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**No. 1372 CUTTACK, WEDNESDAY, JULY 18, 2012/ASADHA 27, 1934**

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**LABOUR & E. S. I. DEPARTMENT**

NOTIFICATION

The 3rd July 2012

No. 5082—li/1(B)-144/1991 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th April 2012 in I. D. Case No. 71/1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Cuttack Central Co-operative Bank Ltd. and its workman Shri Suryamani Dash was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.71 OF 1992

Dated the 18th April 2012

*Present :*

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

*Between :*

The Management of M/s Cuttack Central Co-operative Bank Ltd., Cuttack. . . . . First Party—Management

And

Its Workman . . . . . Second Party—Workman  
Shri Suryamani Dash

*Appearances :*

Shri P. K. Lenka, Advocate . . . . . For First Party—Management

Shri M. K. Pati, Advocate . . . . . For Second Party—Workman

Shri B. P. Panda, Advocate

Shri B. A. Satapathy, 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 (d) 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. 6957—li/1(B)-144/1991-L.E., dated the 23rd May 1992 :

"Whether the discharge from service of Shri Suryamani .Dash, ex-Peon of the Cuttack Central Co-operative Bank Limited, with effect from the 14th March 1978 by the management is legal and/or justified ? If not, to what relief he is Shri Dash entitled ?".

2. The case of the workman as depicted in his statement of claim runs as follows :

The workman joined as Class IV employee under the management on the 5th June 1969 and continuously served as such for about 9 years. It is alleged that the management without proper enquiry has arbitrarily and illegally discharged him vide Letter No. 10597, dated the 14th March 1978. Challenging the domestic enquiry as improper and illegal, the workman has contended that the Enquiry Officer due to his personal enmity with the workman had submitted an adverse report against the workman without any basis. He has further alleged that although he availed leave on the ground of illness of his wife and son but he was asked to submit medical certificate in support of their illness and although he availed hand loan of Rs. 200.00 from one Shri Budhei Rout, but he was illegally entangled in the charge of misappropriation of Bank fund. It reveals from the statement of claim that although the workman was discharged on the 14th March 1978, but he filed an Appeal before the President and the Secretary of the Bank and ultimately after lapse of 10 years he received a Letter No. 7655, dated the 16th December 1988 from the Secretary regarding further enquiry on the 20th December 1988, but on that date the Secretary did not turn up to conduct the proposed enquiry and as no further intimation was received from the Secretary, ultimately he had raised dispute before the Deputy Labour Commissioner, Cuttack and when the attempt of conciliation Officer was failed, the matter has been referred to this Court for adjudication.

3. The management has filed the written statement contending *inter alia* that the present dispute is not maintainable being hit by the principles of limitation. It is urged that the performance of the workman was not satisfactory for which disciplinary action was initiated against him and a charge-sheet was issued against him on the ground of misappropriation of fund and unauthorised absence. It is also urged that after having a proper enquiry and giving sufficient opportunities to the workman finally the workman was discharged from service with effect from the 14th March 1978. Thus it is contended that the domestic enquiry was fair and proper and the action taken against the workman was legal and justified and accordingly it is urged that the reference should be answered in favour of the management.

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

## ISSUES

(i) "Whether the domestic enquiry conducted against the workman was fair and proper ?

- (ii) Is the order of discharge passed by the management giving effect from the 14th March 1978 legal and/or justified ? If not, to what relief ?

### FINDINGS

5. *Issue Nos. (i) and (ii)*—As both the issues are interlinked, they are taken up together for the sake of convenience.

Before going to discuss the evidence in details, it is pertinent to mention here that this Court on the 23rd March 1999 passed an Award in favour of the management stating that the reference is not maintainable on the ground of limitation. Against the Award passed by this Court, the workman challenged the said Award before the Hon'ble High Court of Odisha, Cuttack. Against the said Award the Hon'ble Court in O. J. C. No. 6222 of 1999 in declining to interfere with the Award dated the 23rd March 1999 passed by this Court dismissed the said Writ Petition. Against the said Order of the Hon'ble Court, the workman filed a Writ Appeal bearing W. A. No. 128 of 2007 and the Hon'ble High Court of Odisha, Cuttack quashed the award passed by this Court as well as the Order passed by the Hon'ble Single Judge in O. J. C. No. 6222 of 1999 and directed this Court to reconsider the matter in the light of observation made in the said Order after giving opportunities of hearing to both the parties and also directed this Court to consider whether the Labour Court is required to examine the provisions under Chapter V-A or V-B of the Industrial Disputes Act, 1947 whichever part is applicable to this case. Accordingly both the parties appeared and adduced additional evidences to that effect.

