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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th February 2011

No. 2020—li/1(S)-4/2008-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st January 2011 in Industrial Dispute Case No. 5/2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Dahigaon Service Co-operative Society Ltd., Padampur, Dist. Bargarh, and its Workman Shri Chanchal Dansana was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 5 OF 2009

Dated the 21st January 2011

Present :

Miss Sarojini Mahapatra, M.A., LL.B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of Dahigaon
Service Co-operative Society Ltd.,
Padampur,
Dist. Bargarh.

.. First Party—Management

And

Their Workman
Shri Chanchal Dansana,
Vill. Dahigaon,
P.O. Padampur,
Dist. Bargarh.

.. Second Party—Workman

Appearances :

Shri D. Senapati, Secretary	.. For the First Party—Management
Self	.. For the Second Party—Workman

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department 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 (14 of 1947) in Memo. No. 903, dated the 30th January 2009 to decide the questions :

“Whether the termination of services of Shri Chanchal Dansana with effect from 20-6-2002 (F.N.) by the management of the Dahigaon Service Co-operative Society Ltd., Padampur is legal and/or justified ? If not, what relief the workman Shri Chanchal Dansana is entitled to ?”

2. As per the case of the second party-workman, the second party-workman was appointed by the management of Dahigaon Service Co-operative Society Ltd., as Assistant Secretary and joined on 1-1-1973. The second party-workman was promoted to the rank of Secretary in the year 1994–95. On 28-11-2000 charges were framed against him and he was not asked to explain his case. On 26-11-2000, the suspension order was passed without conducting any enquiry till 5-11-2008. Though the workman was suspended on 26-11-2000, no suspension allowance has been paid to him. Further it is alleged from the statement of claim that the second party-workman was terminated by a letter of A.R.C.S., Padampur vide his letter No. 1518, Dt. 8-1-2002 though the A.R.C.S., Padampur was neither appointing authority nor removal authority of the second party-workman. Dahigaon Service Co-operative Society Ltd., is the appointing authority of the second party-workman. The management removed the second party-workman from service is illegal. So, the second party-workman made a prayer for an order to set aside the removal order of the second party-workman Dt. 20-5-2002 and to reinstate him reinstate in his previous post with full back wages till 31-5-2005.

3. The first party-management appeared filed written statement and contested the case. As per the written statement, the second party-workman Shri Chanchal Dansana was the Assistant Secretary of Dahigaon S.C.S. Ltd, and subsequently on the transfer of the ex-Secretary, the second party-workman was asked to work in his place as Secretary in-charge during such vacant period. So, the second party-workman was never promoted to the post of Secretary of the Dahigaon S.C.S. Ltd. As per the case of the first party-management Shri Sashi Bhusan Bag, the cadre supervisor of Sambalpur District Co-operative Central Bank, Bargarh having been transferred reported as Secretary of Dahigaon S.C.S. Ltd. on 6-11-2000, the second party-workman asked to hand over charge to Sashi Bhusan Bag but the second party-workman Chanchal Dansana did not make over the charge of Secretary to Shri Sashi Bhusan Bag and remained on leave unauthorisedly. This act of the second party-workman leads to misconduct and disobedience of lawful order of the society. Moreover during the services tenure as Secretary in-charge it was found that the second party-workman Shri Chanchal Dansana misappropriated an amount of Rs. 44,030 from

the Society. The second party-workman confessed his guilt in writing before the Board meeting of the society on Dt. 21-10-2000. He also admitted that he would return such amount to the management. But the second party-workman did not return such money to the management for which he was placed under suspension with effect from 28-11-2000 vide order No. 16, Dt. 28-11-2000. On the issue of misappropriation of society money, negligence in duty and disobedience of lawful order of the society, charges framed against the workman and after domestic enquiry he was removed from the service. The workman has already attained the age of superannuation and his date of birth is 14-4-1947. So, the dismissal of the workman from the service of the management is legal and justified and the management made a prayer that the workman is not entitled to get any relief.

4. Out of the pleadings of the parties, the following issues have been framed for adjudication.

ISSUES

- (i) "Whether the domestic enquiry conducted by the management is fair and proper ?
- (ii) Whether the termination of services of Shri Chanchal Dansana with effect from 20-6-2002, (F.N.) by the management of Dahigaon Service Co-operative Society Ltd., Padampur is legal and/or justified ?
- (iii) If not, what relief the workman Shri Chanchal Dansana is entitled to ?"

5. Both the parties have filed their documents in support of their case. The second party-workman Shri Chanchal Dansana has examined himself as W.W.1. The first party-management was examined two witnesses such as M.W.1 Damodar Senapati, Secretary of Dahigaon S.C.S. Ltd., M.W.2 Jailal Bhoi, Peon in Dahigaon S.C.S. Ltd.,

FINDINGS

6. *Issue No. (i)*—In view of the order of this Court Dt. 11-8-2010 the domestic enquiry conducted by the management is fair and proper.

