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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th February 2011

No. 2088—II/1(S)-2/2008-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2010 in Industrial Dispute Case No. 09/2008 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Sarasara Co-operative Society Ltd., Sarasara, Dist. Bargarh and their workman Shri Dharanidhar Pradhan 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. 09 OF 2008

Dated the 31st December 2010

Present :

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

Between :

The management of .. First Party—Management
The Secretary,
M/s Sarasara Co-operative Society Ltd.,
Sarasara, Dist. Bargarh.

And

Their Workman .. Second Party—Workman
Shri Dharanidhar Pradhan,
S/o Late Karna Pradhan,
At/P.O. Sarasara, Dist. Bargarh.

Appearances :

Shri Mala Juadi, Secretary	.. For the First Party—Management
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Shri Dharanidhar Pradhan, Self	.. For the Second Party—Workman

AWARD

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. 9115(4), dated the 26th August 2008 for adjudication of the Schedule questions :

"Whether the dismissal of Shri Dharanidhar Pradhan, Assistant Secretary from services with effect from the 31st March 2004 by the Management of M/s Sarasara Service Co-operative Society Ltd., Sarasara, Dist. Bargarh is legal and/or justified ? If not, what relief the workman is entitled to ?"

2. The case of the second party-workman as per the statement of claim stated as follows :—

The workman Shri Dharanidhar Pradhan was working as Assistant Secretary under the first party-management since 25 years and was dismissed from service by the first party-management vide Order No. 125, dated the 31st March 2004 illegally and the workman was not given opportunity by the management to defend his case. The charges framed against him were not specific nor proper nor any documents relied on by the management as supplied to the workman although the workman requested them to supply the documents. The workman was not given the reasonable opportunity to prove his innocence on the charge framed against him. Due to non-supply of materials/relevant documents the workman claims that he became handicapped to defend himself. The workman claims the order of dismissal from the service by the management is illegal and unjustified.

So, the second party-workman prayed for an order directing the management to quash the order of dismissal and for the reinstatement of the workman in his post retrospectively from the date of termination with full back wages and to treat the period out of employment as duty and qualifying service and for other reliefs.

3. The first party-management contested in this case and filed written statement stating that Sarasara Service Co-operative Society Limited, the management is a registered Primary Co-operative Society under the Orissa Co-operative Societies Act, 1962 constituted for the Socio Economic Upliftment of its members, Agriculturists and Public at large. It bears Registration No. 138, dated the 26th June 1966 and managed in accordance with O.C.S. Act, Rules made thereunder and the registered bye-laws. The second party-workman Shri Dharanidhar Pradhan was an employee of the Society since the 1st June 1975. He was working as the Assistant Secretary and incharge of Fertilisers and other stocks of the Society. He was also responsible for maintenance of the records in respect of the cash and stocks transacted by him. The second party-workman was also performing supervisory nature of job. The date of birth of the workman is the 4th January 1951. While the workman was working as the Assistant Secretary of the Society, it was found that he has

committed serious misconduct like forgery, making of false entry and misappropriation of money. The second party-workman was charged for commission of serious misconduct like forgery, making of false entry as well as misappropriation of money. So, the management vide Order No. 3, dated the 8th April 2003 suspended the workman from service and he was paid subsistence allowance in accordance with law. Then the charge initiated against the second party-workman and issued vide letter No. 54, dated the 20th May 2003. Although, the second party-workman received the letter of charges issued by the management, has failed to submit any explanation and the management accepted his innocence and imposed punishment after expiry of the period specified in the charge-sheet. Thereafter Shri K. B. Dash, Inspector of Co-operative Societies was appointed by the management and after enquiry he submitted his enquiry report. Subsequently, the management sent the copy of the enquiry report, dated the 9th February 2004 and show cause notice issued to the workman but the workman failed to submit the explanation. Thereafter, the management dismissed the workman from his service vide Order No. 125, dated the 31st March 2004. The second party-workman has crossed the age of superannuation.

