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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th March 2011

No. 3175—li/1(BH)-91/1994—(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th September 2010 in Industrial Dispute Case No. 130/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. IPISTEEL Ltd., Dhenkanal and its Workman Shri Alekh Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 130 OF 2008
(Previously registered as I.D. Case No. 1376/1996 in
the file of the P.O., Labour Court, Bhubaneswar)

Dated the 8th September 2010

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of M/s. IPISTEEL Ltd.,
Dhenkanal.

.. First Party—Management

And

Their Workman
Shri Alekh Sahoo,
S/o Shri Sanatan Sahoo,
Vill. Hubasahi,
P.O. Khajuria,
Dist. Puri.

.. Second Party—Workman

Appearances :

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

Shri Shri S. Mohanty, . . For the Second Party—Workman
 Authorised representative.

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') made by the Government of Orissa in Labour & Employment Department, vide their Order No. 10833-li/-(BH)--1994/-LE., dated the 22nd August 1996 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department Order No.4138-li/-21-32-2007/-LE., Dt. 4-4-2008. The schedule of reference runs as follows :—

“Whether the termination of services of Shri Alekha Sahoo Furnace Helper with effect from 15th May1993 by the management of M/s. IPISTEEL Ltd., Gundichapada, Dhenkanal is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?”

2. The workmen's claim is that he was a workman under the first party and his name has been struck off the roll w.e.f. 15-5-1993. It is pleaded that in order to victimise the workmen for their trade union activities the management on 1-10-1991 had declared lock-out in its factory. So, the second party left his work place and went back to his native place. Letter, getting intimation that the lock-out had been lifted he reported for duty on 2-2-1993 but the management refused him employment telling that his services had been terminated. No written order was communicated to him. So, he made repeated approach to the management. Thereafter, the management issued a letter on 30-7-1993 stating that his name had already been struck off the roll w.e.f. 15-5-1993 as he did not attend to duties after the lock-out was lifted. Such action is violative of the standing order of the establishment and against the principle of natural justice. No disciplinary action was taken nor was there compliance of the statutory provisions to effect a valid termination. That apart, the workman has been going without any gainful employment since the illegal termination. Therefore, he should be reinstated with full back wages.

3. In the written statement the management has taken the plea that the second party with other workers of S.M.S. Division of the factory resorted to illegal strike w.e.f. 30-9-1992. Other workers were intimidated and officers were the reatened by them. So, the management was forced to declare lock-out with due notice to all concerned which was letter on lifted w.e.f. 7-2-1993. There was due publication of the lifting of the lock-out on the factory noticeboard by sending letters to the individual workman and by way of newspaper publication Dt. 29-3-1993. Since the second party did not report for duty despite of such publication the management issued a number of letters inviting the workman to report for duties. On 5-2-1993 a charge-sheet was also framed against the workman and an explanation was invited from him for his failure to resume duties. But the workman did not give any explanation nor did he report for duties. On 2-6-1993 the workman intimated that due to

illness he could not join duties but did not mention anything as to when he was expected to join. Ultimately, on 30-7-1993 the Management intimated the workman in writing that as he did not join his duties his name had been struck off w.e.f. 15-5-1993.

4. In terms of the reference, following issues have been settled :—

ISSUES

1. “Whether the termination of services of Shri Alekh Sahoo, Furnace helper with effect from Dt. 15th May 1993 by the management of M/s. IPISTEEL Ltd., Gundichapada, Dhenkanal is legal and/or justified ?
2. If not, what relief Shri Sahoo is entitled to ?”

5. The workman has examined himself as M.W. No.1. The management has examined one its assistants as M.W. No.1. Both sides have exhibited some documents in support of their respective claim.

