

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1047 CUTTACK, FRIDAY, May 25, 2012/JAISTHA 4, 1934

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 14th May 2012

No. 3776—li/1-(B)-50/2001(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th February, 2012 in Industrial Dispute Case No. 277 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s. Prajatantra Prachar Samity, Cuttack and its workman Shri Batakrushna Satpathy was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 277 OF 2008

(Previously registered as I. D. Case No. 25/2002 in the file of the P.O., Labour Court,
Bhubaneswar)

Dated the 29th February 2012

Present :

Shri Raghubir Dash, o.s.J.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of M/s. Prajatantra Prachar Samity, Cuttack. . . First Party—Management

And

Shri Batakrushna Satpathy, Qrs. No. 19, Rajabagicha Labour Colony, Cuttack. . . Second Party—Workman

Appearances :

Shri R. N. Rath, Authorised Representative . . . For the First Party—Management
Shri B. K. Satpathy . . . The Second Party—
Workman himself.

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 2134—li/1-(B)-50/2001/LE., Dt. 16-2-2002 and subsequent Order No. 3792—li/1-(B)-50/2001/LE., Dt. 4-5-2004, 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's 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 Batakrushna Satpathy, Sub-Editor by the Management of Prajatantra Prachar Samity, Cuttack in the guise of transfer with effect from 19-7-2000 is legal and/or justified ? If not, what relief the workman Shri Satpathy is entitled to ?”

2. The case of the Second Party, in short, is that he was working as a Sub-Editor in the establishment of the First party since 11-6-1984. Since he used to raise voice against the high-handed attitude of the Management of the First Party he was a victim of victimisation. On many occasions he was served with notices to show cause on vague and frivolous charges but not a single disciplinary proceeding was initiated against him. Ultimately, on 29-6-2000 the Management issued an order of transfer asking him to join at Sambalpur even though the First Party had no office at Sambalpur and no other regular staff of the establishment was yet posted there. He was asked to report to a Journalist who was not on the pay roll of the First Party. No relieve order was issued to him. So, he was regularly attending the Office at Cuttack as usual. He also wrote a letter to the Management on 5-7-2000 seeking clarification on certain points related to his new place of posting. The Management gave vague reply to that letter and with effect from 18-7-2000 the Management struck his name off the Attendance Register. The Second Party filed a Civil Suit challenging the action of the Management. Later on the Suit was withdrawn and an Industrial Dispute was raised by the Second Party before the Labour Authority which ultimately resulted in the present reference.

3. The First Party in its written statement has admitted that the Second Party was working as a Sub-Editor in the former's Cuttack Office and that he was transferred and posted at Sambalpur where he was to join by 15-7-2000. Instead of joining there the Second Party made some unnecessary query to which the Management gave clarification vide its letter Dt. 10-7-2000 directing the Second Party once again to assume the charge at Sambalpur. Instead of joining there the Second Party filed a Civil Suit which was subsequently withdrawn. The Second Party then tried to rejoin at his original place which was not allowed on the ground that he had already been relieved from his original place of posting. Denying the allegation that the First Party had got no office at Sambalpur at the relevant time, it is contended that at Sambalpur another Odia newspaper, “The Hirakhand”, was being published by the First Party but due to different reasons its publication had stopped and the Management was preparing to bring out another edition of its Odia daily newspaper The “Prajatantra” from Sambalpur. Therefore, the Second Party was transferred to Sambalpur to initiate preliminary arrangements to facilitate publication of the new edition.

Further case of the First Party is that the service of the Second Party was never terminated. Instead of joining at Sambalpur the Second Party raised a dispute before the Labour machinery on a non-existent industrial dispute inasmuch as transfer of an employee is not an industrial dispute and termination of service had not taken place in any form. Consequent upon his transfer the

Second Party had no legal right to work at Cuttack Office. So, his name was removed from the Attendance Register of Cuttack Office. Even after he was relieved from Cuttack Office he had stealthily signed the Attendance Register maintained for the staff working in Cuttack Office.

4. The workman by filing a rejoinder took some additional pleas. According to him, he was not relieved from his duty even after issue of the transfer order. So, he used to report for duty at Cuttack Office. When the Management struck off his name from the Attendance Register he made a representation indicating his willingness to join at Sambalpur in which he had also asked the Management to clarify what should be his duty and where should he hold Office at Sambalpur. The Management did not give any clarification. Therefore, the Management is deemed to have allowed him to continue at Cuttack Office. However, the Management did not pay salary to him and initiated a departmental proceeding but before any enquiry was conducted his service was terminated. It is also claimed by the workman that ever since his retrenchment he has not been in any gainful employment.

