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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th June 2012

No. 4952—li/1-(B)-47/2004 (Pt.)-L.E.S.I.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th May 2012 in I. D. Case No. 62/2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. TATA Motors Ltd., Bhubaneswar and their workman Mr. Sayeed Md. Mustafa was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 62 OF 2004

The 14th May 2012

Present :

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

Between :

The Management of M/s TATA Motors Ltd., .. First Party—Management
Bhubaneswar.

And

Their Workman .. Second Party—Workman
Mr. Sayeed Md. Mustafa

Appearances :

Shri N. K. Mishra, Advocate .. For First Party—Management

Shri N. Mohanty, Advocate

Shri P. K. Sahoo, Advocate

Shri D. K. Pani, Advocate

Shri A. K. Roy, Advocate

Shri S. B. Mohanty, Advocate .. For Second Party—Workman

Shri S. K. Das, Advocate

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 8988—li/1(B)-47/2004-L.E., dated the 8th October 2004.

"Whether the action of the management of M/s. TATA Motors Ltd., Goutamnagar, Bhubaneswar in dismissing the services of Sayeed Md. Mustafa, Ticket No 02425 with effect from the 3rd August 2001 is legal and/or justified ? If not, what relief he is entitled to ?"

2. The case of the workman in brief as set out in his statement of claim is that he was initially appointed by the management on the 10th August 1992 as Mechanic and posted at Bhubaneswar. Since the date of appointment, he was working sincerely, honestly and efficiently to the best satisfaction of the management. When he was working, all on a sudden on the 3rd August 2001 the management dismissed him from service on the allegations of committing misconduct and habitual absence without leave. According to the workman, prior to dismissal, charge-sheet was issued to him and in response thereto, he submitted his reply denying the charges levelled against him. But the management without considering his reply directed him to appear before the Enquiry Officer, who is one of the officers of the management. Further according to the workman, he appeared in the enquiry and gave his statement clearly proving the allegations to be false. But the Enquiry Officer without making proper and fair enquiry submitted a report which was utilised against him. The management without giving any show cause notice or communicating the enquiry report dismissed him on the 3rd August 2001. Thereafter the workman submitted an appeal before the Appellate Authority but the Appellate Authority without considering the appeal rejected the same and confirmed the action of the disciplinary authority. According to the workman, he has not committed any misconduct and the order of dismissal was passed in violation of the principle of natural justice and rules of the management. So, on these backgrounds, the workman has prayed for his reinstatement in service with full back wages.

3. On the other hand, the management appeared and filed written statement admitting that the workman was issued with an appointment order on the 10th August 1992 as a Trainee in the Vehicle Service Department of the management with specified terms and conditions and was placed at Kolkata for training. After completion of training at Kolkata, the workman was placed at Bhubaneswar and subsequently he was confirmed in the service. According to the management, the workman remained absent from his duty unauthorisedly during his service period under the management for which he was issued with a charge-sheet-*cum*-show cause notice, dated the 21st February 2000 for remaining absent unauthorisedly and committing misconduct. After receipt of the charge-sheet the workman submitted a reply on the 20th March 2000. The explanation filed having been found unsatisfactory, it was decided to conduct a disciplinary enquiry into the charges levelled against him for which an Enquiry Officer was appointed to conduct the enquiry and to submit report. Again on the 5th April 2000 the workman was issued with a supplementary charge-sheet. Further according to the management, the enquiry was conducted on the 6th April 2000 and 7th April 2000 with due opportunity of hearing to the workman. The workman was also granted

reasonable opportunity to defend in the enquiry and he also actively participated in the enquiry. The workman has also cross-examined the witnesses examined on behalf of the management. Thereafter the workman also gave his own defence statement. After conclusion of the enquiry the Enquiry Officer submitted his report holding the workman guilty of committing misconduct. After receipt of the enquiry report by the management, the same was supplied to the workman on the 27th July 2001. Though the workman has received the copy of enquiry report on the 28th July 2001, but no reply or objection was filed by the workman. As no reply was received from the workman, on careful consideration of the said enquiry report, the management decided to dismiss the workman from service and accordingly the workman was dismissed from service after paying full and final terminal dues. So according to the management the enquiry was conducted fairly and properly without any violation of the principles of natural justice. So the management has urged that the dismissal of the workman is legal and justified and he is not entitled to get any relief in this case.