Further it is alleged from the written statement that the workman was working as the Assistant Secretary and drawing a salary of more than Rs. 1,600 per month. So, he is not a workman under the I. D. Act, 1947. The first party-management is a Registered Co-operative Society and the workman was one of its paid officer. Thus, the disciplinary action taken by the Society against the paid officer is matter of cognizable by the Co-operative Tribunal u/s 67-B of O.C.S. Act, 1962, barring jurisdiction of this Court. The workman was dismissed from service on the 31st March 2004 and he filed the petition before the Conciliation Officer on the 25th July 2007. The workman during the period of his service as a Assistant Secretary of the Society committed misconduct like forgery, falsification of accounts, misappropriation of Society money and disobedience of orders. So the first party-management made a prayer for dismissal of this case.

4. The second party-workman filed rejoinder denying all the allegations levelled against him.

5. 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 dismissal of Shri Dharanidhar Pradhan, Assistant Secretary from services with effect from the 31st March 2004 by the management of M/s Sarasara Service Co-operative Society Ltd., Sarasara, Dist. Bargarh is legal and/or justified ?
- (iii) If not, what relief the workman is entitled to ?"

6. Both the parties have filed their respective documents in support of their case. The second party-workman has filed documents which are marked as Exts. W. 1 to Ext. W. 6. In order to prove the case, two witnesses have been examined on behalf of the second party-workman. W W. 1 Dharanidhar Pradhan, the second party-workman, W. W. 2 Shri Abadhut Bhoi, Independent witness.

The first party-management has filed several documents which are marked as Exts. M. 1 to Exts. M.38. On behalf of the first party-management, five witnesses have been examined. M.W.1, Kabi Chandra Dash, retired Government Servant, M.W. 2 Rabindra Kumar Bhoi, Administrative Inspector, Sugar Mill Branch, Tora, Bargarh, M.W. 3 Premaraj Dash, Secretary, CARD Bank, Padampur, M.W. 4 Ananda Kumar Bhoi, Assistant Secretary, Co-operative Society, Sarasara, M.W 5 Mala Juadi, Secretary of Sarasara Co-operative Society.

FINDINGS

7. *Issue No. (i)*—The domestic enquiry was not proper nor fair as per Order, dated the 16th April 2010.

8. *Issue No. (ii)*—Admittedly, the workman is an employee of the Management Society since the 1st June 1975. He was working as Assistant Secretary as well as Incharge of Fertilisers and other stocks of the Society. The second party-workman was charged for commission of serious misconduct like forgery, making of false entry and misappropriation of Society money. So the management suspended the second party-workman from service vide Order No. 3, dated the 8th April 2003 and paid him the subsistence allowance in accordance with law. Although the workman was served with the letter, dated the 20th May 2003 but remained silent without submitting any explanation regarding the charges levelled against him. The second party-workman denied the allegations made by the first party-management. The burden lies on both the parties to prove their respective case.

Let us scrutinise the evidence and documents of the second party-workman. The second party-workman has filed Exts. W. 1 to Ext. W. 6. Ext. W. 1 is the copy of the Order No. 125, dated the 31st April 2004 which was issued to him by the first party-management. It reveals in Ext. W. 1 that the second party-workman was suspended vide Order No. 54, dated the 20th May 2003 for his misconduct, irresponsible and gross negligence in duty. Ext. W. 2 is the Xerox copy of registered cover. Ext. W. 2/1 is the copy of letter, dated the 25th January 2003. Ext. W.3 is the copy of draft charge. Ext. W. 4 is the Xerox copy of Admission Register of Sarasara U.P. School. Ext. W. 4/a is the relevant portion of the said register. Ext. W.5 is the letter, dated the 5th November 2010. Ext. W. 6 is the R.O.R. stands recorded in the name of Bhubaneswar Pradhan, Malia Pradhan, Dirju Pradhan, Karna Pradhan, Juan Pradhan. It is alleged from the evidence of the second party-workman that during his service period, the shortage of money has been made due to leakage of water from the roof of the godown of the Society and he has not misappropriated the money in this respect. But there is no such documents filed by this workman regarding such plea. He admitted in his evidence that he has filed Dispute Case against the Loanees who had not cleared up the loan amount of the Society. He admitted for a cash of Rs. 8,248.25 paise was shortage towards selling of bags of fertilisers but all the above shortage amount have not been recovered from his salary except some amount. The second party-workman pleaded that he has never misappropriated the money although he admitted the documents which are exhibited by the first party-management. All the documents, i.e. Exts. M. 1 to Ext. M. 38 are marked without objection from the side of the

