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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st March 2011

No. 2740—li/1(BH)-43/1995-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th February 2011 in Industrial Dispute Case No. 23/1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of IPISTEEL Ltd., Gundichapada, Dhenkanal and their Workman Shri H. H. Bakshi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 23 OF 1996

Dated the 11th February 2011

Present :

Shri S. K. Dash, o.s.j.s. (Sr. Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of IPISTEEL Ltd.,
Gundichapada,
Dhenkanal.

.. First Party—Management

And

Its Workman
Shri H.H. Bakshi,
S/o Jamnat Hussain,
At Balabhadrapur,
P.O. Rampur Saghari,
Via Aurai,
Dist. Muzzafurpur,
Bihar.

.. Second Party—Workman

Appearances :

S.T. Ullaha, . . For the First Party—Management

Shri S. K. Das, Advocate }
 Shri B. K. Rath, Advocate } . . For the Second Party—Workman
 Shri B. S. Mohanty, Advocate }

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.18893–li (BH)-43/1995-LE., Dt. 28-12-1995 of the Labour & Employment Department, Bhubaneswr for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of IPISTEEL, Ltd., Gundichapada, Dhenkanal in dismissing Shri Haidar Hussain Bakshi, Crane Operator from services with effect from Dt.1-10-1992 is legal and/or justified ? If not, what relief Shri Bakshi is entitled to ?”

3. The case of the workman in brief is that the establishment of the management is a manufacturing unit of joint venture growing prospering unit of joint sector of Iron and Steel Manufacturing Undertaking functioning at Dhenkanal. The workman being a technical and high skilled experienced workman was appointed by the management in production wing of the factory and subsequently was confirmed in his service due to his brilliant service career. The workmen of the industry to putforth their grievances formed an Union and subsequently registered it under the provision of Trade Union Act and submitted the grievances of the workman before the management for its early settlement. But the management immediately planned and designed to victimise the working members of the Union. The workman was an active member of the Union and the management had an eye on him for which the mangement tried to suppress the Union leaders by falsely implicating them in different charges and also drawing departmental proceedings. All of a sudden on Dt. 22-9-1993, the management communicated the order of suspension and subsequently issued a charge-sheet alleging certain misconduct with direction to submit explanation on charges. The workman submitted the explanation denying the allegations. The workman had submitted that he should be granted opportunity to produce sufficient materials in his defence but the management without granting any opportunity and making proper enquiry by following the principles of natural justice dismissed him from the service with effect from Dt. 15-12-1993. Such dismissal of the workman is a clear violation of the certified standing order which is prevailing in the establishment of the management and also against the principles of natural justice. After dismissal of the workman, the manufacturing process of the establishment of the management is going on by help of newly recruited persons in place of the workman. The workman is now unemployed as no gainful employment has been available to him. So 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 the reference has been received from the Government 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 him, on Dt. 30-9-1992 during the 'B' shift, the working of the plant was suddenly stopped by the workers on the instigation of the workman. The workman not only instigated but also threatened and coerced the other workers to start a wild-cat sitdown strike without any ostensible cause and without any kind of prior intimation to the management. There was grave apprehension of damage being caused to the furnace as there was semi-molten metal in the furnace. For these misconducts, a charge-sheet was framed against the workman on Dt. 1-10-1992. The said charge-sheet was sent to the workman by registered post as he refused to accept it by hand. The same was returned back undelivered with the postal remark 'refused to accept'. Ultimately, on Dt. 22-9-1993, the workman agreed to receive it by hand and he submitted his written explanation. The management was not being satisfied with the explanation decided to hold a domestic enquiry and appointed Shri R.P. Singhdeo, Advocate as Enquiry Officer. The matter was intimated to the workman by letter which was received by him. The Enquiry Officer had intimated the workman about holding of enquiry on Dt. 21-10-1993 as per his letter which was also received by the workman on Dt. 16-10-1993. The workman participated in the enquiry on Dt. 2-11-1993 and also on Dt. 16-11-1993. After completion of the enquiry, the Enquiry Officer submitted his report to the management. The charge framed against the workman was proved. The management took a decision to dismiss the workman from service as per letter, Dt. 15-12-1993. So in this background, the dismissal of the workman from service is legal and justified and the workman is not entitled to get any relief in this case.

