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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th November 2011

No. 10044—IR(ID)-94/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th September 2011 in Industrial Dispute Case No. 59 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Director of Sports & Youth Services, Bhubaneswar and its workman Shri Fagunath Sethi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 59 OF 2010
Dated the 28th September 2011

Present :

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

Between :

The Management of .. First Party—Management
Director of Sports & Youth Services,
Bhubaneswar.

And

Its Workman Shri Fagunath Sethi .. Second Party—Workman
C/o Late Fakira Sethi
At Godijharia, P. O. Viruda, Dist. Cuttack.

Appearances :

For the First Party—Management .. Smt. Niharika Nayak,
Assistant Director (Planning)

For the Second Party—Workman himself .. Shri Fagunath Sethi

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 the Labour & Employment Department vide their Order No. 7136—ID-94/2010-LE., dated the 26th August 2010. The Schedule of reference referred to this Tribunal for adjudication runs as follows :—

“Whether the action of the Director of Sports & Youth Services, Orissa, Bhubaneswar in terminating the services of Shri Fagunath Sethi, ex-Security Guard with effect from the 9th June 2008 is legal and/or justified ? If not, what relief Shri Sethi is entitled to ?”

2. According to the averments made in the claim statement, the second party workman had been working in the Kalinga Stadium, Bhubaneswar which is under the First Party Directorate since the 1st December 1998. His engagement was on daily wage basis. He had been working as such continuously till the 9th June 2008 when his service was terminated by the First Party without service of a Statutory notice or payment of notice pay and retrenchment compensation. Nor any disciplinary proceeding was initiated against him. Hence, the termination of service of the Second Party being in contravention of the provisions of the Act is illegal. The Second Party has further pleaded that since the date of such termination he has been without any gainful employment. With such pleadings he claims for his reinstatement with full back wages.

3. Admitting that the Second Party had been engaged under the First Party since the 1st December 1998 on daily wage basis, it is claimed by the First Party in its written statement that the Second Party was a habitual neglecter of his duties. Because of his negligence a theft occurred in the Stadium on the 1st June 2008. When the matter was reported by the In-charge of the Stadium to the Director of Sports, payment of his remuneration was stopped. Thereafter he did not attend to his duties for a long period. It is further claimed that now the Second Party is in gainful employment in the Union Bank of India, Staff Training, Jagamara, Bhubaneswar.

4. The following issues have been framed :—

ISSUES

- (i) “Whether the action of the Director of Sports & Youth Services, Orissa, Bhubaneswar in terminating the services of Shri Fagunath Sethi, ex-Security Guard with effect from the 9th June 2008 is legal and/or justified ?
- (ii) If not, what relief Shri Sethi is entitled to ?”

5. The workman has examined himself as W. W. No. 1. The then In-charge of Kalinga Stadium is examined as M. W. No. 1. On behalf of the Workman Exts. 1 to 3 have been marked and on behalf of the Management one document is marked as Ext. A.

FINDINGS

6. *Issue Nos. (i) and (ii)*—The employer-employee relationship is not in dispute. It transpires from the stand taken by the First party and the evidence adduced by M. W. No. 1 that with effect from the 1st June 2008 payment of remuneration to the Second Party was stopped by an order passed by the Director of Sports. The reason cited for such stoppage of remuneration is that in the night between the 31st May 2008 and the 1st June 2008 there was a theft inside the premises of Kalinga Stadium during the duty hours of the Second Party. M. W. No. 1 has further stated that the

