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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd April 2011

No. 3482—li/1-(B)-88/2005-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th January 2011 in I.D. Case No. 71 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Jalamandua Service Co-operative Society Ltd., Barikpur Bazar, Bhadrak and their workman Shri Benudhar Mohanty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 71 OF 2005

The 27th January 2011

Present :

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

Between :

The Management of M/s Jalamandua Service Co-operative Society Ltd.,
Barikpur Bazar, Bhadrak. .. First-party—Management

And

Their Workman .. Second-party—Workman
Shri Benudhar Mohanty.

Appearances :

Shri K. K. Mohakul .. For First-party—Management
Shri B. Mohanty .. Second-party—Workman himself

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. 9226—li/1 (B)-88/2005-L.E., Dt. 29-10-2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of the services of Shri Benudhar Mohanty, ex-Assistant Secretary with effect from Dt. 25-8-1998 by the management of Jalamandua Service Co-operative Society is legal and/or justified ? If not, to what relief Shri Mohanty is entitled to ?”

3. The case of the workman in brief is that he was appointed as Salesman under the management on Dt. 8-3-1983 and thereafter he was promoted to the post of Assistant Secretary in the year 1987 with due approval of the Assistant Registrar, Co-operative Societies, Bhadrak Circle. The workman was discharging his duty to the utmost devotion, diligence and sincerity. The audit was conducted for the period from April 1997 to September, 1997 wherein the workman was held liable for Rs. 73,177.11. The workman deposited the amount which actual was payable to the Society of the management while protesting to the payment of the balance amount being illegal demand on him. The workman was put under suspension with effect from Dt. 5-5-1998 on the allegation of misappropriation of Society's fund. The workman received the suspension order on Dt. 5-5-1998 and on the same day he had received the chargesheet. The workman submitted his explanation to the charges levelled against him but the management was not satisfied with the same and the Enquiry Officer was appointed for a domestic enquiry. The Enquiry Officer without appreciating the facts and circumstance of the case made the workman liable to certain amount. Without giving any opportunity to prove the stand of the workman the management passed a resolution on Dt. 25-8-1998 where the workman was discharged from service with immediate effect and the same was communicated to the workman on Dt. 31-8-1998. The order of discharge/ termination of the workman from service does not contain the ground on which he was discharged from service. The management has not followed the procedure of retrenchment of service. The workman was not paid with any subsistence allowance and retrenchment allowance etc. The workman filed a Service Dispute Case bearing No. 75/1998 before the Co-operative Tribunal, Bhubaneswar which was dismissed being not maintainable and it was advised by the Tribunal to seek necessary appropriate forum being a workman. The workman has rendered service under the management for a period of 18 years. The allegation of misappropriation by the workman to the tune of Rs. 73,177.11 could not be established at any point of time. The workman has never misappropriated the funds of the Society of the management. The management had always grudge against the workman as he was demanding higher scale of pay and a Model Service Rules for the Society for which he was illegally and arbitrarily removed from the service without considering and appreciating his grievance and affording him reasonable opportunity of being heard. So in this background the workman has raised an industrial dispute before the labour authority and when the conciliation failed the matter was referred to the Government and this reference has been received 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 the management, the workman had been appointed as Salesman and subsequently allowed to work as Assistant Secretary, but the said post has not been approved for which he was allowed to continue temporarily on a consolidated salary of Rs. 1,500 per month. The workman was entrusted to collect loan dues from the loanee members of the society but the workman retained the said collected loan dues in his custody instead of depositing in the Society account. The workman had disobeyed the order of the Cadre Secretary of the management and on the decision of Board of Management, he was dismissed from service on the ground of misappropriation of fund and misconduct after giving due opportunity and following the relevant procedure of law and in pursuance of Board Resolution. The workman has been dismissed from service for the larger interest of the Society in order to save image and faith of members of the said Society. The workman has admitted the alleged misappropriation money and paid Rs. 10,541 leaving balance amount of Rs. 62,636.11. The Enquiry Officer had been appointed in the disciplinary proceeding and sufficient opportunities were given to the workman and the personal hearing had been conducted on Dt. 8-8-1998 and all documents were verified by the workman. After enquiry, a copy of the enquiry report was also served on the workman. Before dismissal of the services of the workman principle of natural justice has been followed and charges against him have been established. As per the provisions of O.C.S. statute, the Board of Management is the supreme authority and their decision is final. Hence as per the resolution of the Board of management, the workman was dismissed from service by the President of the Society of the management and the dismissal order was communicated to him. The management had never harassed the workman in completing the disciplinary proceeding. The dismissal of the workman is legal and justified and he is not entitled to get any relief from the management. Hence 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 Benudhar Mohanty, ex- Assistant Secretary with effect from Dt. 25-8-1998 by the management of Jalamandua Service Co-operative Society is legal and/or justified ?
- (ii) If not, to what relief Shri Mohanty is entitled ?