5. In view of the above pleadings of the parties, the following issues are settled :—

ISSUES

- (i) Whether the domestic enquiry conducted against the workman was just and proper ?
- (ii) Whether the action of the management of IPISTEEL Ltd., Gundichapada, Dhenkanal in dismissing Shri Haidar Hussain Bakshi, Crane Operator from services with effect from Dt. 1-10-1992 is legal and/or justified ?
- (iii) If not, what relief Shri Bakshi is entitled to ?

6. In order to substantiate his plea, the workman has examined two witnesses altogether out of whom W.W.1 is the workman himself and W.W.2 is a co-worker of the workman. The workman has proved the documents marked as Exts.1 to 7. On his behalf, the management has neither adduced any evidence nor proved any document on his behalf.

FINDINGS

7. *Issue No. (i)*—This issue is taken up for discussion first as essential.

It has been argued on behalf of the workman that the domestic enquiry conducted by the management against him was not just and fair. According to W.W.1, he was working as Crane Operator under the management. The management framed charge vide Ext. 4 and Shri R. P. Singhdeo was appointed as Enquiry Officer to conduct the enquiry. But the Enquiry Officer did not give opportunity to the workman to defend his case and to cross-examine the management witnesses. The workman has submitted his explanation vide Ext.6. After conclusion of the enquiry, the workman was dismissed from service with effect from Dt. 15-12-1993 vide Ext.7. Ext.7 discloses that the workman had fully participated and full opportunity was given to him for his defence in the enquiry. But the workman has taken the plea that he was not granted any opportunity for his defence in the enquiry and without granting any opportunity and making any enquiry and without following the principle of natural justice, he was dismissed from service. Strangely enough the management has not cross-examined the W.W.1 and nothing has been elicited from his mouth to disbelieve his sworn testimony. The management has only put one suggestion which was answered in negative. W.W.2 who is a co-worker of the workman also deposed corroborating the deposition of W.W.1. But this witness also did not cross-examine by the management and the cross-examination declined by the management. The management has also not adduced any evidence in this case. No document has been proved by the management also. So the vital documents like enquiry proceeding, enquiry report etc. are wanting. If such documents would have been proved by the management it must have thrown light to know the details about manner of enquiry. It is an admitted fact by both the parties that the workman was dismissed from service with effect from Dt.15-12-1993. But inadvertently in the Schedule of reference, it is mentioned as 1-10-1992 which is not correct. So both the parties have knowledge about the date of dismissal of the workman from service on Dt.15-12-1993. So the reference can be answered basing on such materials. So in absence of any positive enquiry and without any informity in the evidence from the side of the workman now it cannot be said that the domestic enquiry conducted by the management was fair and proper. So also there is no material on record to show that the enquiry report was supplied to the workman. So on careful consideration of all the materials available in the case record, I came to the finding that the domestic enquiry conducted against the workman was not just, fair and proper. Hence, the Issue No. (I) is answered accordingly.

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

The management has not taken any pain to prove the charges levelled against the workman on merit. So without any materials in support of it, I also came to the finding that the management has miserably failed to prove the charges levelled against the workman. According to the written statement of the management, charge was framed against the workman on Dt. 1-10-1992. There is no material on record to show that the service of the workman came to an end by following the mandatory provisions of Section 25-F of the Industrial Disputes Act though the workman has clearly deposed that he was working as Crane Operator on Dt. 18-2-85 and was confirmed in the service on Dt. 14-8-1986. Perused all the documents marked as exhibits on behalf of the workman. 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 dismissing the workman from service with effect from Dt. 15-12-1993 but not from Dt. 1-10-1992 is neither legal nor justified and he is entitled to be reinstated in service.

9. Regarding back wages, according to the 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. But in the instant case, the workman has deposed that he has not been gainfully employed elsewhere and he is maintaining his family by incurring loan from his well wishers and relatives. He claims for full back wages. It is an admitted fact that he has not worked for the management for the relevant period in question. In view of the authority reported in 2004 (Supp.) O.L.R. 694 and basing on the materials available in the case record, I am of the opinion that it is not a fit case to grant full back wages. On the other hand, a lump sum amount of Rs. 50,000 as compensation in lieu of back wages 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 of IPISTEEL Ltd., Gundichapada, Dhenkanal in dismissing Shri Haider Hussain Bakshi, Crane Operator, from services with effect from Dt. 15-12-1993 but not from Dt. 1-10-1992 is illegal and unjustified. The workman Shri Bakshi is entitled to be reinstated in service with a lump sum amount of Rs.50,000 (Rupees fifty thousand) only as compensation 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 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 & corrected by me.

S. K. DASH
11-2-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
11-2-2011
Presiding Officer
Labour Court
Bhubaneswar

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