6. During the course of argument, the management urged that the reference is not maintainable. Law is well settled that :

"The Labour Court is the creation of Statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference."

so in view of the above position of law the contention piloted by the management is rejected being devoid of any merit.

7. On perusal of the evidence adduced on behalf of the parties, it is an admitted fact that the witnesses examined on behalf of the management have not uttered a single word that the enquiry conducted by the Enquiry Officer was fair and proper and the Enquiry Officer during enquiry adopted the principles of natural justice. Law is well settled that :

"An enquiry cannot be said to have been properly held unless :

- (i) the employee proceeded against has been informed clearly of the charges levelled against him,
- (ii) the witnesses are examined ordinarily in the presence of the employees-in respect of the charges,
- (iii) the employee is given a fair opportunity to cross-examine the witnesses,
- (iv) he is given a fair opportunity to examine witnesses including himself in his defence, if so wishes on any relevant matter; and
- (v) the Enquiry Officer records his findings with reasons for the same in his report."

8. On the above score, on perusal of the evidence already adduced from the side of the management as well as the workman, it is seen that the M. W. 2 has categorically stated that while he was working as a Law Officer, he was acquainted with the facts of this case and he came to know about the illegality committed by the workman during tenure of his service period for which a departmental proceeding was initiated, charges framed, enquiry was conducted, report was submitted and the delinquent-workman was found guilty of all the charges. He has further stated that the copy of the enquiry report had been supplied to the delinquent-workman and an opportunity of hearing was also provided to him by then President of the management and ultimately he was discharged from his service on the 14th March 1978. On the cross-examination, he has stated that all the incidents were occurred prior to his joining and at the relevant point of time he was not the employee of the management and admitted that he joined under the management in the year, 1984 much after to the discharge of the workman from service. He has also admitted that the Enquiry Officer is still alive and is residing in his village at Kendrapara and ultimately during his cross-examination, he has stated that he has no personal knowledge about the enquiry conducted by the Enquiry Officer and he has filed the affidavit evidence as per the direction of the Bank Secretary of the management. On the other hand, the workman challenged the legality of his discharge and adduced evidence stating that due to enmity relationship he was victimised and the management has falsely implicated him in the departmental proceeding. He has further stated that neither he was given any opportunity for personal hearing nor any document was supplied to him.

9. On perusal of the case record and after going through the evidence of both the parties on record, the procedure as adopted by the Enquiry Officer appears to be unfair and improper and the Enquiry Officer had not adopted the rules of the natural justice while conducting the enquiry. Above all, the management has not examined the Enquiry Officer who had conducted the enquiry and submitted his enquiry report as alleged to the management. So on careful consideration of all the materials available in the case record, as discussed above, in my opinion that the discharge from service of the workman with effect from the 14th March 1978 by the management is neither legal nor justified in absence of any positive evidence.

10. Above all, giving regards to the findings of the Hon'ble High Court of Odisha, Cuttack in W. A. No. 128 of 2007, the present case is coming under the purview of Chapter V-A of the Industrial Disputes Act, 1947. In view of my foregoing discussion, there is ample materials on record to show that the management has totally failed to prove that Section 25-F of the Industrial Disputes Act, 1947 had been complied with at the time of discharge of the workman from service and due to violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947, the discharge from service of the workman with effect from the 14th March 1978 by the management is neither legal nor justified.

11. It is pertinent to mention here that since the dispute is lingering between the parties from the year 1978 and basing upon the documents filed by the workman as well as from the side of the management, it appears that the workman has already attained the age of superannuation. Hence it is not proper to direct the management for reinstatement of workman in service with back wages. But at the same time, I am of the opinion that instead of reinstatement of the workman in service and back wages, a lump sum amount of Rs. 1,50,000 as compensation will meet the ends of justice in this case. Hence both the issues are answered accordingly.

## 12. Hence Ordered :

That the discharge from service of Shri Suryamani Dash, ex-Peon of the Cuttack Central Co-operative Bank Limited, with effect from the 14th March 1978 by the management is neither legal nor justified. However, the workman Shri Dash is entitled to get a lump sum amount of Rs. 1,50,000 as compensation in lieu of reinstatement and back wages. The management is directed to implement this Award within a period of two months from the date of its publication failing, the workman will be at liberty to get it implemented through process of law. In the event the amount as stated above is not paid to the workman within the period of two months from the date of its publication, in that case, the management shall liable to pay interest at the rate of 15% per annum till the amount is actually paid to the workman.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
18-4-2012  
Presiding Officer  
Labour Court, Bhubaneswar

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18-4-2012  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor

M. R. CHOUDHURY  
Under-Secretary to Government