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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd January 2011

No. 851—li/1(B)-30/2004-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th November 2010 in Industrial Dispute Case No. 49/2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. ORTEL Communication Ltd., Bhubaneswar and its Workman Shri Kartik Ch. Sethi, Ex Technician represented through General Secretary, Cuttack Commercial Workers Union, Cuttack was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 49 OF 2004

Dated the 11th November 2010

Present :

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

Between :

The Management of M/s. ORTEL
Communication Ltd.,
Bhubaneswar.

.. First Party—Management

And

Its Workman
Shri Kartik Ch. Sethi
Ex Technician, represented
through General Secretary,
Cuttack Commercial Workers
Union, Cuttack.

.. Second Party—Workman

Appearances :

Shri B. K Pati,
Assistant Manager, H.R.

.. For the First Party—Management

Shri T. Lenka,
Vice President
Shri S. N. Biswal,
General Secretary

.. For the Second Party—Workman

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. 5537–li/1(B)-30/2004-LE., dated the 30th June 2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Kartik Ch. Sethi with effect from the 3rd February 2002 by the management of M/s. ORTEL Communication Ltd., Bhubaneswar is legal and/or justified ? If not, what relief Shri Sethi is entitled to ?”

3. The case of the workman in brief is that he joined under the management as Technician on 1-6-2000 and was confirmed in the said post on 5-7-2002 having place of posting at Cuttack. He was discharging his duties to the full satisfaction of the management. After confirmation, the workman was availing all the facilities as were availing by the regular employees of the management. The workman has performed his duty sincerely till 2-12-2002. But all of a sudden on 3-12-2002 when he went to the office as usual he was not allowed to sign in the attendance register and was not allowed to perform his duty without any reason. In spite of several approach, when the management did not turn up, the workman was compelled to send the Lawyer’s notice to the management praying for reinstatement him in service with full back wages and refusal of employment was illegal. Even at any point of time no charge was framed against the workman and no enquiry was also held for any misconduct. After receiving the Lawyer’s notice, the management has taken the plea that the workman was not refused employment rather he remained absent from his service voluntarily without prior approval of the appropriate authority. Having no alternative the workman 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 from the Government and out of which this industrial dispute case arises in which the workman has prayed for 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. It is admitted by the management that the workman was working under him as a Technician. But according to the management the nature of job assigned to technician plays a vital roll in proving uninterrupted service to the society at large. The management is in the business of providing convergence related telecom and broadcast services to customers and can be described as a Broad Band Access Network Operator and Service Provider. The technician on receipt of complaints from subscribers have to immediately attain the same by utilising his technical

skill and knowledge. However, in the instant case the workman being a technician never shown any sincerity in attending assignments and achieving organisational goals. The workman has never discharged his duty with due diligence and has a blemish career in the organisation. The workman has never worked continuously for 240 days in a year and he has voluntarily abandoned his service with his own accord from 3-12-2002. When the workman remained absent from 3-12-2002 without taking prior approval of the appropriate authority as per limited and agreed terms and conditions of appointment letter, being worried the management enquired the matter by issuing the registered letter in last know correct address furnished by the workman in his bio-data. The workman received the letter but no respond was received from him for which the management was compelled to follow Clause No. 12(g) of the Certified Standing Order alongwith Para. 8(b) of limited and agreed terms and conditions of appointment letter with regard to termination of service and terminated the service of the workman by striking off the name from the muster roll. The workman was directed by notice, Dt. 6-1-2003 to hand over the charges and contact H.R. Department for final settlement and also collect dues for final settlement from Accounts Department, but the workman did not turn up to resume his duty. The management has never refused employment to the workman rather it is a voluntary abandonment of service. Further due to conduct of the workman and from his past performance the management lost its confidence. The management has the obligation to provide uninterrupted service to the Society at large and for that technician plays a vital role. The post of the technician cannot be remained vacant for such a long period. The workman did not show any interest to work as technician and such he has abandoned his service. 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 termination of services of Shri Kartik Ch. Sethi with effect from the 3rd February 2002 by the management of M/s. ORTEL Communication Ltd., Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief Shri Sethi 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 10. Similarly the management has examined his Assistant Manager, H.R. as M.W. 1 and proved documents marked as Exts. A to C in support of his case.

FINDINGS

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

It has been argued by the authorised representative of the workman that the management has terminated the services of the workman with effect from 3-12-2002 by refusal of employment without following the mandatory provisions of Section 25-F of the Industrial Disputes Act for which the workman is entitled to be reinstated in service with full back wages. On the other hand, it has been argued by the authorised representative of the management that it is not case of termination of service by refusal of employment, but the workman abandoned his service by remaining absent

from duty with effect from 3rd December 2002 for which the management has struck off his name from the muster roll with effect from 23rd December 2002 by following the provisions of Clause 12(g) of the Certified Standing Order and Para. 8(b) of limited and agreed terms and conditions of appointment letter.

8. Before discussing in detail about the dispute between the parties, the main important point raised by the authorised representative of the management is that the date of termination as mentioned in the schedule of reference is wrong as it has been mentioned as 3-1-2002 instead of 3-12-2002. In all documents marked as exhibits like Exts. 3, 6, 7, conciliation failure report and from the pleadings of the parties it is admitted by both the parties that the termination of the workman is with effect from 3-12-2002 and not 3-2-2002. So even if in the reference kit has been mentioned as 3-2-2002 it is only a typographical error and while considering the case it has been admitted by both the parties that the termination of the workman from service will be counted from 3-12-2002. According to the settled principle of law the Labour Court cannot go beyond the reference. But in the instant case the date of termination in the schedule of reference is merely a typographical error and basing on the admitted fact of the parties the date can be treated as 3-12-2002 instead of 3-2-2002.