5. Basing on the pleadings of the parties, the following issues were originally framed by the P.O., Labour Court, Bhubaneswar prior to transfer of the record to this Tribunal :—

ISSUES

- (1) Whether the termination of services of Shri Batakrushna Satpathy, Sub-Editor by the management of M/s Prajatantra Prachar Samity, Cuttack with effect from Dt. 17-6-2000 is legal and/or justified ?
- (2) If not, to what relief Shri Satpathy is entitled ?

The following two additional issues have been framed in compliance of the order of the Hon'ble High Court in W.P. (C) No. 15633 of 2011 :—

ADDITIONAL ISSUES

- (3) Whether the present reference is maintainable ?
- (4) Whether the Opposite Party Shri Batakrushna Satpathy, Sub-Editor working as Journalist as defined under Section 2(f) of the Working Journalist and Other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act ?

6. On behalf of the Second Party two witnesses have been examined. W.W. No. 1 is the Second Party himself and W.W. No. 2 is an ex-employee of the First Party. From the side of the Second Party documents have been exhibited from Exts. 1 to 12 series. On behalf of the Management the Chairman of the First Party is examined as the sole witness (M.W. No. 1) and documents have been marked from Exts. A to G.

FINDINGS

7. *Issue No. 4*—Though it is not pleaded in the written statement/additional written statement, it is vehemently argued by the First Party that the Second Party being not a 'Working Journalist' the provisions of the Act are not applicable to him and for that the reference is not maintainable. But, according to the Second Party he was a 'Working Journalist' and the Management should not be permitted to take such a stand without there being any pleading to that effect. At this stage it is pertinent to reproduce the definition of the expression 'Working Journalist' as defined under

Section 2(f) of the Working Journalist and Other Newspaper Employees' (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, 'Working Journalists Act') :—

- “(f) ‘Working Journalist’ means a person whose principal avocation is that of a journalist and (who is employed as such, either whole-time or part-time, in, or in relation to, one or more newspaper establishment) and includes an Editor, a Leader, Writer, News-Editor, Sub-Editor, Feature-Writer, Copy-Tester, Reporter, Correspondent, Cartoonist, News-Photographer and Proof-Reader, but does not include any such person who—
- (i) is employed mainly in a managerial or administrative capacity; or
 - (ii) being employed in a supervisory capacity, performs, either by the nature of the duties attached to his office or by reason of the powers vested in him, functions mainly of a managerial nature.”

Thus, it is found that the expression ‘Working Journalist’ means a person whose principal avocation is that of a journalist who is employed as such in one or more newspaper establishment and it includes *inter alia*, a Sub-Editor provided he is not employed mainly in managerial or administrative capacity, or, being employed in a supervisory capacity does not perform functions mainly of a managerial nature. Admittedly, the Second Party was holding the post of Sub-Editor in the newspaper establishment of the First Party. The Second Party while adducing evidence on the nature of functions he used to perform as a Sub-Editor has stated that under the supervision of the Editor, Managing Editor and News Editor he used to do the work of editing, translating copies, giving captions and headings to the news and taking telephonic news from the Reporters. There is no cross-examination on this assertion of W.W.No. 1. It was simply asked to and admitted by the Second Party that he used to get Rs. 7,081.00 as his monthly salary and that he was never posted as a Journalist. It is submitted that the workman has not exhibited any document showing the nature of job he used to perform as a Sub-Editor. Even the Management has not exhibited any document showing the nature of the principal avocation of the Second Party. M. W. No. 1 in his affidavit evidence has stated that the Second Party was never appointed as a Journalist nor had he discharged any job as described in the Working Journalists Act. It is further stated by him that the job of the Second Party was supervisory in nature and that as a Sub-Editor he used to get his monthly salary in excess of Rs. 1,600.00 and therefore, he is not a workman. Save and except this oral evidence the Management has not placed any other materials on record showing as to what was the principal avocation of the Second Party.

The word ‘Journalist’ is not defined in the Working Journalists Act. A person who practices the occupation of journalism such as writing, editing, photographing or broadcasting news or of conducting any news organisation as a business is a Journalist (Webster’s Encyclopedic Unabridged Dictionary). The uncontroverted evidence of the Second Party that he used to do editing, translating and rendering captions and headings of the news is sufficient to establish that his principal avocation was that of a Journalist. It is neither claimed nor proved that he was employed mainly in a managerial or administrative capacity or even in a supervisory capacity. Not only it is not shown that he was employed in a supervisory capacity but also there is no assertion that being employed in a supervisory capacity he used to perform functions mainly of a managerial nature. With the materials available on record this Tribunal is in favour of taking the view that the Second Party being a Sub-Editor was a Working Journalist within the definition rendered in the Working Journalists Act.

