

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2661 CUTTACK, FRIDAY, DECEMBER 9, 2011/MARGASIRA 18, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th November 2011

No. 10769—li/1(B)-89/1991(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th February 2011 in Industrial Disputes Case No. 83 of 1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of United Puri Nimapara Central Co-operative Bank Ltd., Puri and its workman Shri Kasinath Prusty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 83 OF 1994

Dated the 26th February 2011

Present :

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

Between :

The Management of .. First Party—Management
United Puri Nimapara Central
Co-operative Bank Ltd., Puri.

And

Its Workman .. Second Party—Workman
Shri Kasinath Prusty,
Vill. Chasapada,
P.O. Bijay Ramachandrapur,
Via Chandanpur, Dist. Puri.

Appearances :

Shri N. K. Mishra, Advocate .. For the First Party—Management

Shri L. D. Das, Advocate .. For the Second Party—Workman
Shri S. Mohanty, Advocate

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. 5681—li/1 (B)—89/1991-LE., Dt. 9-5-1994 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management in keeping Shri Kasinath Prusty, Asst. Jr. Supervisor under suspension with effect from 15-3-1978 without initiating disciplinary proceeding 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 working as an Assistant Junior Supervisor in Satyabadi Co-operative Society of the management since January, 1973. He was posted at Bira Narasinghpur Service Co-operative Bank Ltd. vide order Dt. 5-1-1975. He was getting salary and enhancement pay from time to time. While the workman was working at Ratnachira Service Co-operative Society, Puri the management vide order Dt. 7-1-1978 transferred him to the head office, Puri. He was relieved on 14-5-1978 and submitted his joining report at the head office on 15-5-1978. But the Secretary of the head office refused to accept the joining report from the workman and told that he will be suspended soon and accordingly the workman was suspended on Dt. 29-3-1978. Thereafter the management has drawn up charges against him vide order Dt. 29-3-1978. The workman submitted his explanation on Dt. 15-5-1978. After receipt of the explanation of the workman, the management remained silent and no action was taken to finalise the proceeding nor allowed the workman to work. No subsistence allowance was given to him. After lapse of 11 years, in the year 1989 the Enquiry Officer was appointed and the date was fixed for enquiry, but till yet it was not finalised. So in this background he 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 industrial dispute case has been initiated wherein the workman has prayed to declare the suspension is illegal and for reinstatement in service with all consequential service benefits.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to him, suspension pending disciplinary proceedings can never be construed as an industrial dispute for which the reference is not maintainable. The workman was appointed temporarily as an Assistant Junior Supervisor on a consolidated salary vide office order Dt. 5-1-1973. Initially he was appointed under Baliput Service Co-operative Society in the Sadar Block. Even though the workman was engaged on temporary basis he was subsequently transferred to other places as such. His service under the management was not totally satisfactory. He was found to have indulged in several acts of misconduct for which he was suspended, issued with cautionary letters, charge sheets, explanation call notices, etc. By an order Dt. 9-12-1977 he was transferred from Ratnachira Service Co-operative Society and was posted at the head office of the management. The workman was handed over the charges on Dt. 4-2-1978 but did not join at the head office at any point of time and remained wilfully and unauthorisedly absent from duty thereafter. On account of several misconducts committed by the workman appropriate disciplinary proceeding was initiated against him with issue

of a charge sheet Dt. 29-3-1978 and calling upon him to submit explanation. The workman has submitted his explanation on Dt. 15-5-1978. However the workman neither reported to duty at any time nor co-operated with the disciplinary proceeding for which it has construed that he had no intent to take part in the proceeding to bring it to an end. The workman was never under suspension from Dt. 15-3-1978 without initiating any disciplinary proceeding. Delay in completion of disciplinary proceeding is in any way not attribute to the management but the workman alone. So in this background 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 action of the first party management in keeping the second-party workman under suspension with effect from 15-3-1978 without initiating disciplinary proceeding is legal and/or justified ?

(ii) If not, what relief the workman is entitled to ?”

6. In order to substantiate his plea, the workman has examined himself as W. W. 1 and proved documents marked as Exts. 1 to 9. Similarly the management has examined his Law Officer-in-Charge as M. W. 1 and proved documents marked as Exts. A to C.