7. *Issue No. (ii)*—Admittedly, the second party-workman Chanchal Dansana was appointed as Assistant Secretary by the management of Dahigaon Service Co-operative Society Ltd. on 1-1-1973. The second party-workman relied on some documents such as xerox copy of objection in Industrial Dispute Case No. 5 of 2009 (Ext. W.1). Ext.W. 2 is the xerox copy of affidavit. Ext. W. 3 is the xerox copy of Society Rules. As per the case of second party-workman he was working as Secretary. On death of ex Secretary Sasadeb Behera, the management in presence of the then Tahasildar, Padampur endorsed all the cash book of the society to the effect that Chanchal Dansana the second party-workman was posted as Secretary of the society to discharge his function in the society. Since then, the workman was working as Secretary. The management has taken a false grievance against him that he was not promoted to the post of Secretary. The second party-workman on the otherhand denied on the allegation of charge of misappropriation of the society fund of Rs. 44,030.96 paise. However, the second party-workman admitted in his cross examination that he was found guilty of misappropriation of society money and as per the instruction

of the management he has paid the cash of Rs. 44,000 for which the management has purchased fertilisers. Subsequently, he has stated in his evidence that the management has not purchased fertilisers amounting Rs. 44,000 but the second party-workman has purchased fertilisers of Rs. 44,000 for the management. As per the Audit Report. the management claims of Rs. 66,639 from the second party-workman towards misappropriation.

8. Here the question arises whether the second party-workman committed mistake by misappropriating the society money of Rs. 44,030 without any authority. The second party-workman was charged for the bundle of allegations such as misappropriation of society money, negligence in duty as well as disobedience of office order. Let us scrutinise the evidence of M.W.1 and M.W.2. M.W.1 is the Secretary of the Dahigaon Service Co-operative Society Limited who has stated that the second party-workman Chanchal Dansana was working as Assistant Secretary in the Dahigaon Service Co-operative Society Ltd. As per his evidence, the second party-workman was suspended the ground of misappropriation of fund vide Order No. 16, Dt. 28-11-2000 in view of Resolution No.2, Dt. 28-11-2000. The dispute case has been filed against the second party-workman in the Court of A.R.C.S. for recovery of the said amount. Taking all these facts and circumstances as well as basing on the bundle of allegation initiated against the second party workman the management removed the second party-workman from his service. Ext. M.1 is the suspension order No.16, Dt. 28-11-2000. Ext. M.2 is the discharge order No.10, Dt. 20-6-2002. Ext.M.3 is the memo. No. 32, Dt. 1-2-2001. Ext.M.4 is the copy of disciplinary proceeding. Ext.M.9 is the Resolution Dt. 28-11-2000 by the management. Ext.M.10 is the letter No. 3219 Dt. 10-11-2000 from which it is clear that the second party-workman Chanchal Dansana while working as Secretary In-charge in the Management Society has misappropriated the cash of Rs. 34,095.96 paise and made fertiliser shortage amounting to Rs. 9,935. However, it is alleged from Ext.M.10 that the second party workman admitted the misappropriation of cash and fertiliser in the Board meeting of the management society held on 21-10-2000. Although, he made a prayer to deposit the said misappropriated amount i.e. Rs. 44,030.96 by 31-10-2000 but he has not repaid the same to management society. So the management lodged F.I.R. against him and subsequently he was placed under suspension for misappropriation of public money of the society. M.W.2 is the Peon of Dahigaon Service Co-operative Society Ltd. proceeded to the house of the second party-workman to serve the notice on 7-12-2000 but the second party-workman refused to receive the same. However, the workman admitted in his evidence that he has misappropriated the cash of Rs. 44,030.96 paise from the management society. It is established on the evidence on record as well as from the documents that the second party-workman has misappropriated the society money. There is nothing to disbelieve on the allegations initiated against the second party-workman by the management. The second party-workman while working as Secretary in-charge of the management society misappropriated such money from the society without any authority. The second party workman has failed to establish that he is innocent in this case. However, taking all these facts into consideration as well as the gravity of the allegations and nature and conduct of the second party-workman, it is proper not to extend any relief in favour of the second party-workman. Accordingly, the first party-management has established the (*issue No. ii*) properly. The second party-workman Chanchal Dansana cannot pretend innocent when he admitted in his evidence regarding misappropriation of society money.

9. *Issue No. (iii)*— In view of such facts and circumstances, the second party-workman is not entitled to get any relief in this case, In the meantime, the second party-workman has attained the age of superannuation. Hence the award.

AWARD

The reference is answered on contest but without any cost. The termination of services of Shri Chanchal Dansana with effect from 20-6-2002 (F.N.) by the management of the Dahigaon Service Co-opertive Society Ltd., Padampur is legal and justified and the second party-workman is not entitled to get any relief in this case.

Dictated and corrected by me.

S. MAHAPATRA
21-1-2011
Presiding Officer
Labour Court
Sambalpur

S. MAHAPATRA
21-1-2011
Presiding Officer
Labour Court
Sambalpur

By order of the Governor

P. K. PANDA
Under-Secretary to Government