second party-workman. W. W. 2 Shri Abadhuta Bhoi stated in his evidence that he was the President of Sarasara Service Co-operative Society Limited, Bargarh from the 26th September 1987 to the 29th July 1991 and during his incumbency the second party-workman was working under the first party-management as Assistant Secretary. He further stated that during the period of his Presidentship, the roof of the Fertiliser godown was made by R. C. C. sheets and most of the sheets were rusted and due to leakage of water from the roof the fertilisers were getting wet. He had discussed with the Assistant Registrar of Co-operative Society but no replacement was made on the roof. During his service period as President of the Society there was no adverse record in the Society against the second party-workman. This witness explained regarding the ancestors of second party-workman.

9. The first party-management in order to establish the case relied on the evidence of M.W. 2 to M. W. 5 and M. W. 2 Shri Rabindra Kumar Bhoi is working as Administrative Inspector in the Sugar Mills Branch of the said Bank. As per his evidence Sarasara Service Co-operative Society has been affiliated and a Member Shareholder of the said Bank. The Bank used to transfer its employee to work as Secretary of different Primary Co-operative Societies affiliated to it including the Sarasara S.C.S. Ltd. On being transferred by the Bank, he (M.W. 2) was working as the Secretary of Sarasara S.C.S. Ltd. during the period from the 10th August 2002 to the 14th June 2007. As the Secretary, he was the Chief Executive of the Society. On the 20th May 2003 on the order of the President of the Society M. W. 2 issued a draft charge against the workman. Although the management has issued several letters to the workman Shri Dharanidhar Pradhan, he did not turn up nor submitted any explanation to the charges levelled against him. The first party-management in this respect has filed the documents which is marked as Ext. M. 1, i.e. copy of letter, dated the 15th November 1979. Ext. M. 2 is the copy of the Demand notice, dated the 10th February 1988. Ext. M. 3 is the copy of Decree, dated the 4th October 2000. Ext. M. 4 is the copy of collection programme, dated the 10th March 2003. Ext. M. 5 is the complain, dated the 17th April 2003. Ext. M. 6 is the complain, dated the 16th April 2003. Ext. M. 7 is the letter, dated the 12th April 2003. In the year 2003 January and February M.W. 2 requested the second party-workman to reconcile the accounts of 2002 Khariff Loan with the Bank Account and prepare individual Insurance Claim statement of the concerned members of different quarters but the second party workman did not perform the said work for which he was issued a letter No. 49, dated the 25th March 2003 to show cause for the disobedience of order. Ext. M. 10 is the copy of the show cause notice, i.e. dated the 25th March 2003. The second party-workman has not complied the same. Besides that the second party-workman on the 17th April 1979 availed a Medium Term Loan from the Society. The Society used to maintain a loan register in respect of its loanee. The loan was repayable by the workman within five years. The workman himself made an entry in respect of loan availed by him and the workman put his signature on the receipt of loan from the Society. He availed the loan by mortgaging the landed property measuring Ac. 2.48 decimals against the loan. In the loan register the land particulars of the loanee member is required to be mentioned. Ext. M. 24 is the loan register of the Society. In page No. 186 of Ext. M. 24 has been mentioned by the workman in two places. In Ext. M. 24 in page No. 186 the columns filled up by the workman but it was found that the landed