The Management has not pleaded or proved that the Second Party was employed mainly in a managerial or administrative capacity or being employed in a supervisory capacity he used to perform functions mainly of a managerial nature. Therefore, the Management cannot take any advantage even if the issue under consideration is answered in its favour and it is held that the Second Party is not a 'Working Journalist'. Because, since he was employed in a newspaper establishment he is a newspaper employee and comes within the definition of "Non-Journalist newspaper employee". Therefore, even if he is treated as a 'Non-Journalist newspaper employee' the provisions of the Act would be applicable to him if he is found to have successfully raised an industrial dispute.

Thus, it is held that the Second Party was a Working Journalist. Even otherwise, he can be said to be a non-Journalist newspaper employee. In either case the reference under the Act is maintainable. If he is a Non-Journalist newspaper employee, then he is a 'workman' as defined under the Act and if he is a 'Working Journalist', then the provisions of the Act shall apply as they apply to or in relation to "workman" as defined under the Act.

8. *Issue No. (iii)*—The submission made by the First Party on the maintainability of the reference is that there being no termination of service of the Second Party and the dispute being with regard to the order of transfer the Second Party cannot be said to have raised an industrial dispute as defined under the Act. It is further contended that the First Party has never terminated the services of the Second Party and that it is the Second Party who, on being transferred to another branch of the First Party, instead of joining at the new place of posting raised the dispute before the Labour machinery. From the terms of reference it is understood that under a pre-supposition that the service of the Second Party has been terminated in the guise of the order of transfer passed by the Management the reference has been made for adjudication under the Act. However, without considering all the materials available on record one cannot come to a conclusion that the services of the Second Party have been terminated in the guise of transfer. The evidence adduced by the parties therefore needs careful scrutiny.

It is not in dispute that vide Order Dt. 29-6-2000 marked Ext. 3 the Management directed the Second Party to join duty at Sambalpur by 15-7-2000. It is also not in dispute that in reply to that order of transfer the Second Party made queries vide Ext. 4 wherein he had also made a request to issue relieve order in his favour on or before 13-7-2000 so that he would be able to join at Sambalpur on 15-7-2000. It is also not disputed that in reply to the queries made by the Second Party a communication was made by the Management on 10-7-2000 vide Ext. 5. It is also not in dispute that the Second Party did not join in the new place of posting on or before the date fixed. About the subsequent events the Second Party has stated that since no relieve order was passed and he was not relieved from his post at Cuttack he continued to work in the Cuttack Office till 18-7-2000 and thereafter he was not allowed entry into the Cuttack Office to discharge his duties saying that his work was no longer required in the Cuttack Office of the First Party. In this regard M. W. No. 1 has deposed on behalf of the Management that the order of transfer was itself an order relieving the Second Party from his duties from the Cuttack Office and that no separate relieve order was necessary as because the Second Party had nothing to handover charges of his seat. M. W. No. 1 has denied the suggestion that as because the Second Party was not relieved from the Cuttack Office he continued to work in the Cuttack Office till 18-7-2000. In the written statement the First Party has taken the stand that consequent upon his transfer the Second Party had no legal

right to work at Cuttack Office for which his name was removed from the Attendance Register of Cuttack Office. It is further pleaded that even after he was relieved from the Cuttack Office the Second Party had stealthily signed the Attendance Register maintained at its Cuttack Office. It is also pleaded that for disobedience of order of transfer no disciplinary proceeding was started against the Second Party.

