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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th November 2011

No. 10617—li/1-(S)-21/2004(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th July, 2011 in Industrial Dispute Case No. 12 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Sukruli LAMPCS Ltd. and its Workman Shri Ramesh Chandra 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 2005

Dated the 18th July 2011

Present :

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

Between :

The Management of .. First Party—Management
M/s Sukruli LAMPCS Ltd.

And

Its Workman .. Second Party—Workman
Shri Ramesh Chandra Behera

Appearances :

Shri P. K. Rath, Advocate	}	.. For the First Party—Management
Shri P. K. Satapathy, Advocate		
Shri R. N. Parija, Advocate		
Shri A. K. Rout, Advocate		
Shri D. P. Pattnaik, Advocate		
Shri S. K. Pattnaik, Advocate		
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Shri S. K. Dash, Advocate		.. For the Second Party—Workman

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. 3052—li/l-(S)-21/2004-LE., Dt. 31-3-2005 of the Labour & Employment Department for adjudication of the dispute.

2. The terms of reference is as follows :—

“Whether the action of the management of M/s Sukruli LAMPCS Ltd., Sukruli in terminating the services of Shri Ramesh Chandra Behera, Ex-Salesman with effect from the 1st September 1986 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 Salesman under the management after due selection in the interview held on 2-8-1981 vide Letter No. 43, Dt. 5-8-1981. He was assigned the duty of sale of consumer goods and other produces such as, rice, wheat, sugar, fertiliser and pesticides on liability basis. The workman as discharging his duties and responsibilities to the best satisfaction of the management. The last salary of the workman was Rs. 650.00 per month. But all of a sudden the service of the workman was terminated with immediate effect on the allegation of misappropriation of stocks vide Letter No. 88, Dt. 1-9-1986. The workman was not asked to explain any charges made against him and no enquiry was conducted by the management before implicating him on the said alleged charges and terminating his service. The workman was not at all involved in the alleged charges of misappropriation of stocks of the society of the management. The workman was not aware of the conducting of any enquiry by any Enquiry Officer prior to passing of order of termination of his service as no notice of enquiry was issued to him. If at all any enquiry is conducted, the same were conducted behind the back of the workman which was a mere eyewash and intended to punish the workman by falsely implicating him in alleged charges. The provisions of the Industrial Disputes Act has not been followed at all by the management and it was against the principle of natural justice. The management has filed a dispute Case No. 35/1986-1987 against the workman in the Court of Assistant Registrar, Co-operative Societies, Karanjia to recover the alleged shortage amount of stocks of Rs. 54,42,371.00. But such Assistant Registrar, Co-operative Societies, Karanjia vide Order, Dt. 22-7-1997 held that the workman is liable to pay Rs. 12,850.10 towards shortage of goods and Rs. 218.00 towards dispute cost and as the workman was removed from his service, the management may consider the reappointment of the workman in service. But the management did not reinstate the workman rather preferred an appeal before the Member, Co-operative Tribunal, Bhubaneswar vide Case No. TA 25/1997 which was ultimately dismissed on 5-12-2001. Thereafter also the management has not reinstated the

workman in his service. In this background the workman has 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 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. According to the management, from the date of appointment as Salesman, the workman intentionally mismanaged the stocks and caused shortage of stocks and misappropriated the sale proceeds. He has not deposited the alleged shortage stock and sale proceeds for which the management initiated a recovery proceeding before the Assistant Registrar, Co-operative Societies, Karanjia. The said Assistant Registrar held that the workman was liable to pay Rs. 12,850.10 with cost of Rs. 218.00 to the management society. There was no direction for reappointment of the workman by the Assistant Registrar, Co-operative Societies. The management has preferred an appeal which was accordingly dismissed. The workman has not complied the direction of the Assistant Registrar, Co-operative Societies, Karanjia. So the workman has not approached this Court with clean hands. By following the due principles of natural justice and provisions of the Industrial Disputes Act, the management initiated a disciplinary proceeding against the workman. He was directed to show cause within 7 days failing which or if the show cause not satisfactory to the management he shall be removed from service. The management appointed the C.E.O., Sukruli Block as an Enquiry Officer. The workman in the show cause reply admitted the shortage of articles which were given to him for sell. The Enquiry Officer completed the enquiry and submitted his report on 30-4-1986. He came to the finding that the workman had made shortage of goods fertiliser stocks and intentionally have not deposited the daily sell proceeds in full in the society accounts and caused financial shortage. The Enquiry Officer submitted the enquiry report to the Board of Management of the society and considering the enquiry report, the management has decided to remove the workman from service and accordingly the workman was terminated from service with effect from 1-9-1986. There was no irregularity in conducting the enquiry against the workman and passing termination order. So in this background, the management has prayed that the workman is not entitled to get any relief as prayed for.

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 Sukruli LAMPSC Ltd., Sukruli in terminating the services of Shri Ramesh Chandra Behera, Ex-Salesman with effect from 1-9-1986 is legal and/or justified ?
- (ii) If not, to what relief Shri Behera is entitled ?"