property measuring Ac. 2.48 Decimals do not belong to the names as per the Column Nos. at page 186. On the otherhand the second party-workman filed Ext. W. 6 wherein the names of some Pradhan families has been mentioned. Shri Karunakar Pradhan is the father of the workman Shri Dharanidhar Pradhan. The name of Shri Karunakar Pradhan nor the name of Shri Dharanidhar Pradhan are reflected in Ext. W. 6., Ext. M. 24 stands recorded in the name of Shri Bhubaneswar Pradhan, Shri Dirju Pradhan, Shri Karna Pradhan, Shri Juan Pradhan, Shri Balamukunda Pradhan and Shri Jala Pradhan. The management verified and found that the Land particulars mentioned in page No. 186 in Ext. M. 24 does not belong to the second party-workman. So, the management has pleaded that in order to avail the loan from the Society, the second party-workman made a false entry in Ext. M. 24 at page 186. Moreover the workman illegally availed the loan from the Society in the year 1979 and did not repay the same to the society. As an Assistant Secretary of the Society, the second party-workman was entrusted with some day to day work and it was the duty of the workman to prepare some papers in the Society and list of loan defaulters of the Society to take legal action against them who became the defaulters in payment of the loan. In this way the second party-workman was directed to initiate legal proceedings against the loan defaulters vide Resolutions No. 2, dated the 7th November 2001 and No. 7, dated the 25th January 2003 passed by the Board of Directors of the Society. Besides that the workman was also issued with order No. 17, dated the 18th October 2001 to explain for non-taking of any legal action against ninety-eight numbers of cases involving Rs. 9,00,000.00 (Rupees nine lakhs) approximately. So as par the case of the management, the management could not realise the said amount from the defaulters due to the negligent acts of the second party-workman. The second party-workman has not proved this fact in support of his case although he denied such type of allegation. So it is presumed that the workman intentionally did not initiative any legal action on the defaulters causing a great loss to the management.

Moreover, the workman was incharge of fertiliser stock of the Society and he caused shortage of fertiliser stock. The workman in his evidence admitted that a cash of Rs. 8,248.23 paise was shortage towards selling of bags of fertilisers but all the shortage amount has not been recovered from his salary except some amount. So in this regard, the second party-workman admitted such type of allegation made by the first party-management against him. Ext. M. 26 is the recovery register which is maintained in the Society in the regular course of business. In Ext. M. 26 it is reflected that from the salary of the workman some amount has been adjusted and on the 1st February 1992 the workman against the audit recoveries paid Rs. 200 in cash to the Society. So Ext. M. 26 shows an outstanding of Rs.8,248.23 paise against the workman. The second party-workman during his service period committed shortage of fertiliser stock and misappropriated the same of the Society. So, the workman is liable to pay Rs. 8,248.23 paise to the Society. Moreover, during the year 1976-1977 the workman was incharge of fertilisers which indicates shortage of fertiliser stock value of Rs. 953.24 paise which was misappropriated by the second party-workman. The audit report of the Society for the year 1976-1977 also reveals to recover the said amount from the second party-workman. On the 20th July 1976 the workman collected Rs. 347 from a loanee member of the Society namely Shri Debara Bhoi of village Rengalpali and failed to deposit the amount in the Society and misappropriated the said money. The workman mentioned in the pass book of Shri Debara Bhoi the receipt of Rs. 347.00 and put his signature thereon. But the workman has not mentioned nor made an entry in the loan register of the Society regarding such payment.

