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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 28th June 2012

No. 5012—li/1(B)-96/1992(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th March 2012 in Industrial Dispute Case No. 210 of 1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s H. M. Electrical, New Industrial Estate, Jagatpur, Cuttack and its Workman Shri Ananta Charan Routray was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 210 OF 1993

Dated the 17th March 2012

Present :

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

Between :

The Management of
M/s H.M. Electrical,
New Industrial Estate,
Jagatpur, Cuttack. . . First-party—Management

And

Its Workman
Shri Ananta Charan Routray. . . Second-party—Workman

Appearances :

Shri B. K. Swain . . For the First-party—Management

Shri S. N. Biswal . . For the Second-party—Workman

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (1) of Section 12, read with Clause (c) of sub-section (5) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute for adjudication vide Order No. 16416—li/1(B)-96/1992-LE., dated the 9th December 1993 :—

"Whether the termination of service of Shri Ananta Charan Routray, Testing In-charge by the management of M/s H.M. Electricals, Jagatpur, Cuttack with effect from the 1st April 1991 is legal and/or justified ? If not, what relief he is entitled to ?"

2. In response to the notice issued from this Court, both the parties have filed their respective pleadings.

It has been urged by the workman that he was working under the management with effect from the 6th April 1985 as Testing In-charge till Dt. 26-3-1991. On 27-3-1991 being suffered from fever he remained absent till 31-3-1991 after informing regarding his illness to the management through his colleague Duryodhan Das and on being recovered when he proceeded to join on 1-4-1991, he was not allowed to enter inside the factory. As the management had illegally retrenched him without complying with the provisions under Section 25-F of the Industrial Disputes Act, he has raised the present dispute.

3. The management in its turn has filed the written statement refuting the claim of the workman. While admitting the fact of engagement of the workman as Technical Manager, the management has urged that the present dispute is not maintainable as the workman is not coming under the purview of the definition of 'workman' as he was working in managerial and administrative capacity. It has been further urged that the conduct of the workman was highly derogative and he was simultaneously working in another firm namely J.K. Electrical and he was also running his own firm under the name and style of Hara Gouri Electricals. It has been further urged that the workman had indulged himself in clandestine dealing and apprehending some stringent action from the management side due to his misconduct and misdeed. He voluntarily abandoned the job and remained absent. On the above backdrops it has been urged that the reference should be answered in negative against the workman.

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

ISSUES

(i) Whether the termination of service of Shri Ananta Charan Routray, Testing In-charge by the management of M/s H.M. Electricals, Jagatpur, Cuttack with effect from the 1st April 1991 is legal and/or justified ?

(ii) If not, what relief he is entitled to ?

5. It is pertinent to mention here that this Court passed Award in favour of the workman on the 18th December 1999. Thereafter the management challenged the said Award before the Hon'ble High Court of Orissa, Cuttack in O.J.C. No. 4675 of 2000. The Hon'ble Court on the 28th August 2009 pleased to quash the Award passed by this Court and directed this Court to find out as to whether the second-party was a workman on the basis of the evidence already recorded and to consider the letter, dated the 21st May 1991 submitted by the workman to the management. Accordingly an additional issue is framed as per the direction of the Hon'ble Court, i.e. whether the

second-party workman is coming under the purview of Section 2(s) of the Industrial Disputes Act, 1947.

6. On the above score, on perusal of the evidence already adduced from the side of the management, it is seen that the management witnesses have not uttered a single word that the second-party was not a workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947. There is also no evidence from the side of the management that the workman being a Testing In-charge of the management, he had been discharging mainly managerial and administrative functions and had been supervising the works of other employees subordinate to him for running the said management. So on careful consideration of all the materials available in the case record, as discussed above, I am of the opinion that although the second-party workman was a Testing In-charge, but he had no independent authority to appoint or discharge the employees and to charge-sheeted them and his functions could not be held mainly to be supervisory or managerial. Accordingly the second-party was a workman and is coming under the purview of Section 2(s) of the Industrial Disputes Act.

7. It goes by admission that workman was engaged as a Testing In-charge under the management from 6-4-1985 till 26-3-1991. The workman has specifically pleaded and testified that on 27-3-1991 he suffered from high fever and remained absent till 30-3-1991. 31-3-1991 being Sunday, he proceeded to join on 1-4-1991 but he was not allowed to enter inside the factory premises and from 1-4-1991 to 4-4-1991 he approached the management to allow him to work, but the management refused to engage him. The workman has further testified that at the time of such termination the management had neither served any prior notice nor paid any notice pay as well as retrenchment compensation. He has filed the documents such as, character certificates issued by the management under Exts. 1 and 2, letter dated the 3rd October 1989 issued by J.K. Electricals authorising the workman to collect a sum of Rs. 2,000 from a company. Exts. 3 and 3/a are the E.P.F. slips, Ext. 4 is the E.S.I. Card and Ext. 5 series are the transformer test reports prepared by the workman.

The workman has candidly admitted that he remained absent from 27-3-1991 till 31-3-1991 due to his illness. Although he has asserted that through Duryodhan Das he had informed the management regarding his illness, but the said Duryodhan Das (M.W. 3) does not support the above assertions. He has categorically stated that on 27-3-1991 the workman did not give any document to him. It is not the case of the workman that he had handed over any leave application to Shri Duryodhan Das. However, it appears that the main controversy between the parties relates to the absence of the workman from 27-3-1991 to 31-3-1991.