6. In order to substantiate his plea the workman has examined himself as W.W.1 and proved documents marked as Exts. 1 to 7. Similarly the management has examined his Managing Director as M.W. 1 and proved documents marked as Exts. A to K.

FINDINGS

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

At the initial stage, the workman has challenged the reference on the ground that the domestic enquiry conducted against him as alleged by the management was not fair and proper. Though

separate issue on the point of fairness of domestic enquiry has not been framed, both the parties have knowledge about such domestic enquiry during trial. So at this stage I feel it proper to decide the issue regarding fairness of domestic enquiry first before proceeding to the other issues.

8. According to the management, after knowing the financial irregularity and shortage of stock the management warned the workman by issuing demand notices vide Exts. H to H/6. It is argued by the advocate for the management that the charges have been framed against the workman vide Ext. A. But on perusal of such document it came to my notice that it is not a charge on separate heads rather it is a show cause notice. In Ext. B the management has requested the C.E.O., Sukruli Block to be an Enquiry Officer and Ext. C is the xerox copy of his appointment letter as Enquiry Officer. The Enquiry Officer has submitted his report vide Ext. F wherein he has found the workman guilty and came to the findings as follows :

“So the shortage shown are intentional. Hence Shri Ramesh Chandra Behera should no long be allowed to continue in service.”

The workman has filed show cause on 25-1-1986 vide Ext. D but Ext. B is of dated the 20th January 1986 which is prior to receipt of reply to the show cause notice by the workman vide Ext. D. So before issuing the show cause notice to the workman, the management has decided to appoint the Enquiry Officer. It is argued by the advocate for the workman that the enquiry conducted by the management as alleged is not fair and proper. The workman has not given intimation regarding the date of enquiry and he has not participated in the enquiry which was conducted beyond his back and the enquiry report was not supplied to him and without following the principles of natural justice, the major punishment like termination of service was imposed on him. Perused the documents marked as exhibits on behalf of both the parties.

9. In the authority reported in AIR 1963 SC 1914 it has been held that an enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report. But in the instant case the proceeding file has not been furnished by the management in this Court. Nothing has been shown that any witness has been examined or not and all the principles as mentioned in the authority as discussed above has been duly complied with or not. On the other hand, it shows all the principles as laid down in the authority has not been fulfilled by the management. Furthermore, according to the settled principle of law as reported in AIR 1994 SC 1074 the furnishing of enquiry report to a delinquent employee giving opportunity to submit his explanation before awarding the punishment will imperative on the part of employer. Therefore the non-furnishing of copy of enquiry report to the workman before imposing the punishment of dismissal violates the principle of natural justice and in such view of the matter, the dismissal of workman is illegal and unjustified. In the instant case nothing has been shown by the management that the copy of the enquiry report has been supplied to the workman. Furthermore, vide Ext. F the Enquiry Officer recommended the punishment for removal from service of the workman which is illegal and improper as argued for the advocate of the workman. In the authority reported in (2008) 8 SCC 236 it is for punishing/disciplinary authority to impose appropriate punishment and Enquiry Officer has no role in awarding punishment. In the departmental proceedings, the enquiry officer himself has acted as investigator, prosecutor and judge, such a procedure is opposed to principle of natural justice. M. W. 1 in his cross-examination has clearly admitted that he cannot say if the copy of the enquiry report was supplied to the workman

was a party and he was defending the said cases which was ultimately disposed of on 5-12-2001. Thereafter the workman submitted a letter to the management requesting to reinstate him in service and to recover the amount of Rs. 12,850.00 from his salary on instalment basis. But the management did not consider the same for which the workman raised a dispute before the labour authority on 22-4-2002. So in the circumstances there was no delay in raising the dispute on the part of the workman as alleged by the management. So, on the basis of the above materials and on careful consideration of the same, I came to the finding that the argument raised by the advocate for the management regarding delay in raising dispute by the workman and filing of statement of claim by him has no force at all.

11. The allegation of misappropriation against the workman has not been duly proved on merit in the Court by the management. So when I have already come to the conclusion that the domestic enquiry conducted by the management against the workman was not fair and proper and the allegation against the workman has also not been duly proved by the management during trial, I am of the opinion that it is a fit case for reinstatement of the workman in service. So the workman is entitled for reinstatement in service.

12. 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 settled principle of law as 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. 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. 70,000.00 will meet the ends of justice in this case. Hence both the issues are answered accordingly.

13. Hence Ordered :

That the action of the management of M/s Sukruli LAMPCS Ltd., Sukruli in terminating the services of Shri Ramesh Chandra Behera, Ex-Salesman with effect from the 1st September 1986 is illegal and unjustified. The workman Shri Behera is entitled to be reinstated in service with a lump sum amount of Rs. 70,000.00 (Rupees seventy 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
18-7-2011
Presiding Officer, Labour Court
Bhubaneswar

S. K. DASH
18-7-2011
Presiding Officer, Labour Court
Bhubaneswar

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