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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th November 2011

No. 10520—li/1-(BH)-28/2005(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th September 2011 in I. D. Case No. 9/2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Secretary, Mayurbhanj Central Co-op. Bank Ltd., Baripada and its Workman Shri Ganeswar Sahu represented through All Odisha Central Co-op. Bank Employees Federation, Mayurbhanj Unit, Baripada was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 9 OF 2006

Dated the 17th September 2011

Present :

Shri S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of
the Secretary, Mayurbhanj Central
Co-op. Bank Ltd., Baripada. . . First-party—Management

And

Its Workman
Shri Ganeswar Sahu represented
through All Odisha Central Co-op.
Bank Employees Federation,
Mayurbhanj Unit, Baripada. . . Second-party—Workman

Appearances :

Shri D. Giri, Sr. Assistant	. . .	For the First-party—Management
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Shri G. Sahu	. . .	For the 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, 1947 have referred the matter in dispute to this Court vide Order No. 1327—li/1(BH)-28/2005-LE., dated the 9th February 2006 for adjudication.

2. The terms of reference is as follows :—

"Whether the denial of seniority and promotion of Shri Ganeswar Sahu with effect from the 9th November 1985 is legal and/or justified ? If not, to what relief Shri Sahu is entitled for ?"

3. The workman's case in brief, as set out in his statement of claim is that after being sponsored from the Employment Exchange and being found suitable in the interview, he was initially appointed as a Junior Administrative Inspector with effect from the 2nd November 1974 under the management. Thereafter the workman left the job for his higher studies. After completion of higher studies, the workman was again appointed as a Supervisor under the management with effect from the 6th March 1978 along with three other employees namely, Shri Asit Kumar Pani, Shri Budhuram Singh and Shri Himanshu Sekhar Das Patnaik. However, the services of all the above three employees including the workman were terminated by the management with effect from the 30th June 1978. At the time of termination of their services, the name of the workman was top in the list and he was the senior most among them. Thereafter a fresh appointment order was issued on 11-12-1978 in favour of the workman as a Supervisor for a period of three months and accordingly the workman joined on Dt. 13-12-1978. The management started to deduct the Provident Fund dues of the workman by treating his date of joining in the service as Dt. 13-12-1978. While the workman was continuing in his employment, the management directed vide Order, Dt. 2-7-1979 to undergo training at the Co-operative Training Institute at Baripada from Dt. 18-7-1979. Thereafter the management on Dt. 31-8-1979 issued appointment orders in favour of the above named two employees in the post of Supervisor and the name of the workman was found place at the top of the aforesaid list. While the workman was continuing in the training, being sponsored by the management, surprisingly vide Order No. 2084, Dt. 26-9-1979, the service of the workman was illegally terminated with effect from the 1st October 1979. After completion of the training he was relieved from the training institute on Dt. 9-12-1979 without any wages. However, the management issued an Order bearing No. 5285, Dt. 27-12-1979 by giving appointment to the workman in the post of Supervisor and the workman was continuing as Supervisor under the management uninterruptedly. On Dt. 19-1-1985 the management called for necessary particulars of the employees for preparation of gradation list and accordingly the workman submitted his required information on Dt. 12-2-1985 and the first gradation list was published by the management on Dt. 25-9-1985 wherein the workman was placed at Sl. No. 16 illegally showing his date of joining under the management as Dt. 27-12-1979 instead of Dt. 13-12-1978. Thereafter the workman raised objection to such gradation list and requested for necessary correction but the management did not correct his date of joining in the gradation list. On the contrary the management promoted six employees to the post of Accountant with effect from the 9th November 1985 out of whom three were junior to the workman. So he made

detailed representation to the management on Dt. 11-12-1985 and Dt. 5-12-1989 with a prayer to restore his seniority and to give him promotion from the date when his juniors were promoted treating the date of joining as Dt. 13-12-1978 but the management did not consider his above representations. On these averments, the workman has prayed to grant promotion to him from the date when his juniors were got promotion to the post of Accountant on Dt. 9-11-1985 with all monetary and service benefits.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to it, the workman was appointed vide Order, Dt. 11-12-1978 for a period of three months and his appointment was purely temporary and can be terminated without assigning any reason whatsoever. Again his service was extended for a period of two months vide Order, Dt. 3-7-1979 and further extended for a period of one month vide Order, Dt. 31-8-1979 by the management. The management had notified the vacancies of the posts as per the rules and accordingly the District Employment Exchange sponsored the suitable names against each category of vacancies but due to ill luck of the workman, his name was not sponsored by the Employment Exchange for which the management was compelled to terminate the service of the workman vide Order, Dt. 26-9-1979. Thereafter being sponsored the name of the workman by the District Employment Exchange, the management had appointed the workman afresh as a Supervisor vide Order, Dt. 27-12-1979. As such, the date of appointment of the workman in the management service is Dt. 27-12-1979. As Shri Asit Kumar Pani and Shri Sarat Chandra Pani were senior to the workman, their services were considered for promotion to the next higher rank with effect from the 9th November 1985. As the workman was not eligible for seniority and promotion, the management had not considered his representations. In the above circumstances, the workman is not entitled to get any promotion with all monetary and service benefits and prayed for dismissal of the case.

5. In view of the above pleadings of the parties, the following issues are settled :

ISSUES

- (i) "Whether the denial of seniority and promotion of Shri Ganeswar Sahu with effect from the 9th November 1985 is legal and/or justified ?
- (ii) If not, to what relief Shri Sahu is entitled for ?"