8. It has been stated by M.W. 2 that when the workman did not turn-up with effect from 27-3-1991, the management issued three notices to him asking him to join immediately under Ext. B series and despite such notices the workman did not turn-up. During his cross-examination he has expressed his inability to say the reason of absence of the workman after 27-3-1991 and why the management did not take any action against the workman for such absence. On a perusal of Ext. D series, it appears that the notices, dated 29-3-1991, 5-4-1991 and 20-4-1991 were issued to the workman by M.W. 2 on behalf of the J.K. Electricals. Under Ext. D/2 the workman was asked to join on or before 27-4-1991 failing which it would be treated as voluntarily abandonment of his job and his name would be deleted from the records and registers of the management Company. There is no document regarding services of the notices on the workman. From the postal receipts, it appears that the letters were sent under certificate of posting. In absence of any material regarding

service of notices on the workman, it cannot be said that the workman had received such notices. As indicated above no further action was taken against the workman. In the case between *Madhubananda Jena Vs. Orissa State Electricity Board and others* reported in I LLJ 1990 463, their Lordships have observed as follows :

"The opposite-parties have not placed any contemporaneous material to show that the petitioner was treated as an absconder from duty and was dealt with as such. No reasonable and plausible reason has been stated in the counter affidavit why the petitioner who had been serving for about five years would suddenly abscond from duty. No material has also been produced by the opposite-parties to show that any attempt was made by them to inform the petitioner that he should join duty by a specified date failing which action would be taken to terminate his service. In such circumstances, we are not persuaded to accept the plea of the opposite-parties that the petitioner voluntarily absented from duty."

In the of case *Delhi Cloth and General Mills Co. Ltd. Vs. Shambhunath Mukharji* reported in I LLJ 1978 1, the Hon'ble Apex Court has held that striking off name of the workman from the muster roll amounts to retrenchment. Considering the present case in the light of the above well settled principles, I have no hesitation to come to a conclusion that the absence of the workman from 27-3-1991 to 31-3-1991 would not tantamount to voluntarily abandonment of service. On the other hand, refusal of employment by the management would amount to termination of service of the workman.

9. No doubt, the management has led evidence alleging the misconduct and clandestine dealing of the workman on various occasions. The management did not prefer to conduct any domestic enquiry on this allegation. There is ample evidence on record to the effect that the Proprietor of H.M. Electricals was father of the Proprietor of J.K. Electricals and after death of Jishnu Das, the Proprietor of J.K. Electricals, his father Harmohan Das was looking after the management of J.K. Electricals. It appears from the evidence adduced by both the parties that the workman was working in both the firms for certain period. In that view of the matter, the allegation that the workman had simultaneously worked under J.K. Electricals without knowledge of the management of H.M. Electricals does not hold good. Relying on a decision reported in 1987 SCC (Labour) 25, *Kamal Kishore Lakshman Vs. Management of M/s Pan American World Airways INC. and others*, it has been urged on behalf of the management that as the management had lost confidence over the workman due to his misconduct and irregularities which amounted to a stigma, such termination would not amount to retrenchment. I have carefully gone through the above decision. The facts and circumstances of that case is clearly distinguishable from the circumstances of the present case. In the present case, the management having pleaded regarding the voluntarily abandonment of the job by the workman and having failed to adduce sufficient convincing evidence relating to the stigma in the career of the workman and there having no specific order regarding the termination of the workman, the above decision is of no avail to the management. Admittedly the management had neither served any prior notice nor paid the notice pay or retrenchment compensation to the workman. No enquiry was also conducted against the workman. In view of my foregoing discussion, there is ample materials on the record to show that the action of the management would come under the purview of retrenchment under Section 2(oo) of the Industrial Disputes Act, 1947 and due to violation of the provisions under Section 25-F of the Industrial Disputes Act, 1947, the termination of service of the workman by the management with effect from the 1st April 1991 is neither legal nor justified.

10. In view of the direction of the Hon'ble High Court of Odisha, Cuttack, it is pertinent to mention here that since the dispute in between the parties is lingering from the year 1991 and

basing upon the document filed by the workman before the management and marked as Ext. J on behalf of the management, it is not proper to direct the management for reinstatement of the workman. Rather it is a fit case to pass an order for payment of lump sum compensation in lieu of reinstatement in service and back wages. So on careful consideration of all the materials available in case record as discussed above and in view of the observation made by the Hon'ble Court, I am of the opinion that instead of directing for reinstatement of the workman in service and payment of back wages, a lump sum amount of Rs. 1,00,000 as compensation will meet the ends of justice in this case.

11. Hence ordered :

That the termination of service of Shri Ananta Charan Routray, Testing In-charge by the management of M/s H.M. Electricals, Jagatpur, Cuttack with effect from the 1st April 1991 is neither legal nor justified. However, the workman is entitled to get a lump sum amount of Rs. 1,00,000 as compensation in lieu of reinstatement and back wages. The management is directed to implement the Award within a period of two months from the date of its publication failing the workman will be at liberty to get the Award implemented through process of law. In the event the amount as stated above is not paid to the workman within a period of two months from the date of its publication, in that case, the management shall be liable to pay interest at the rate of 10% per annum on the aforesaid amount to the workman from the date, i.e. from April, 1991 till the entire amount is actually paid to the workman.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
17-3-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
17-3-2012
Presiding Officer
Labour Court, Bhubaneswar

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