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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 4th August 2012

No. 7016-11/1(B)-87/1997(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th May 2012 in I. D. Case No. 29 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial dispute between the Management of M/s Nalanda Sales Corporation, Junuspatna Road, College Square, Cuttack and its workman Shri Gagan Bihari Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 29 OF 2003

Dated the 19th May 2012

Present :

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

Between :

The Management of M/s Nalanda Sales
Corporation, Junuspatna Road,
College Square, Cuttack. .. First Party—Management

And

Its Workman,
Shri Gagan Bihari Das. .. Second Party—Workman

Appearances :

Shri D. K. Mohanta, Advocate .. For the First Party—Management

Shri T. Lenka .. For the Second Party—Workman

Shri S. N. Biswal

Shri B. B. Mishra

A W A R D

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.5767–li/1(B)-87/1997- LE., dated the 12th June 2003.

“ Whether the termination of services of Shri Gagan Bihari Das, Peon, with effect from the 15th October 1996 by way of dismissal by the management of M/s Nalanda Sales Corporation, Cuttack is legal and/or justified ? If not, to what relief Shri Das is entitled ?”.

2. The case of the workman in short is that he joined as Peon in the year 1983. After being satisfied the management issued appointment letter bearing No. NSC/ADM/G-2/262, Dt. 30-9-/15-10-1986 and subsequently was confirmed from 9-4-1987. Further the case of the workman is that on 6-4-1996, while he was returning from the campus of Bank of Borada, Buxibazar, Cuttack after encashing a cheque of the management, two unknown persons holding knife came to him and snatched away the cash. Seeing the same, he immediately reported the Branch Manager and accordingly F.I.R. was lodged at the nearest Police Station and investigation took place. Explanation was submitted by the workman on 19-4-1996 pleading his innocence. After two months of the incident the workman was suspended vide Order Dt. 7-6-1996 after he was arrested by the police during investigation. On the above incident, charge was framed against him on 11-6-1996 and was directed to submit his explanation within 72 hours of receipt of the charge-sheet and accordingly after receipt of the charge-sheet, he explained in details regarding his innocence. The management vide their letter Dt. 4-7-1996 communicated to the workman that as his explanation was not found satisfactory, it was decided to hold an enquiry into the charges levelled against him and accordingly Mr. B. K. Pattnaik, Advocate, Cuttack was appointed as Enquiry Officer and the Enquiry Officer sent a notice to the workman on 8-8-1996 fixing the date of enquiry to 19-8-1996. But the workman submitted a representation on 16-8-1996 to the Enquiry Officer to adjourn the enquiry proceeding as an appeal case had to file in the appellate Court. But the Enquiry did not consider the representation of the workman and conducted the enquiry in absence of the workman in an *ex parte* manner. The workman has alleged that no opportunity was given to him to cross-examine the management witnesses and also he has not given a fair opportunity to examine his witnesses including himself in his defence. Therefore the workman has contended that the enquiry was vitiated and the Enquiry Officer has violated the principles of natural justice. Subsequently the Enquiry Officer submitted his report on 16-9-1996 holding the workman was guilty of the charges. Thereafter the management without considering the show cause and without giving second show cause notice and also without supplying the enquiry proceeding terminated the services of the workman by way of dismissal vide their letter Dt.15-10-1996. The Workman has pleaded that the enquiry was not conducted according to the principles of natural justice and past service of the workman had not been taken into consideration. According to the workman the criminal case instituted against him has been decided in favour of the workman and the workman was acquitted in G. R. Case No. 635/1996 as per judgment of the learned Judicial Magistrate, First Class on 29-8-2001. On these back grounds, the workman has prayed for reinstatement in service with full back wages and all other service benefits.

3. On the other hand, the management appeared and filed written statement refusing the claim of the workman. While admitting the engagement of the workman by the management has stated that the said fact of alleged theft was a build up story of the workman as per the report of the police. On receipt of the final report from the police, the management issued a letter Dt. 9-4-1996 to the workman for submission of a detailed statement. But as the statement of the workman was not satisfactory, the management issued an order of suspension and latter on charge-sheeted against him. On receipt of the suspension order and charge-sheet, the workman submitted an explanation which was also not found satisfactory. Therefore, the management decided to hold a disciplinary enquiry against the workman and accordingly an Enquiry Officer was appointed to conduct the enquiry. The Enquiry Officer conducted the enquiry as per law and submitted his enquiry report to the management stating that the charge has been proved. The management on receipt of the enquiry report, the workman was directed to submit a show cause reply to such enquiry report. After due consideration of the show cause reply filed by the workman and the materials available on record of the enquiry, the disciplinary authority decided to dismiss the workman from services with immediate effect. On these averments, the management has prayed that the reference should be answered in negative against the workman.

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

I S S U E S

- (i) “ Whether the termination of services of Shri Gagan Bihari Das, Peon with effect from the 15th October 1996 by way of dismissal by the management of M/s Nalanda Sales Corporation, Cuttack is legal and/or justified ?
- (ii) If not, to what relief Sri Das is entitled ? ”

5. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved the documents under the cover of Exts. 1 to 14. On the other hand, the management has neither cross-examined the W.W.1 nor examined any witness on its behalf.

6. Before going to discuss the evidence in details, it is pertinent to mention here that there is no dispute between the parties regarding engagement and disengagement of the workman from service and also relating to the conduct of domestic enquiry. The workman urged that the enquiry was not conducted in a fair and proper manner and no principle of natural justice has been followed by the Enquiry Officer during the domestic enquiry. On the other hand, the management has stated that due opportunity was afforded to the workman to defend his case properly and also the Enquiry Officer conducted the enquiry as per law. To substantiate the above plea, the management has not filed a single piece of paper to establish the same. Therefore, the plea taken by the management that the Enquiry Officer has conducted the enquiry as per law cannot be accepted. It is also an admitted fact that while terminating the services of the workman by way of dismissal, the management has not given one month prior notice or notice pay in lieu thereof and retrenchment compensation. So the management has violated the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. So on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that the termination of services of the workman with effect from the 15th October 1996 by way of dismissal by the management is illegal and unjustified and the workman is entitled to be reinstated in service.

7. Regarding back wages, admittedly the workman had not worked under the management from the date of alleged termination. Law is well settled 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”

However, on careful consideration of all the materials available in the case record 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.

8. Hence Ordered:

That the termination of services of Shri Gagan Bihari Das, Peon with effect from the 15th October 1996 by way of dismissal by the management of M/s Nalanda Sales Corporation, Cuttack is neither legal nor justified. The workman Shri Das is entitled to be reinstated in service with 50% back wages. The management is directed to implement this Award within a period of one month from the date of its publication failing, the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S.A.K.Z. AHAMED

19-5-2012

Presiding Officer
Labour Court
Bhubaneswar

S.A.K.Z. AHAMED

19-5-2012

Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

M. R. CHOUDHURY

Under-Secretary to Government