FINDINGS

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

At the outset the advocate for the management has argued that suspension pending disciplinary proceeding can never be construed as an industrial dispute for which the present reference is not maintainable. Though specific issue has not been framed regarding maintainability of the reference, but in the initial stage of the written statement the management has raised such plea. So both the parties had knowledge about it and it can be decided at this stage first. It has been argued by the advocate for the workman that the present dispute has been raised relating to the suspension of the workman without payment of subsistence allowance from the date of the impugned suspension. The definition of an industrial dispute provided under Section 2 (k) of the Industrial Disputes Act is so wide and it takes into account any difference of opinion between the workman and the management and therefore the scope of the definition cannot be curtailed by any artificial process and the reasoning given in the impugned suspension. Further it is argued that any act of the employer which involves non-employment of a worker or violation of the terms of service upon which he is employed can give rise to an industrial dispute. The definition of industrial dispute as provided in Section 2 (k) of the Industrial Disputes Act which reads as follows :

“Industrial dispute means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person”.

Nowhere the management has raised objection that the establishment of the management is not an industry. So in view of the materials available and in view of the relevant provision of the Industrial Disputes Act I am of the opinion that the dispute raised by the workman is an industrial dispute and this can be adjudicated in this reference and the reference is maintainable.

8. It is an admitted fact that the workman was working under the management as an Assistant Junior Supervisor. It is also an admitted fact that while the workman was working at Ratnachira Service Co-operative Society he was transferred to the head office, Puri and accordingly he was relieved. But though according to the workman he has submitted his joining report in the head office at Puri on 15-3-1978 it was not accepted. It is the plea of the management that without joining in the head office, the workman remained absent voluntarily. In the examination-in-chief the W.W. 1 has deposed that he came to know from the Secretary of the management that he was placed under suspension. The Secretary further told the workman to provide the suspension order later on. But he was not served with any suspension order by the management. He has requested the management to supply the relevant document to file his show cause but the management had permitted him to verify the documents in the office. Thereafter the workman submitted his show cause on 15-5-1978. No enquiry was made by the management in this case. Thereafter the workman requested for an enquiry. The workman was intimated about the appointment of the Enquiry Officer on 13-5-1989 and subsequently intimated about his suspension and about holding of enquiry. But no enquiry was held till yet. In the cross-examination he had admitted that he has not received any suspension order. M. W. 1 deposes that after relieved from Ratnachira Service Co-operative Service on 4-2-1978, the workman did not join in the head office and remained wilfully and unauthorisedly from duty. Due to several misconducts committed by the workman a charge sheet Dt. 29-3-1978 was issued to him. The workman also after receipt of the charge sheet submitted his explanation on 15-5-1978. Thereafter the workman remained away from the duty for which no disciplinary proceeding was initiated in absence of the workman. The workman was never put under suspension with effect from 15-3-1978 as stated in the reference. The workman is not entitled to get any relief in this case. Perused the documents marked as exhibits on behalf of both the parties. Ext. 4 is the xerox copy of the letter addressed to the workman by the Secretary of the management allowing him to see the concerned documents of Satyabadi S.C.S. by 5-5-1978. In such letter against the name of the workman it has been mentioned as 'under suspension'. Ext. 6 is the xerox copy of letter of appointment of the Enquiry Officer. Exts. 7, 8 and 9 are the xerox copies of the letters of the Enquiry Officer addressed to the workman wherein against the name of the workman it has been mentioned as 'U. S.' It has been argued on behalf of the workman that 'U. S.' means 'under suspension'. The management has no specific answer to it in respect of the suspension of the workman. On the other hand, the management has specifically deposed that the workman was never put under suspension much less with effect from 15-3-1978 in Para. 7 of his affidavit evidence. It has been argued by the management that while in the statement of claim the workman the date of suspension to be 29-3-1978 and in the evidence the workman has stated as 13-5-1989 and in the reference it has been mentioned as 15-3-1978. On perusal of the case record in Para. 2 of the evidence of W. W. 1, he has only stated that he was intimated about the appointment of the Enquiry Officer on 13-5-1989. It has been argued on behalf of the workman that even though the disciplinary proceeding was drawn up on 29-3-1978, the Enquiry Officer was appointed during the year 1989 after lapse of 11 years and the proceeding has not been yet finalised. Though as per the order Dt. 5-5-2006 passed by this Court, the management was directed to produce the disciplinary proceeding file in connection with proceeding No. 5941, Dt. 29-3-1978, the management has not produced the same and remained silent in spite of sufficient opportunities