9. It is admitted fact that the workman was working under the management as a Technician. He was appointed under the management as per appointment order and the xerox copy of such appointment order has been as Ext. 1. The xerox copy of the certified standing order has been marked as Ext. B. Para. 7 of Ext. 1 discloses about termination of permanent service. Para. 7 (b) of Ext.1 reads as follows :

“If you absent yourself without leave or remain absent beyond the period of leave originally granted or subsequently extended, you shall be considered as having voluntarily abandonment your employment without giving any notice unless you.”

- (i) return to work within 8 days from the commencement of such absence; and
- (ii) give an explanation to the satisfaction of the management regarding such absence.”

Clause 12 of the certified standing order discloses about attendance and late coming. Clause 12(g) of the certified standing order reads as follows :

“Any workman absenting without authorised leave continuously for a period of 8 days or more shall lose his lien on his appointment and he shall be deemed to have left the services of the Company on his own accord and his name will be struck off from the Company’s Muster Roll.”

So basing on these two documents the management has taken the plea that the workman has abandoned his job for which his name has been struck off from muster roll. But it is the plea of the workman that after termination of his service by refusal of employment he approached management several times to regularise his service, but when he failed he raised the present industrial dispute. According to the settled principle of law as reported in 1993 SSC-3-259 retrenchment is

comprehensive and intended to cover any action of management to put an end to the employment of an employee for any reason whatsoever and where the standing order providing for automatic loss of lien on the post in case of expiry of eight days' absence from duty and opportunity of hearing not given to the workman nor enquiry was held it is a clear violation of the principles of natural justice. Procedure prescribed for depriving a person of livelihood must answer the requirement of Article 14. Principles of natural justice must be read into the Standing Orders and the principles of natural justice are part of Article 14. So according to the management when the workman remained absent his name has been struck off from the muster roll is not the procedure by following the principles of natural justice. Similarly in the authority reported in 1993 LLR, 876 it has been held that the termination of service on ground of absence from duty constitutes termination by misconduct. No termination is permissible on the ground of misconduct unless proper enquiry is held according to the principles of natural justice. Further as per the authority reported in 2010 LLR, 1175 it has been held that in case of absence of the workman in duty the action of the management in presuming that workman abandoned his service and then terminating his services would be illegal and unconstitutional because the order passed without any opportunity and domestic enquiry and the action is clearly arbitrary and violative of Articles 14 and 21 of Constitution of India. According to the authority reported in 2004 (Supp.), OLR 694 to constitute abandonment of service there must be total or complete giving up of duties and/or expression of the intention not to serve any further. This being a question of fact, onus lay on the management which took such a plea to prove with cogent evidence that in fact the workman had abandoned his service. But in the instant case such factors are wanting and the workman has always claiming for reinstatement in service with full back wages. So in view of the above authorities and basing on the materials available it cannot be said that the workman had abandoned his service.

10. The management has terminated the services of the workman with effect from 3-12-2002. The workman has taken the plea that from the date of joining till the date of termination he was in continuous service. On the other hand, the management has taken the plea that the workman has not worked continuously for 240 days in a year. According to the settled principle of law as reported in AIR 2010 SC 1236 that when the workman claimed and deposed that he had worked for 240 days the burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. It is an admitted fact that from the date of appointment till the date of termination the workman as in service under the management. When the management took the plea that he has not completed 240 days of service in 12 calendar months preceding to the date of termination and have not proved any cogent evidence to this effect, it cannot be believed. On the other hand, it can safely be concluded that the workman had completed 240 days of service in 12 calendar months preceding to the date of termination. Admittedly the management has not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act while terminating the services of the workman. No disciplinary action has been taken by the management against the workman. So on careful consideration of all materials available in the case record as discussed above I am of the opinion that the termination of services of the workman from 3-12-2002 and not from 3-2-2002 by the management is neither legal nor justified.

11. The workman has prayed for reinstatement in service with full back wages. According to the settled position of law is that 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. Ext.C discloses that a letter has been issued to the workman showing that his performance has not been found satisfactory and he has placed in

Category 'D'. The workman in his cross-examination has also admitted that his performance of work was 'D' category which was a poor one. Further the management has taken the plea that the conduct and for his past performance, the management has lost his confidence on the workman. So now on careful consideration of all such materials available how I am of the opinion that instead of reinstating the workman in service and allowing back wages, a lump sum amount of Rs. 40,000 will meet the ends of justice in lieu of reinstatement and back wages in this case. Hence both the issues are answered accordingly.

12. Hence Ordered :

That the termination of service of Shri Kartik Ch. Sethi with effect from 3-12-2002 and not from 3-2-2002 by the management of M/s. ORTEL Communication Ltd., Bhubaneswar is illegal and unjustified. The workman Shri Sethi is entitled to get a lump sum amount of Rs. 40,000 (Rupees forty thousand) only as compensation in lieu of reinstatement and back wages. The management is directed to pay the above amount 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
11-11-2010
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
11-11-2010
Presiding Officer
Labour Court
Bhubaneswar

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