FINDINGS

6. *Issue No. 1* :—There is no dispute that the second party was a workman and his name was struck off w.e.f. 15-5-1993. The real dispute is as to whether the workman, inspite of being intimated by the management, did not report for duties after lifting of the lock-out for which his name has been struck off. The workman takes the plea that having come to know about the lifting of the lock-out he had gone to the factory gate to report for duties but he was denied entry inside the factory. He has further taken the stand that even after such denial, he used to go to the factory gate regularly but he was not allowed to enter inside and no intimation was given to him as to why he was not being allowed to join. According to him, when he came to know about the management’s action that his name had been struck off he raised a dispute before the local District Labour Officer by making a written representation Dt. 18-8-1993. The Management, on the other hand, contends that even after the publication of the notice in the newspaper intimation used to be sent to the workman inviting him to report for duties, yet there was no response from the workman for a long period for which the workman was presumed to have had abandoned his service. To prove this contention the management has exhibited documents marked Exts. B, C, F and G. Ext. G is a letter Dt. 5-2-1993 said to have been sent to the workman at his home address which the workman denies to have received. In this letter the management has directed the workman to immediately report for duty and to explain as to why disciplinary action should not be taken against him for having absented from duty from the date of lifting of the lock-out. N.M. No.1 in his cross-examination has stated that this letter was sent to the workman by Regd. Post but the management has failed to furnish the postal receipt/A.D, showing that the letter was duly delivered to the workman or he refused to accept the same. So, there is nothing to show that this letter had come to the notice of the workman and still he failed to report for duty. Ext.F is another such letter Dt. 20-2-1993 asking the workman to report for duties latest by Dt. 26-2-1993. This letter is also not shown to have been served on the workman. From the body of the letter it can be said that it was not sent to the workman either in his home address or his then postal address which was available with the

management. Ext.B is another letter Dt. 5-3-1993 asking the workman to resume duty by 11-3-1993. This letter stands in the same footing as Ext. F. Thereafter, the paper publication Dt. 29-3-1993 vide Ext. A was effected by the management. The workman admits that he had knowledge about this paper publication and on that basis he had gone to the factory but he was denied entry at the gate. It is claimed by the management that after the paper publication another notice (Vide Ext.C) was sent to the workman by Regd. Post with A.D. It is not proved that the letter has been sent by Regd. Post. Ext.C is Dt. 28-4-1993. It reflects that the management had given another chance to the workman to report for duty by 5-5-1993. But, it is not proved by the management that the letter was either delivered to the workman or he refused to receive the same. It is also not forthcoming from the body of the document as to whether it was sent in his home address or the then postal address of the workman. Thus, the management has failed to prove that notices said to have been issued repeatedly to the workman calling upon him to resume duties were duly served on him and knowing that he was invited to report for duty he did not comply with such instructions. In his affidavit evidence M.W. No.1 has stated that the Company's letter Dt. 5-5-1993 was received by the workman and the letter Dt., 28-4-1993 was returned by postal authority undelivered. But these facts are not proved by the management. Further the statement in the affidavit that management's letter Dt.5-7-1993 was received by the workman is also not proved by the management. It is also not explained as to what was that letter about.

However, it is admitted, on the basis of the newspaper publication Dt. 29-3-1993 the workman was aware of the lifting of the lock-out. According to the management, when the workman did not report for duty till Dt.15-5-1993, the management deemed it to be a case of voluntary abandonment and his name was struck off the roll. It is also contended that the workman had never reported for duty and he was never denied employment. Now the attending facts and circumstances may be taken into consideration to find out whether the workman can be presumed to have abandoned his job. Ex. E is a representation made to the management by the workman on Dt. 31-5-1993 wherein he has stated that for last three months he had been denied employment and he had not been paid his one month's salary alongwith bonus and *ex gratia*. With this he made a prayer to the management to send his dues in the address furnished on the body of the representation. The management relies on this representation. So, in absence of any explanation it is to be presumed that the management received the representation on or a few days after 31-5-1993. Yet, the management does not appear to have made any correspondence with the workman in the address given on the representation. Ext.D is another representation of the workman made two days after the first representation (Ext.E). In Ext.D the workman has stated that because of illness he was not able to report for duty in obedience to management's direction. He has also stated therein that he was badly in need of money and the management should clear his arrear dues. The management has not shown to have taken any action on this representation.