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. The management has neither adduced any evidence nor proved any document on its behalf.

FINDINGS

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

It is admitted by both the parties that a domestic enquiry was held in this case and thereafter when the workman was found guilty about the charges levelled against him regarding misappropriation of funds of the Society, the management dismissed him from service. Before deciding the above issues, the fairness of the domestic enquiry should be decided first though specific issue has not been framed about it and both the sides have knowledge about it. So before proceeding to other issues, I will first see whether the domestic enquiry held against the workman was fair and proper. According to W.W. 1, he was appointed as Salesman and thereafter he was promoted to the post of Assistant Secretary and he was getting consolidated salary of Rs. 1,500

per month. After checking the accounts of the Society it was alleged about the misappropriation of fund to the tune of Rs. 66,896 by the workman along with other recovery total amounting to Rs. 73,177.11 and such report was not based on correct facts and an unilateral report which is not acceptable at all. A notice was issued to the workman to deposit the same and in reply he owe only Rs. 10,541 to the Society and he had not misappropriated the said alleged amount and he was not liable to pay the said alleged amount. Thereafter the President of the management instructed him to deposit the said admitted amount and accordingly the workman deposited the said amount of Rs. 10,541 in the Society in protest of the said notice and the report. The management without affording any reasonable opportunity to verify the relevant documents initiated an enquiry proceeding against him which is illegal. The enquiry proceeding was conducted by the Enquiry Officer behind the back of the workman and the evidence of the management witnesses was not recorded in his presence. The workman protested such conducting of enquiry before the Enquiry Officer and he requested to furnish the copy of statement of witnesses of the management but it was all in vain. The Enquiry Officer did not respond to his request. Thereafter he was dismissed from service. The xerox copy of enquiry report has been marked as Ext. 9. The xerox copy of the dismissal order has been marked as Ext. 3. Ext. 1 is the xerox copy of the suspension order. Ext. 2 is the xerox copy of the charges levelled against the workman containing seven heads. Ext. 4 is the xerox copy of the certified copy of the judgement of the Court of Member, Co-operative Tribunal, Bhubaneswar in Service Dispute 75 of 1998. Perused the other documents marked as exhibits on behalf of the workman which include the xerox copies of the explanations submitted by the workman vide Exts. 6 and 7. The management has cross-examined the witness (W.W. 1) by putting a single question which is a denial suggestion. The management has not taken any pain to ask more questions to W. W. 1 to elicit the truth. So the evidence of the workman remained as if unchallenged. The enquiry proceeding has not been filed. The Enquiry Officer has not come forward to the witness box to depose how the enquiry was fair and proper. The workman has deposed that the evidence of the management witnesses were taken in his back. So from the materials available cannot be said that the domestic enquiry was fair and proper. On careful consideration of all the materials available in the case record as discussed above I also came to the finding that the said domestic enquiry held by the management was not fair and proper.

8. The management has not proved the allegations levelled against the workman regarding misappropriation of fund. So without any specific evidence regarding misappropriation of fund it cannot be said that there was any misappropriation of fund of the Society. Though the management has taken the plea that the workman has admitted the misappropriation and paid part of it that has not been proved at all. The workman has deposed that he has completed 18 years of service. So without any contrary evidence, it cannot be said that he has not worked for 240 days in 12 calendar months preceeding to the date of termination by way of dismissal of service. The mandatory provisions of the Industrial Disputes Act has also not been followed by the management at the time of termination by way of dismissal of service of the workman as the management is silent about it. So in this background on careful consideration of all the materials available in the case record as discussed above I am inclined to hold that the termination of service of the workman with effect from Dt. 25-8-1998 by the management 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. Further in view of the authority reported in 2004 (Supp.) OLR 694 when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However, on careful consideration of all the materials available in the case record, I am of the opinion that instead of granting back wages, a lump sum amount of Rs. 25,000 as compensation will meet the ends of justice in this case. Hence, both the issues are answered accordingly.

10. Hence Ordered :

That the termination of service of Shri Benudhar Mohanty, ex-Assistant Secretary with effect from Dt. 25-8-1998 by the management of Jalamandua Service Co-operative Society is illegal and unjustified. The workman Shri Mohanty is entitled to be reinstated in service with a lump sum amount of Rs. 25,000 (Rupees twenty five thousand) only as compensation in lieu of back wages. The management is directed to implement that 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 and corrected by me.

S. K. DASH
27-1-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
27-1-2011
Presiding Officer
Labour Court
Bhubaneswar

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