

AWARD

The Government of Odisha 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, 1947 have referred the following dispute to this Court vide Order No.411-li/1 (B)-116/2003-LE., dated the 9th January 2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

“Whether the termination of service of Shri Banamali Nandi, ex Driver with effect from the 27th August 2001 by way of dismissal by the District Transport Manager, O. S. R. T. C., Cuttack vide Order No. 736(c), dated the 27th August 2001 is legal and/or justified ? If not, what relief Shri Nandi is entitled to ?”

2. The case of the workman in brief is that he was working as a Driver under the management. He was posted under the District Transport Manager (in short D. T. M.), Bhubaneswar and subsequently he was transferred to different places like Baripada, Puri, Bhadrak and Cuttack. From there he was posted under the A. T. M., Kendrapara on deputation vide order, dated th 27th February 2001 of the D. T. M., Cuttack. While working at Kendrapara, he got telephonic message about seriousness of his ailing father, he suddenly proceeded to his native place at Balasore without taking any headquarter leaving permission or prior function of leave and he sent his leave application by registered post with A. D. seeking leave from the 3rd March 2001 which was returned back with postal remark “addressee refused to receive”. Due to serious illness of his father who was suffering from acute paralysis, he continued on leave. Suddenly the D. T. M. (A), Cuttack vide his Order vide letter No.737 (c), dated the 7th August 2001 dismissed the workman from service on the ground of misconduct for remaining unauthorised absence from duty from the 3rd March 2001 to the 17th July 2001. Such dismissal of service of the workman from service is against the principle of natural justice and mandatory provisions of law. The A. T. M. (A), Angul was appointed as Enquiry Officer and the date of enquiry was fixed to the 7th August 2001 at 11.30 A. M. in the office of the D. T. M. (A), Cuttack. The workman was present in the enquiry but the enquiry Officer was absent for which the enquiry could not be held. Thereafter no further communication has been received regarding the date of enquiry by the workman till the date of dismissal. No opportunity was also given to putforth the cause of his unauthorised absence. So on this background the workman has prayed for his reinstatemnt in service with full back wages.

3. The management appeared and filed written statement denying the plea of the workman. According to him, the workman after being transferred absence from the place of duty without intimating the authorities and without giving details of his whereabouts. Since he remained unauthorised absence from duty a proceeding was initiated and in view of O. S. R. T. C. (CR & CS) Regulation, 1978 it was a grave mis conduct. Though the workman received the proceeding he did

not submit any show cause. Even if sufficient opportunities were given, the workman did not attend the enquiry. Hence his service was terminated by way of dismissal by the disciplinary authority. Admittance of remaining unauthorised absence has been proved on record. Hence no enquiry is necessary. So on this back ground, the management has prayed for answering the reference in his favour.

4. In view of the above pleadings, this Court already framed two issues such as (i) whether the termination of service of Shri Banamali Nandi, ex Driver with affect from the 27th August 2001 by way of dismissal by the District Transport Manager, O. S. R. T. C., Cuttack vide Order No.736(c), dated the 27th August 2001 is legal and/or justified ; and (ii) if not, what relief is Shri Nandi entitled to.

5. It is pertinent to mention here that both the issues are answered in favour of the workman stating that the termination of service of Shri Banamali Nandi, ex Driver with effect from the 27th August 2001 by way of dismissal by the District Transport Manager, O. S. R. T. C., Cuttack vide Order No.736(c), dated the 27th August 2001 is neither legal nor justified. The workman Shri Nandi is only entitled to be reinstated in service but without any back wages. The management is directed to implement this Award forthwith. On the above score, the workman challenged the Award before the Hon'ble High Court of Odisha, Cuttack in W. P. (C) No.2410 of 2011 and the Hon'ble Court vide its Order No. 03, dated the 18th November 2011 remanded the case to this Court with following directions:

“Therefore, the matter is remitted back to the Court of original jurisdiction, who shall consider this change of fact and pass appropriate orders regarding grant of back wages to the petitioner in accordance with law.”

Basing upon the direction made by the Hon'ble Court, both the parties appeared and the workman has examined further. But the management though appeared, did not adduce any evidence but he has cross-examined the W.W.1.

6. Perused the case record, evidence adduced by the workman as well as the documents attached to the case record. As regards back wages, according to the settled principles 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 according to the settled principle of law reported in 2004 (Supp.) OLR 694 that :

“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.”

8. In the instant case, it is an admitted fact that during pendency of the present case, the

workman attained the age of superannuation and the workman has also stated in his affidavit evidence that he has not been gainfully employed elsewhere during his un-employment period. No doubt no cross-examination was made by the management to impeach his testimony, but at the same time an able bodied cannot seat idle without doing any work for the livelihood for their family members. In this piculiar facts and circumstances of this case, since this Court has already been decided that the termination of services of the workman with effect from the 27th August 2001 by way of dismissal by the management is neither legal nor justified but careful consideration of all the materials available in the case records as discussed above, I am of the opinion that instead of granting full back wages, 50% back wages will meet the ends of justice in this case . Hence both the issues are answered accordingly.

9. Hence it is Ordered :

That the termination of services of Shri Banamali Nandi, ex Driver with effect from the 27th August 2001 by way of dismissal by the District Transport Manager, O. S. R. T. C., Cuttack vide Order No.736(c), dated the 27th August 2001 is neither legal nor justified. However, as the workman Shri Nandi has already been attained the age of superannuation, he is only entitle to get 50% back wages with continuity of service and all other service benefits. The management is directed to implement this Award forthwith failing which the amount shall carry interest at the rarte of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
03-03-2012
Presiding Officer
Labour Court, Bhubaneswar.

S. A. K. Z. AHAMED
03-03-2012
Presiding Officer
Labour Court, Bhubaneswar.

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