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

ISSUES

- (i) "Whether the action of the management of M/s TATA Motors Ltd., Goutamnagar, Bhubaneswar in dismissing the services of Sayeed Md. Mustafa, Ticket No. 02425 with effect from the 3rd August 2001 is legal and/or justified ?"
- (ii) If not, what relief he is entitled to ?

5. In order to substantiate their pleas, the workman has examined himself as W. W. 1 and proved the documents under the cover of Exts.1 to 10. On the other hand, the management has examined two witnesses altogether such as, Enquiry Officer and the Divisional Manager (Admn.) as M. W. 1 and M. W. 2 respectively and proved documents under the cover of Exts. A to M.

6. It is pertinent to mention here that this Court vide order, dated the 29th August 2011 has passed order to decide the preliminary issue such as, whether the domestic enquiry conducted by the management against the workman was fair and proper and accordingly vide order, dated the 22nd October 2011 this Court after scrutinising the evidence led by both the parties came to the conclusion that the Enquiry Officer conducted the enquiry was proper and there was no breach of principles of natural justice took place during the course of enquiry and opined that the domestic enquiry conducted by the management against the workman was fair and proper.

7. In view of the preliminary issue already decided in favour of the management, now the point for determination in this case is whether the dismissal of the service of the workman by the management with effect from the 3rd August 2001 is proportionate to the gravity of proved misconduct and the action of the management in dismissing the workman from service with effect from the 3rd August 2001 is legal or justified and if not to, what relief.

8. On the above issues, the learned Advocate for the management during the course of argument has urged that the dismissal of the workman from service by the management is legal and justified because the workman prior to facing the present enquiry has been cautioned for unauthorised absence from duty without leave. On the other hand, the Advocate for the workman

has urged that there is no material on record to suggest that the workman was intentionally remained absent and he was cautioned prior to initiation of the present proceeding and the order of dismissal is not legal and justified keeping in view of the gravity of misconduct shown by the workman during the tenure of his service.

9. Perused the evidence on record and the documents filed on behalf of both the parties. No doubt, the dismissal of the workman from service by the management as alleged is legal and justified, but at the same time keeping in view of the principles of natural justice, it is an admitted fact that the punishment of dismissal was passed in favour of the workman basing upon the allegations of remaining absent unauthorisedly without leave and committing misconduct. 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 alleged misconduct. Generally it is the practice that the workers/employees working under an establishment in a cadre of Technician, Mechanic etc. have no knowledge relating to the rules framed by the management during the course of their service and they are always depending upon their next higher boss relating to the service procedures. In this case admittedly, the workman left the work place intimating his Supervisor and after joining, he submitted the leave application as per the direction of his next higher boss, if necessary. In this case, no doubt the workman was a Mechanic having no knowledge about the rules prescribed by the management and it is an admitted fact that he remained absent unauthorisedly, but the management discriminate the workman for which the punishment of dismissal has been passed in his favour.

10. Law is well settled that :

"Penalty should not be vindictive or unduly harsh and should not be so disproportionate to the offence as to shock the conscience of a reasonable man."

Further Law is well settled that :

"Under Section 11-A of the Industrial Disputes Act, 1947, the Industrial Tribunal has the jurisdiction to interfere with the punishment awarded in the domestic enquiry for good and valid reasons. If the Tribunal decides to interfere with such punishment, it should bear in mind the principles of proportionality between the gravity of the offence and the stringency of the punishment."

Keeping in view of the above stated principles in mind and taking the status of the workman into consideration, simply basing upon the enquiry conducted by the Enquiry Officer on the question of unauthorised absence, the punishment imposed by the management, no doubt, was severe and harsh and also disproportionate to the gravity of proved misconduct. Hence the punishment imposed by the management upon the workman is set aside and the workman is entitled to be reinstated in service. So far as the back 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 principle of "no work, no pay". The management is at liberty to reinstate the workman in any office of its organisation found suitable to him.

11. Hence Ordered :

That the action of the management of M/s TATA Motors Ltd., Goutamnagar, Bhubaneswar in dismissing the services of Sayeed Md. Mastafa, Ticket No. 02425 with effect from the 3rd August

2001 is disproportionate to the gravity of proved misconduct. Therefore, the workman is entitled to be reinstated in service but without any back wages. The management is at liberty to reinstate the workman in service in any office of its organisation found suitable to the workman.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
14-5-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
14-5-2012
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

M. R. CHOUDHURY
Under-Secretary to Government