order for stoppage of remuneration was passed on the 2nd June 2008 and the Workman remained absent from duty with effect from the 2nd June 2008. The Workman has claimed that he worked up to the 8th June 2008 and on the next day, i. e. the 9th June 2008 he was denied employment without assigning any reason. In order to prove that the Workman did not attend duty with effect from the 2nd June 2008 the Management has exhibited the Attendance Sheet for the month of June 2008 which is marked Ext. A. But the Workman claims that he was not allowed to sign the Register and also was stopped from discharging duty with effect from the 3rd June 2008. Though there is disagreement between the parties as to from which date the Workman was either denied employment or he himself did not attend to his duties, it is not in doubt that the disengagement or discontinuance was as an out-come of the theft that had occurred on the 1st June 2008. The Management does not claim that any disciplinary proceeding was started against the Workman. Without any disciplinary proceeding order was passed to stop payment of his remuneration. Though it is claimed by the Management that after the 2nd June 2008 the Workman did not report for duty for a long period, it is admitted by M. W. No. 1 that on the 3rd July 2008 the Workman had made a representation to the Director of Sports. The representation dated the 3rd July 2008 is marked Ext. 3. In the representation the Workman alleged that he was not allowed to perform his duty with effect from the 9th June 2008. It is also mentioned in the representation that he should be permitted to resume his duties. But, the Management does not appear to have taken any action on that representation. The Management does not claim to have issued any notice to the Workman inviting explanation as to why he remained absent from duties with effect from the 2nd June 2008. When the Workman claims that he was denied employment and in reply to which the Management claims that the Workman abandoned his job by remaining absent from duties for a long period, the burden lies on the Management to show that it was a case of abandonment of job. The Management does not take a clear-cut plea that the Workman has abandoned his job. On the other hand, it has taken the stand that it has not terminated the services of the Workman. Though it is claimed that the Workman was a habitual neglecter of duties, it is not claimed that any disciplinary action was taken against him for any act of negligence. Even on the alleged incident of theft no action against the Workman is claimed to have been initiated.

7. In *M. C. D. Vrs. Praveen Kumar Jain & others*, 1999 Lab. I. C. 619 (S. C.), the Workman was a casual worker and the Management by an order had disallowed the workman to work with effect from the 1st August 1981. The Hon'ble Supreme Court have held that if it was by way of penalty then at least a regular departmental enquiry should have been conducted and if it was a simpliciter discharge order it was in violation of Section 25-F of the I. D. Act with further observation that if it is a penalty order it would fail on merits as not having followed the procedure of departmental enquiry.

In the case at hand the Second Party was working on daily wage basis but he had been in continuous employment for little less than ten years. The First Party stopped payment of his remuneration when the incident of theft was reported to the Authority. Soon thereafter the services of the workman got discontinued. Since the Workman has made a representation vide Ext. 3 and the Management has not taken any action thereon it is to be presumed that the Workman was interested to join in his duties but the Management did not want to take him back into employment. Even though the Management does not take a bold stand that because of the incident of theft the Second Party was disengaged from employment, the facts and circumstances indicate that it is a case of denial of employment on the ground of alleged negligence on the part of the Workman. Even though the Workman had been working on daily wage basis the Management ought to have initiated a disciplinary proceeding against him before terminating his services on the ground of

misconduct. Even assuming that the Workman absented from duties for some days soon after the alleged theft in the Stadium, the Management should have allowed him to resume duties when he approached for permitting him to join in his duties keeping it wide open itself to initiate a disciplinary proceeding against him. Even no action has been taken for the alleged long absence from duties. Even during conciliation proceeding the Management did not offer any proposal to take the Workman back in its employment. The conciliation failure report reveals that since another person has been engaged to work in the place of the Workman it was not possible to take the Workman back in his service. Thus, it is found that though work was available the Workman was not given employment. Thus, it is found that the denial of employment amounts to termination of service which is not in accordance with the provisions contained in Section 25-F of the Act.

In the result, the termination of service of the Second Party is illegal as well as unjust.

8. Since the Workman had been working continuously for about nine and half years and he was illegally terminated from service even though work was available, he is entitled to the relief of reinstatement. Since the Workman approached the First Party for his re-employment and then approached the Labour machinery within two months of his retrenchment but the Management did not agree to give him employment, the Workman is also entitled to back wages. Though the Management has specifically pleaded that the Workman has been working in the Union Bank of India, Staff Training, Jagamara, there is no evidence to substantiate the same. It might be a fact that the Workman has got employment in the meanwhile. But in the absence of evidence it is difficult to decide as to what is the period of such engagement and the amount of wages paid therefor. Therefore, this Tribunal holds that the Workman is entitled to full back wages.

In the facts and circumstances, the First Party is to reinstate the Second Party and pay him full back wages from the date of termination of his service till actual reinstatement. However, it is left to the discretion of the management to take-up disciplinary action against the Workman for the alleged misconduct and to recover the amount of wages, if any, the Workman has received towards his wages from the Union Bank of India, Staff Training, Jagamara, Bhubaneswar on being duly confirmed by the Management of Union Bank of India, Staff Training, Jagamara, Bhubaneswar.

The reference is answered accordingly. The First Party to implement the Award within a period of two months of the date of its publication in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH
28-9-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
28-9-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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