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 to 21. Similarly the management has examined its Accountant as M.W. 1 but has not proved any document in support of its case.

FINDINGS

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

It is pertinent to mention here that Exts. 1 to 7 are marked on admission on behalf of the workman. The workman in his affidavit evidence has stated that he was appointed as Junior Administrative Inspector with effect from the 2nd November 1974 under the cover of Ext. 8. After completion of his higher studies, the workman was appointed as a Supervisor with effect from the 6th March 1978 under the cover of Ext. 9. His Provident Fund dues were deducted from his monthly salary under the cover of Ext. 10. He was selected by the management to undergo inservice training in the Co-operative Training Institute, Baripada which will commence from Dt. 15-7-1979 under the cover of Ext. 11. He was relieved from the Training Institute after completion of the training for the period from Dt. 16-7-1979 to Dt. 9-12-1979 under the cover of Ext. 12. During training period the

workman was terminated from service with effect from the 31st August 1979 under the cover of Ext. 13. The management requested its employees to furnish the personal information of service under the management for preparation of gradation list under the cover of Ext. 14. Accordingly the Managing Director, Podaghar LAMPS where the workman at that time was working had supplied the detailed service particulars under the cover of Ext. 15. The management prepared the gradation list under the cover of Ext. 16 wherein the name of the workman found place at Sl. No. 16 of Supervisor and Sub-Accountant cadre. The management promoted six persons to the post of Accountant on Dt. 9-11-1985 under the cover of Ext. 17. The workman submitted his representation to the management under the cover of Ext. 18. Thereafter the Union filed a complaint petition before the District Labour Officer, Baripada on Dt. 9-9-2003 under cover of Ext. 19. Ext. 20 is the Staff Service Rules of the management. The management had issued a character certificate in favour of the workman on Dt. 31-7-1980 under the cover of Ext. 21. During cross-examination of the workman nothing material has been brought out from his mouth by the management to disbelieve his evidence. The management has admitted all the documents filed by the workman during his evidence.

8. On the other hand, though the management adduced evidence through M.W. 1 but no documentary evidence has been filed to substantiate his case. So the documentary evidence adduced by the workman can safely be taken into consideration. During cross-examination, M.W. 1 has admitted that while the workman was undergoing training, he was removed from service. He has also admitted that five other employees were appointed by the management on Dt. 26-9-1979 when the workman was removed from service. He has also admitted that the representations of the workman was not considered by the management. M.W. 1 has further admitted that the initial appointment of the workman was Dt. 13-12-1978 which was a temporary one and on Dt. 27-12-1979 the workman got appointment on permanent basis under the management.

9. So from the above oral and documentary evidence of the workman and admission of the M.W. 1 during his cross-examination, it is crystal clear that when the workman had undergone inservice training under the cover of Ext. 11, his service was terminated under the cover of Ext. 13 without any prior notice or notice pay and retrenchment compensation which violates the principles of natural justice and the provisions of Section 25-F of the Industrial Disputes Act. Though the M.W. 1 in his cross-examination has stated that when the workman was undergoing training he was a temporary worker but Ext. 11 clearly speaks as follows :

"The following employees of the Bank are selected to undergo training in the Co-operative Training Institute, Baripada which will commence from Dt. 16-7-1979. The candidates are directed to join the Training Institute on Dt. 16-7-1979."

So Ext. 11 does not disclose about temporary appointment of any of the employees. So the evidence of M.W. 1 that at that time the workman was a temporary worker cannot be believable and the evidence of M.W. 1 cannot be accepted on that score. Furthermore, no such termination letter was communicated to the authority of the Training Institute where the workman was taking training. Above all, in the earlier appointment of the workman till Dt. 13-12-1978, the management has been shown the workman top in the list of employees. So from the above score, it is evident that the management has violated the principles of "last come first go" as envisaged under Section 25-G of the Industrial Disputes Act while terminating the service of the workman under the cover of Ext. 13. So the management has failed to establish that the workman had terminated from his service with effect from the 31st August 1979 with due procedure of law by following the provisions as contemplated in the Industrial Disputes Act. So it can safely be presumed that there was no

termination of the workman from service with effect from the 31st August 1979 under the cover of Ext. 13. Moreover the management has not filed a single paper to establish that the workman was not senior to Shri Asit Kumar Pani (M.W. 1) and Shri Sarat Chandra Pani and the name of the workman was not in the top of the list earlier.

10. So on careful consideration of all the materials available in the case record as discussed above, I am of the view that the denial of seniority and promotion of the workman with effect from the 9th November 1985 is neither legal nor justified. The workman is entitled to get his seniority above the employees, namely Shri Asit Kumar Pani and Shri Sarat Chandra Pani and also entitled to get promotion to the higher rank with effect from the 9th November 1985 when the above named two junior employees got promotion with monetary and service benefits. Hence both the issues are answered accordingly.

11. Hence, ordered :

That the denial of seniority and promotion of Shri Ganeswar Sahu with effect from the 9th November 1985 is illegal and unjustified. The workman is entitled to get his seniority above the employees, namely Shri Asit Kumar Pani and Shri Sarat Chandra Pani and also entitled to get promotion to the higher rank with effect from the 9th November 1985 when the above named two junior employees got promotion. The management is directed to prepare a revised seniority list accordingly immediately and to pay the wages as applicable for the post of higher rank with effect from the 9th November 1985 to the workman within a period of three months from the date of publication of the Award.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
17-9-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
17-9-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government