Even though it is claimed that the workman's name had been struck off w.e.f. 15-5-1993 the management did not intimate that fact to the workman soon after receipt of these representation. After long two months the management sent Ext.2 to the workman stating therein that his name was struck-off the rolls for his failure to report for duty. This belated communication together with management's lack of sincere effort to effect personal service of notices like Exts.B, C, F & G

indicate that the management had not taken any action against the workmen till Dt. 30-7-1993 against the latter's unauthorised long absence. Till the workman submitted representations on 31-5-1993 and 2-6-1993 he was not officially intimated that his services had been terminated or his name had been struck off. Therefore, the workman's allegation that he had been removed from his job three months prior to that representation supports his stand that after the paper publication when he reported for duty he was denied employment.

As on the dates of the representations vide Exts.D and E the workman was not officially informed that his name has been struck off. The management has not proved any documents to show that on 15-5-1993 the authority passed an order striking off the workman's name from the roll. It is also not shown that soon after the alleged striking off the name, the management took concrete steps to communication the order to the workman. Before any such communication could be made by the management the workman made the representations vide Exts. D and E, It appears, it was only after receipt of Exts. D and E the management apprehended that the workman might raise a dispute alleging illegal termination of services and in order to show that it was a case of voluntary abandonment the management issued the letter Dt. 31-7-1993 vide Ext.2. Much before Ext.2 was issued, the management had received Exts.D and E. If the workman had the intention to abandon his job he would not have made representations like Exts.D and E Rather, the representations marked Exts.D and E reflect that the workman had the intention to join in his duties, but for circumstances beyond his control he could not. Because of long unemployment he was driven to penury and for that he was earnestly making request for payment of arrear dues. The management did not make any reply. On the other hand, it appears to have created self-serving documents like Exts.B, C, F & G Exts.D and E are sufficient to show that the workman had no intention to abandon his job. The management has failed to show that the workman was aware of the fact that the management was inviting him to report for duty and yet he preferred not to report for duty. So, the management's plea that it is a case of voluntary abandonment of job is not acceptable.

The management has cited the decision in *Raju Sankar Poojary Vrs. Chambur Warehouse Company & another*, 2003 LLR 1150 (Bombay High Court) *Krishnan P. Vrs. Management, Jonas Woodhead and Sons (India) Ltd., Madras* and another, 2003-III-LLJ 686 (High Court of Madras) and *Tirloki Nath (Shri) Vrs. Shri Dharam Paul Arora* and another, 2007-I-LLJ 578 (High Court of Delhi) to support its contention that if the workman fail to join duty when the management makes a specific offer then it is a case of voluntary abandonment disentitling the workman to any relief. But the facts situation in each of the reported case is quite different from that of the case at hand. In the reported cases the workman had either got notice of the management's offer to resume duty or he admitted that he was offered duty but did not join. If in this case the management could have proved that the workman being aware of the management's offer did not report for duty for a reasonable period it would have been presumed that the workman had voluntarily left the job.

7. In the result, it is held that the workman did not abandon his job but he was denied employment with effect from Dt. 15-5-1993 which amounts to retrenchment. Admittedly, due procedure to bring about a valid retrenchment has not been followed. Therefore, the retrenchment is held to be illegal.

8. *Issue No. (2)*—It is not disputed that the workman was initially appointed as a Helper in the year 1985 and his services were confirmed with effect from 11-3-1992. He had been in continuous service with the management for about eight to nine years. He was holding a permanent post. At the time of retrenchment the workman was aged about 24. He was working as a helper. So, there may be a presumption that he was accustomed to manual work. He was out of employment for a period of about seventeen years. The management did not avail his services for such a long period. The workman is and was an able bodied man fit to take up any manual job. Though he has pleaded that he was out of gainful employment. Which is denied by the management, it is to be presumed that during the relevant period he was earning for his livelihood. Taking into consideration the nature and duration of continuous employment and the way he was denied employment and other facts and circumstances, this Tribunal is of the considered view that the second party should be reinstated in service with 50% back wages.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
8-9-2010
Presiding Officer
Industrial tribunal
Bhubaneswar

RAGHUBIR DASH
8-9-2010
Presiding Officer
Industrial tribunal
Bhubaneswar

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