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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 14th May 2012

No. 3805—li/1(BH)-80/2001(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th February 2012 in Industrial Dispute Case No. 22/2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Sakthi Sugars Ltd., Dhenkanal and its workman Shri Prafulla Kumar Khatua was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 22 OF 2003

Dated the 25th February 2012

Present :

S. A. K. Z. Ahamed,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of M/s. Sakthi Sugars Ltd., Dhenkanal. . . First-party Management

And

Its workman Shri Prafulla Kumar Khatua . . Second-party Workman

Appearances :

Shri B. P. Tripathy, Advocate . . For the First-party Management

Shri S. Mohanty, Advocate . . For the Second-party Workman

Shri S. K. Das, Advocate

Shri S. S. Mohapatra, Advocate

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, Bhubaneswar vide their Order No. 4036–li/1(BH)-80/2001-L.E., dated the 21st April 2003 for adjudication.

2. The schedule of the reference runs as follows :

"Whether the termination of employment of Shri Prafulla Kumar Khatua by the management of M/s. Sakthi Sugars Ltd., Dhenkanal with effect from the 29th January 2001 is legal and or justified ? If not, to what relief Shri Khatua is entitled ?"

3. The workman's case, in brief, as set out in his statement of claim is that he had appointed as Cane Assistant in the establishment of the management on the 16th December 1992 and subsequently transferred him to different places and his last place of posting was at Gondia of Dhenkanal District. While he was working as Cane Assistant at Gondia Section of the management, all of a sudden a Departmental enquiry was initiated against him vide charge-sheet, dated the 15th July 2000 due to misconduct and violation of the Standing Orders of the management. The management asked the workman to submit explanation on the basis of the charge-sheet. After receiving the charge-sheet, the workman immediately submitted an application before the management to supply the relevant documents on the basis of which the charges have been made. As no documents were supplied to him, he made a representation before the Enquiry Officer to direct the management to supply the documents on the basis of which the charges have been made. As no documents were supplied to him, he made a representation before the Enquiry Officer to direct the management to supply the documents but the Enquiry Officer turned deaf ear. In his statement of claim, he has further stated that during enquiry he was placed under suspension and the subsistence allowance was not paid to him for which the workman failed to attend the enquiry due to financial crisis and ultimately he personally appeared before the Enquiry Officer on different dates and made representations for non-availability of the documents but the Enquiry Officer being influenced by the management did not take any action protecting the interest of the workman and all of a sudden, the management after receipt of the report of the Enquiry Officer, dismissed him from the service. So, on the above back grounds, according to the workman, the dismissal from service is illegal and unjustified and he has prayed for his reinstatement in service with full back wages and consequential service benefits.

4. On the other hand, the management has appeared and filed written statement *inter alia* contended that the workman while working as a Cane Assistant in the establishment of the management at Gondia Division was a habitual defaulter in regard to submission of planting report, agreement book to division office and disobeying the instructions of the superiors, etc. for which he had been warned and visited with minor penalties. Due to his repeated act of such misconducts, he was charge-sheeted on dated the 15th July 2000 and was placed under suspension vide letter, dated the 15/17th July 2000. The explanation submitted by him on the 24th July 2000 being found unsatisfactory, the management conducted a domestic enquiry to prove into the charges and ultimately the management appointed an Enquiry Officer. The Enquiry Officer during the course of the enquiry and adhering the principles of natural justice and with due regard to the provisions of the Certified Standing Orders of the management Company, conducted an enquiry in presence of the workman on the 19th August 2000, 7th September 2000, 9th September 2000 and

16th September 2000. Further contention of the management is that the workman on many occasions remained absent and did not participate in the enquiry for which notice was served on him and after paying travelling expenses the workman remained absent and the Enquiry Officer conducted his enquiry *ex parte* holding him guilty. The management was also issued a show cause notice on the 15th November 2000 to the workman and in response to the show cause notice, the workman submitted his explanation and since the explanation appears to be unsatisfactory, the disciplinary authority vide its order, dated the 14/29th January 2001 converted the proposed punishment of dismissal to one of discharge and the workman was accordingly discharged from the service of the management company with immediate effect. So on these above averments, the management has prayed that the workman is not entitled to get any relief as prayed for.

5. At this stage, it is mentioning here that when the issues were settled on the 29th July 2004 there was no issue on the fairness of domestic enquiry. On the petition filed by the management, this Court on the 16th October 2007 in compliance with the principles laid down in the case of Karnataka State Road Transport Corporation *Vrs.* Smt. Lakhmi Devamma reported in 2001 LLR 529 that when a domestic enquiry was conducted by the management the Labour Court should first decide as a preliminary issue whether the domestic enquiry has violated the principle of natural justice, so this Court resettled the issues and order was passed to take up the issue on fairness of the domestic enquiry as a preliminary issue. The parties were given opportunity to adduce evidence.

6. Following are the issues settled on the 29th July 2004 and 16th October 2007 respectively.

ISSUES

- (i) "Whether the termination of employment of Shri Prafulla Kumar Khatua by the management of M/s. Shakthi Sugars Ltd., Dhenkanal with effect from the 29th January 2001 is legal and or justified ?
- (ii) If not, to what relief Shri Khatua is entitled ?"

PRELIMINARY ISSUES

1. Whether the domestic enquiry conducted by the management in response to charge framed against the workman was fair and proper ?

7. In order to substantiate their pleas regarding all the above mentioned Issues, the workman has examined two witnesses altogether, out of which W. W. 1 is the workman himself and one Ambuja Kumar Swain, Private Electrician as W. W. 2. The workman has proved documents under the cover of Exts. 1 to 5. Similarly the management has examined its Enquiry Officer, Shri Binoyananda Mohapatra as M. W. 1 and proved documents under the cover of Exts. A to E.

FINDINGS

8. *Issue No. (i)* i. e. Preliminary Issue—It is worthless to mention here that this Court vide Order No. 63, dated the 15th September 2011 passed necessary orders on the question of fairness on administrative action dealing with the Issue "Whether the enquiry is fair and proper" and the same has not violated the principles of natural justice, has already been decided in favour of the management.

9. *Issue Nos. (i) and (ii)*—In view of the preliminary issue, now the point for determination is to whether the termination of employment of the workman by the management with effect from the 29th January 2001 is legal and or justified and if not, to what relief.

On the above issues no doubt, the termination of employment of the workman by the management is legal and justified, but at the same time, keeping in view of the principles of natural justice and settled principles of law and on perusal of the case record, it is an admitted fact that the punishment is passed in favour of the workman basing upon the allegations of insubordination, late comer, false informer, etc. The management has also stated that the workman was earlier cautioned for his above misconducts. But there is no material on record nor the management has filed a piece of paper to show that the workman was earlier cautioned by the management for the alleged misconducts. Keeping in view of the facts and circumstances of this case and taking the status of the workman into consideration, simply basing upon the enquiry conducted by the Enquiry Officer, the punishment imposed by the management no doubt was severe and harsh. Hence the punishment imposed upon the workman is set aside and the workman is entitled to be reinstated in the service. So far as the wages is concerned, the industry should not be financial burden by paying the back wages to the workman who contribute nothing during that period on the principles of "no work, no pay".

10. Hence it is ordered :

That the termination of employment of Shri Prafulla Kumar Khatua by the management of M/s. Sakthi Sugars Ltd., Dhenkanal with effect from the 29th January 2001 is neither legal nor justified. The workman Shri Khatua is entitled to be reinstated in service with continuity of service but without any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
25-2-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
25-2-2012
Presiding Officer
Labour Court, Bhubaneswar

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