of his training period and was confirmed in service on the 5th November 1992. While he was performing his duty as an Assistant in the Stores department of the management, on the 4th July 1994, he was called to the office room of Shri D. K. Tondon, the then General Manager where he was surrounded by a group of security personnels, the said General Manager handed over a piece of paper to him and asked him to write as per his dictation. He was socked and very much afraid in such a situation out of fear and being compelled by the then General Manager, he wrote in that paper that he is resigning from his service for his personal reason and family disturbance. But thereafter he worked in the office till the 12th July 1994. Thereafter he sent

one F. I. R. to the police on the 16th July 1994, but the police being influenced by the mighty officers of the management did not take any action on his complaint and did not register any case. So he sent a copy of his complaint to the Superintendent of Police, Balasore who also did not take any action. On the 26th July 1994, he was refused to enter into the factory premises of the management. But the workman is silent about what happened between the 13th July 1994 to 26th July 1994 and whether he was working under the management for the said period or not. On the other hand, it is admitted by the workman in his cross-examination that there was cordial relationship between the management till the 12th July 1994. So if so, the question of obtaining resignation by applying force is also doubtful. It is admitted by both the parties that the workman was getting Rs. 2029/- per month at the time of so-called resignation.

8. According to M. W. 1 on the 4th July 1994, the workman voluntarily submitted his resignation to the General Manager (Commercial) of the management which was duly accepted by the management on the 12th July 1994 and he was advised to collect his full and final payment from the accounts department immediately. Ext. B is the xerox copy of acceptance of resignation letter, dated 12th July 1994 which was sent to the workman by registered post with A. D., but the same was returned back with postal remark "addressee absent home hence return to sender". The xerox copy of postal cover has been marked as Ext. F whereas, the postal A. D. has been marked as Ext. F/1. The Original postal envelope produced by the management and proved through M. W. 2 which has been marked as Ext. G and the original letter of Ext. B has been marked as Ext. H. The management has also proved the xerox copy of letter of withdrawal of resignation of workman sent by post card on the 8th August 1994 marked as Ext. D. According to W. W. 1, he lodged F. I. R. to the police vide Ext. 3 which was sent to the police by registered post. The xerox copy of postal receipt has been marked as Ext. 3/a and the xerox copy of postal A. D. has been marked as Ext. 3/b which is of dated the 19th July 1994. Ext. 3 does not disclose any date when it was scribed and sent to the police. Though the workman has stated that he had intimated the Superintendent of Police, nothing has been proved in this regard. According to the settled principle of law, if the resignation has been taken from the workman by the management under force which amounts to a criminal action, the workman should have taken shelter under Criminal law. Though the concerned police including Superintendent of Police did not co-operate, what prevented the workman to lodge complaint case before the competent Court of law in this regard. The workman is also silent in this matter. According to workman, he has intimated the management through registered letter vide Ext. 5 praying to cancel his resignation letter which has taken forcibly. It was of dated the 26th July 1994 and was sent to the management by registered post which was returned back as refused vide Ext. 5/a. So when it was by the management to receive, the workman remained silent by not taking any further course of action in this regard and remained silent for a long period. Thereafter according to the workman, he issued a letter vide Ext. 1 of dated the 16th April 1996 under certificate of posting vide Ext. 1/a praying to allow him to join his duty. Ext. 2 is another such prayer of dated the 10th June 1998. It was also sent through under certificate of posting vide Ext. 2/a. When it was alleged that the resignation was obtained from him forcibly and he prayed for reinstatement in service, he could have submitted the same personally or by registered post. But without doing the same, he sent letters only by under certificate of posting and remained silent. From an under certificate of posting, it cannot be said that the addressee received a letter. It is a presumption that

an envelope has been issued to the addressee. Ext. 4 is the xerox copy of representation of the workman of dated the 16th October 1995 to the management which was sent through registered post vide Ext. 4/a. The resignation letter has been accepted by the management on the 12th July 1994 vide Ext. B. The withdrawal of resignation received from the workman by the management vide Ext. D is after thought one as there is no pleading in this regard. So that should not be taken into consideration at this stage. However, it is after acceptance of the resignation letter. Perused all the documents marked as exhibits on behalf of both the parties.

9. So basing on these materials available in the case record, it has been argued by the workman that his resignation was obtained forcibly and he was not relieved from service and his dues were not settled. So taking into consideration of his documents marked as exhibits, he may be reinstated in service with full back wages. In support of his argument, he has relied upon the authority reported in 1997 S. C. S. (L & S) 941 but that case is basing on voluntary retirement where the claim has not been settled. But it is a case of resignation and the resignation has been duly accepted. The management has argued that there is delay of about seven years in raising industrial dispute for which it should not be taken into consideration as it is barred by limitation. The authority reported in AIR 2001 S. C. 2562 and AIR 1999 S. S. 1351 as relied on by the workman that the limitation is not strictly applicable to the proceeding under the Industrial Disputes Act and proceeding cannot be quashed on the ground of long delay. But in the instant case, the workman has not given sufficient reason for remaining silent till dated the 11th April 2001 when he for the first time raised the dispute before the concerned labour authority. In relying upon the authorities reported in 2009 Lab. I. C. 2567, it has been argued that once the resignation has been accepted, the resignation is voluntary and was duly accepted. According to the settled principle of law as reported in 2008 Lab. I. C. 395 when the party challenged the legality of an order, the burden lies upon him to prove illegality of order and if no evidence is produced the party, invoking the jurisdiction of the Court must fail. Further in view of the authority reported in 2002 Lab. I. C. 552 Act of resignation is complete when officer of resignation is accepted by competent authority. For becoming resignation effective, it is not necessary that employee should receive communication of its acceptance. But in the instant case, the management had communicated the acceptance of resignation which of dated the 12th July 1994 but the workman was absent at his home, so it was returned unserved to the sender. It has been argued by the management that the allegation of obtaining resignation forcibly from the workman has not been proved by the workman at all by examining any witness at that time. In reply to it has been argued that all the employees present at the time of occurrence were working under the control of the management. So it cannot be expected that they come forward to depose against the management. But the workman can raise his dispute immediately before the labour authorities, i. e. concerned Assistant Labour Officer or concerned District Labour Officer and to the concerned labour Union, but the workman is silent in this regard.

10. The management has challenged the reference on the point of maintainability on the ground that the workman was getting higher salary and was a Supervisor. But during trial nothing has been proved in this regard to show that the workman was working in the nature of supervisory category. So for want of sufficient materials it cannot be said that the workman was working under supervisory category and on that ground, the reference said to be not maintainable. So now on

careful consideration of all the materials available in the case record as discussed above, I came to the finding that the resignation letter of the workman is a voluntary one and it was duly accepted by the management. So on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the termination from services of the workman with effect from the 13th July 1994 by the management by way of resignation voluntarily but not under duress is legal and justified and the workman is not entitled to get any relief in this case. Both the issues are answered accordingly.

11. Hence, ordered :

That the termination from services of Shri Radha Ranjan Das, Assistant (Stores) with effect from the 13th July 1994 by the management of M/s. Birla Tyres by way of resignation voluntarily but not under duress is legal and justified. The workman Shri Das is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
17-5-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
17-5-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government