Thus, it is found that consequent upon failure on the part of the Second Party to join in the new place of posting the First Party instead of taking up any disciplinary proceeding against him struck his name off the Attendance Register. Ext. 6 is the Certified Standing Orders of the establishment of the First Party. Standing Orders No. 14(v) makes "refusal to honour an order of transfer" an act of misconduct. Yet, no disciplinary action was taken against the Second Party. Instead, his name was struck off the Roll of the Attendance Register and the Second Party was not allowed to work in the Cuttack Office. This, in my considered view, amounts to refusal of employment which, in turn, amounts to retrenchment as defined under Section 2 (oo) of the Act. From the conciliation failure report it transpires that by the time the Second Party raised the dispute his name had already been struck off the Attendance Register maintained in the Cuttack Office. Therefore, it cannot be said that the termination of service of the Second Party had never taken place and that the dispute raised by the Second Party being with regard to the order of transfer was not an industrial dispute. "Retrenchment" as defined under the Act means, the termination by employer of the service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action. In the present case the Management did not take any punitive action against the Second Party. Instead, it struck the name of the Second Party off the Attendance Register and thereby denied employment to him. The fact that the Second Party did not join at the new place of posting cannot be treated as a case of voluntary abandonment of work. The First Party did not initiate disciplinary action against the Second Party for an unreasonable period despite of the fact that the Second Party had violated the order of transfer and disclosed his mind not to join at Sambalpur by raising a dispute before a Civil Court and then before the Labour Authority alleging refusal of employment. Under the facts and circumstances of this case, the Tribunal is of the considered view that it is a case of termination of service of the Second Party with effect from 19-7-2000 and therefore, the reference is maintainable.

9. *Issue Nos. (i) and (ii)*—It is already held that this is a case of retrenchment. Admittedly, the provisions of Section 25-F of the Act or Section 3(2) of the Working Journalists Act have not been complied with. Therefore, the retrenchment is illegal. Such refusal of employment without taking recourse to any disciplinary action for the act of misconduct i.e., refusal to honour an order of transfer as contemplated under Standing Order No. 12 of the Certified Standing Orders, is unjustified as well. Standing Order No. 12 of the Certified Standing Orders lays down that the services of a permanent employee shall not be terminated as a punishment unless the procedure laid down in the Standing Order No. 16 is followed. The Management ought not to have avoided taking disciplinary action against the Second Party before terminating his services for his refusal to obey the order of transfer.

Issue No. (i) is therefore, answered against the Management.

10. The retrenchment is found to be illegal as well as unjustified. The Second Party was a permanent employee of the First Party. He claims that since his retrenchment he has been without

any gainful employment. Though the Management contends that the Second Party has been in gainful employment, no evidence is adduced to substantiate the same. Ext. F is a copy of an affidavit purportedly sworn by one Pradip Chandra Sahoo stating therein that on his enquiry he could know that the Second Party had been working in a newspaper establishment publishing daily newspaper 'The Sambad'. But the deponent of the affidavit is not examined as a witness. Therefore, the contents of the affidavit cannot be taken into consideration.

Under such circumstances, this Tribunal is of the considered view that the Second Party should get the relief of reinstatement with back wages and other service benefits subject to liberty to the First Party to initiate disciplinary proceeding against the Second Party for the alleged misconduct. However, it is found from the affidavit evidence of the Second Party that he is now aged about 58. The affidavit was sworn on 13-9-2011. There is no material on record to ascertain the age of superannuation of the Second Party. It is very likely that the Second Party has now attained the age of superannuation. If that be so, then he would be entitled to full back wages with other service benefits from the date of retrenchment till the date of superannuation. Any amount paid to the Second Party towards his wages for any period in between the date of retrenchment till the date of this Award be adjusted from his entitlement towards back wages.

The reference is answered against the First Party. The awards passed be complied with within a period of two months of the date of its publication in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH
29-2-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
29-2-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government

any gainful employment. Though the Management contends that the Second Party has been in gainful employment, no evidence is adduced to substantiate the same. Ext. F is a copy of an affidavit purportedly sworn by one Pradip Chandra Sahoo stating therein that on his enquiry he could know that the Second Party had been working in a newspaper establishment publishing daily newspaper 'The Sambad'. But the deponent of the affidavit is not examined as a witness. Therefore, the contents of the affidavit cannot be taken into consideration.

Under such circumstances, this Tribunal is of the considered view that the Second Party should get the relief of reinstatement with back wages and other service benefits subject to liberty to the First Party to initiate disciplinary proceeding against the Second Party for the alleged misconduct. However, it is found from the affidavit evidence of the Second Party that he is now aged about 58. The affidavit was sworn on 13-9-2011. There is no material on record to ascertain the age of superannuation of the Second Party. It is very likely that the Second Party has now attained the age of superannuation. If that be so, then he would be entitled to full back wages with other service benefits from the date of retrenchment till the date of superannuation. Any amount paid to the Second Party towards his wages for any period in between the date of retrenchment till the date of this Award be adjusted from his entitlement towards back wages.

The reference is answered against the First Party. The awards passed be complied with within a period of two months of the date of its publication in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH
29-2-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
29-2-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government