were given to him. Though the management has taken the plea that the workman was remained absent voluntarily in his duty, nothing has been proved clearly in support of it. It has been further argued on behalf of the workman that the management debarred the workman from discharging his duties in the head office in the sense to forbid the workman to work with effect from 15-3-1978. Even though it was not in the form of a written order, it was in the form of action as subsequently mentioned in the communications made by the Secretary and Enquiry Officer to the workman vide Exts. 4, 7, 8 and 9 indicating the workman as under suspension. So it has been further argued that the workman was placed under suspension with effect from 15-3-1978 without initiation of disciplinary proceeding. The workman in his statement of claim has mentioned that he was suspended on 29-3-1978 but nowhere in the evidence in the Court he has stated the exact date of his suspension and he has not received any suspension order. The management has totally denied about the suspension of the workman though the letters of the management disclose about the suspension of the workman as mentioned earlier. There is also no specific date of suspension in such letters marked as exhibits. The management has also not filed the disciplinary proceeding file in this Court though called for by this Court as mentioned earlier. In the cross-examination of W. W. 1 the management has put a suggestion that from 15-3-1978 the workman remained absent voluntarily and never submitted the joining report at the head office to which W. W. 1 answered in negative. The workman raised an industrial dispute vide complaint petition Dt. 13-10-1988 vide Ext. A which was received by the labour authority on 15-10-1988 as revealed from the failure report. So now taking into consideration of all the materials available together and in absence of any specific date of suspension, basing on the materials available it can safely be concluded that the workman was suspended on 15-3-1978. Both the parties are silent about availability of any Certified Standing Order for the establishment of the management. According to the Industrial Employment (Standing Orders) Rules, 1946, clause 14 (4) (a) where a disciplinary proceeding against a workman is contemplated or is pending or where criminal proceedings against him in respect of any offence are under investigation or trial and the employer is satisfied that it is necessary or desirable to place the workman under suspension, he may, by order in writing suspend him with effect from such date as may be specified in the order. A statement setting out in detail the reasons for such suspension shall be supplied to the workman within a week from the date of suspension. But this procedure has not yet been followed in the present case. Ext. 2 is the xerox copy of the charge sheet which is of Dt. 29-3-1978 and the Enquiry Officer was appointed vide Ext. 6 which is of Dt. 13-5-1989 which is much after about 11 years. So mere framing of a charge cannot be said that a disciplinary proceeding was initiated. The Enquiry Officer was also appointed after raising the industrial dispute by the workman. The management has not adduced any reason for not producing the disciplinary proceeding file before this Court for perusal. If such disciplinary proceeding file would have been produced it might have shown light about the initiation of the disciplinary proceeding and the action taken thereon. Admittedly the disciplinary proceeding as alleged which was initiated much after has not been finalised. It has been argued on behalf of the management that due to non-co-operation of the workman the disciplinary proceeding could not be finalised. But no sufficient materials have been proved in support of it. So on careful consideration of all the materials available in the case record as discussed above now I came to the finding that the action of the management in keeping the workman under suspension with effect from 15-3-1978 without initiating disciplinary proceeding is neither legal nor justified.

9. Regarding reinstatement and back wages, as per Ext. C the workman has crossed the age of superannuation. So the question of reinstatement in service does not arise, but he should be compensated accordingly. According to the settled principle of law the relief of 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. Admittedly the workman has not been worked under the management after the alleged suspension. 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, I am of the opinion that in lieu of reinstatement and back wages a lump sum amount of Rs. 2,00,000.00 as compensation will meet the ends of justice in this case. Hence both the issues are answered accordingly.

10. Hence Ordered :

That the action of the management in keeping Shri Kasinath Prusty, Assistant Junior Supervisor under suspension with effect from 15-3-1978 without initiating disciplinary proceeding is illegal and unjustified. The workman Shri Prusty is entitled to get a lump sum amount of Rs. 2,00,000.00 (rupees two lakhs) only as compensation in lieu of reinstatement and back wages. The management is directed to implement this Award within a period of one month from the date of its publication in the Official Gazette 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
26-2-2011
Presiding Officer, Labour Court
Bhubaneswar

S. K. DASH
26-2-2011
Presiding Officer, Labour Court
Bhubaneswar

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