Besides that the workman has not issued any money receipt of the Society as a token of receipt of such money of Rs. 347.00 and such amount was not brought to the account of the Society. During the year 1977-78, the workman failed to account for Rs. 12.05 paise collected by him by selling fertilisers. In the year 1976-77 and 1977-78 the workman misappropriated of Rs. 1,312.29 paise of the Society which is corroborated to the Audit Report of the Society. In spite of the notice issued to the workman, the workman failed to pay the same to the Society. So, the Society filed Dispute Case No. 21 of 1981-82 in the Court of A.R.C.S., Bargarh for recovery of the misappropriated amount. The workman admitted his liability and refunded the said amount vide Receipt No. 031046, dated the 24th May 1983 of the Society. The Society took a lenient view over the matter and withdrew the Dispute Case. Further it is alleged from the evidence on record that the workman submitted a false tour diary for the month of March, 2003 Ext. M. 4 where the second party-workman mentioned that he conducted extensive tour to different villages for collection of loan. In due course of time on verification it was found that the workman neither conducted any tour nor collected any loan from the villagers. However, the workman submitted a false tour report for the month of March, 2003. The first party-management placed many allegations regarding misappropriation of money against the workman. The Society received a complaint from Dhulu Meher of village Sarasara which is marked as Ext. M. 16 alleging that the workman collected Rs. 990.00, Rs. 330.00 towards Group Insurance for Khariff 2002 and Rabi 2003 respectively from him without granting any money receipts and subsequently that amount were not accounted for in the Society. The second party-workman made an entry in the pass book of Dhulu Meher by mentioning of Rs. 900.00 and Rs. 330.00 showing receipt of money by him from Dhulu Meher. But such amount was not brought to the record nor issued any receipt to him. Likewise the Society received complaint from Babulal Suna of village Balijori alleging that the workman collected Rs. 700.00 on Dt. 9-12-2000 from him towards share capital against M. T. Pump set loan and made necessary entry in the K.C. C. Pass Book of Babulal Suna. But the workman has not issued any receipt to Babulal Suna nor the said amount deposited in the account of the Society. The workman committed misappropriation of such amount by making a false entry in the Pass Book of Babulal Suna. Ext. M. 17 is the complaint of Babulal Suna. Ext. M. 23 is the Pass Book of Babulal Suna. On 16-4-2003, the first party-management society received complaint from Shri Lalit Mohan Dash and on 17-4-2003 received complaint from Shri Premaraj Dash belonging to village Birmal to the effect that the workman collected Rs. 210.00 each from them towards crop insurance premium of Khariff 2002 loan. The workman did not issue any receipt to them nor accounted for the money in the book of accounts of the society and misappropriated that money. The first party-management society in order to recover the misappropriated amount filed a Dispute Case No. 1225 of 2000-2001 in the Court of A.R.C.S., Bargarh against the workman. The case was decreed on 4-10-2000 as per Ext. M. 3 directing the workman to pay Rs. 6,668.00 and further interest till the full payment to the Society. Till today, the workman has not paid the said amount to the Society. The workman has not preferred any appeal against that decree nor raised any question in his evidence. The decree passed under Section 68 of the OCS Act disclosing the misappropriation committed by the workman in the Society.

10. In view of such facts and circumstances, when the second party-workman was working in the Management Society adopting the way of misappropriation of money as well as made false entry in the Registers and when it was detected by the management Society, a meeting of Board of Directors of the Society called for. The Board of Director after considering on the allegations made against the workman, enrage a decision to dismiss the workman from service as a measure of

punishment. So after giving ample opportunity to the second party-workman, the dismissal order No. 124, dated the 31st March 2004 communicated to the workman. The evidence led by other witnesses such as M.W. 3 to M. W. 5 also corroborated the evidence of M. W. 2. It is apparent from the evidence as well as relevant documents filed by the first party-management that the workman has misappropriated the society money in various ways concealing many facts. Moreover, he has not mentioned the relevant entry in the concerned Register of the Society. There is nothing to disbelieve the case of the management society. The management has fully established his case by adducing evidence as well as relevant documents.

Now-a-days this type of activities such as misappropriation of public money and property is rampant in the office and in the society and spreading like cancer causing a great loss to the concerned office or society. So I do not feel to extend any sympathy to such type of person like the workman who has misappropriated the public money in the society causing great loss to the society as well as public. So, the first party-management has established its case basing on all the relevant documents which are marked Ext. M. 1 to Ext. M. 38.

11. In the meantime, the workman has already attained his superannuation date. However, taking all these facts into consideration and due to nature of the workman as well as gravity of the allegations levelled against him, it can be concluded that the workman is not entitled to get any relief from the management in this case. Accordingly, issue No. (ii) is answered.

12. *Issue No. (iii)*—In view of such facts and circumstances, the second party-workman is not entitled to get any relief at all in this case. Hence the following award.

AWARD

The reference is answered on contest but without any cost. The dismissal of Shri Dharanidhar Pradhan, Asst. Secretary from services with effect from Dt. 31-3-2004 by the management of M/s Sarasara Service Co-operative Society Ltd., Sarasara, District Baragarh is legal and justified and the workman is not entitled to get any relief in this case.

Dictated and corrected by me.

SAROJINI MAHAPATRA
31-12-2010
Presiding Officer
Labour Court
Sambalpur

SAROJINI MAHAPATRA
31-12-2010
Presiding Officer
Labour Court
Sambalpur

By order of the Governor

P. K. PANDA

Under-Secretary to Government