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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 27th November 2012

No. 9678—IR(ID)-107/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th September 2012 in Industrial Dispute Case No. 76 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Kalinga Hospital Ltd., Chandrasekharpur, Bhubaneswar and their Workman Shri Radha Raman Barik was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 76 OF 2010  
Dated the 26th September 2012

*Present :*

Shri Raghubir Dash, o.s.J.s. (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal, Bhubaneswar.

*Between :*

The Management of . . . First Party—Management  
M/s Kalinga Hospital Limited,  
Chandrasekharpur, Bhubaneswar.

And

Its Workman Shri Radha Raman Barik . . . Second Party—Workman  
Qrs. No. 9/ER-118, BDA Colony,  
Chandrasekharpur, Bhubaneswar.

*Appearances:*

Shri Patitapaban Sahoo, Assistant Manager (HR) . . . For the First Party—Management  
Shri R. R. Barik . . . For the Second Party—Workman  
himself.

## AWARD

The Government of Odisha in their Labour & E. S. I. Department in exercising of power conferred upon them by Section 12(5), read with Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the 'Act') have referred the following dispute to this Tribunal for adjudication vide their Order No. 8517—ID-107/2010-LE., dated the 5th October 2010 :—

“Whether the action of the Management of Kalinga Hospital Ltd., Bhubaneswar in dismissing the services of Shri Radha Raman Barik, Senior Technician, Radiology with effect from the 8th January 2005 is legal and/or justified ? If not, what relief Shri Barik is entitled to ?”

2. Facts not in dispute are that the second party workman was working as a Senior Technician (Radiology) in the establishment of the first party Management, that he had rendered continuous service with effect from the 11th April 1997 till the 8th January 2005 when he was dismissed from service and that the order of dismissal was passed without any domestic enquiry.

3. It is the case of the second party that the termination of his service by way of dismissal without any domestic enquiry being illegal, he should be reinstated in service with full back wages. It is his further case that the allegation of acts of misconduct for which he has been dismissed from service is totally false and concocted.

4. The stand taken by the management is that on the 8th January 2005, i. e., the date on which the disputed dismissal was given effect to the second party was in 'A' shift duty. Further case of the management is that on the 8th January 2005 at about 9.30 A.M. while the second party was in 'A' shift duty he misbehaved with a lady patient inside the X-Ray room where he was performing duty. While taking X-Ray of the patient the second party molested her. The patient made a complaint in writing narrating the acts of misconduct. On that complaint the Management invited a show-cause from the second party and after making an informal enquiry the order of dismissal was passed on the same date. Since the reputation and honour of a lady patient was at stake the management did not conduct a full fledged enquiry.

In the written statement the management had made a prayer to permit it to adduce evidence before this Tribunal to prove the charges of misconduct. Therefore, this Tribunal following the principles laid down in *Cooper Engineering Ltd. Vrs. P. P. Mundhe*, AIR 1975(SC) 1900 and other decisions, including the decision in *Karnatak State Road Transport Corporation Vrs. Smt. Laxmi Devamma*, AIR 2001 (SC) 2090 has permitted the first party to prove the charges against the second party by adducing evidence. Thus, in this case the first party first adduced evidence on all the issues and thereafter the second party was called upon to adduce his evidence.

5. The following issues have been settled:—

#### ISSUES

- “(1) Whether the second party is guilty of any misconduct(s) ?  
 (2) Whether the order of dismissal is justified and proper ?  
 (3) What relief, if any” ?

6. In order to prove its case the Management has examined the victim Lady Patient as M. W. No. 2 and her brother as M. W. No. 1. Besides them, another witness (M. W. No. 3) has been examined who is an official working in the establishment of the first party. On the other hand, the second party has examined himself as his sole witness.

#### FINDINGS

7. *Issue No. 1*—Ext.1 is the order of dismissal which was passed on the very date of the alleged incident. Therein it is stated that on the same date at about 9.30 A.M. while the second party was on ‘A’ shift duty a Lady patient bearing I. P. No. 18800, who was sent to the X-Ray room for X-Ray was kept in the X-Ray room for about 30 minutes and during that period the second party “attempted some immoral act with the lady” causing serious damage to the reputation of the Hospital. The dismissal order further contains that the act of the second party amounted to major misconduct as per Clause 21(B)(5) & (8) of the General Service Rules (for short, Rules) of the Hospital.

8. According to the management, one Madhusmita Dash (M. W. No. 2) is the lady patient. M. W. No. 2 in her deposition has stated that on the 8th January 2005 at about 9.30 A.M. she entered into the X-Ray room of the first party Hospital and the Attendant Radha Raman Barik (the second party) took X-Ray of her Chest. She has further stated that when she stood before the X-Ray machine the second party touched her body from all sides giving demonstration as to how she should position her Chest and that while doing so he also touched her chest. She has further stated that by such behaviour of the second party she was shocked but she stood in front of the X-Ray plate and the second party took the X-Ray. She has further stated that on the plea that the X-Ray was not OK the second party asked her to stand once more in front of the X-Ray machine for a repeat. This time also, it is alleged the second party fondled her chest and asked her to stand in good position by touching her breast. She has further stated that while she was coming out of the room the second party again misbehaved with her and threatened her of severe consequences if she would tell it to anybody else. She has further stated that since she stayed in the X-Ray room for a long period her mother entered into the room and thereafter the second party asked her to leave the room.

The second party does not deny that on the 8th January 2005 he was on ‘A’ shift duty and that at about 9.30 A.M. one Madhusmita Dash (M. W. No. 2) had come to the X-Ray room and that as the X-Ray Technician, he had attended to her. On the other hand, he has denied the allegations made by her and suggested to her that at the instance of one Rajendra Kumar Sahoo, who is the Deputy Finance Officer in the establishment of the first party and who is admittedly a friend of Madhusmita’s

brother with whom the second party was not in good terms, a false accusation has been made against him. M. W. 2 admits that her brother is a friend of said Rajendra Kumar Sahoo. Her brother is examined as M. W. 1. It is suggested to M. W. No. 1 that at the instance of Shri Sahoo he has made a false allegation against the second party. This suggestion is stoutly denied by M. W. No. 1. The second party has not stated anything in his claim statement about his strained relationship with Shri Sahoo and the alleged false accusation at the instance of Shri Sahoo. However, in his affidavit evidence he has stated that Shri Sahoo was not in good terms with him because earlier he had refused to do free C. T. Scan of Mr. Sahoo's father. The plea of false accusation at the instance of Mr. Sahoo seems to be after thought. There is no material to support the plea that the second party and Mr. Sahoo were in inimical terms. Even assuming that they were not in good terms, it is difficult to believe that M. W. No. 1 could be persuaded by Shri Sahoo to bring her unmarried sister into picture with false accusation of sexual harassment to her. Therefore, the defence taken by the second party is found unacceptable.

9. The incident as alleged by M. W. Nos. 1 and 2 implicating the second party had taken place on the 8th January 2005 and on the same date the order of dismissal (Ext. 1) was passed by the management. In the said order it is clearly mentioned that the second party had attempted to do some immoral act with the lady patient bearing IP No. 18800. Ext. D, the final bill raised by the Hospital discloses that one Madhusmita Dash was allotted with IP No. 18800 and that she was admitted in the Hospital from the 7th January 2005 to 14th January 2005. Ext. B is the statement of the victim recorded by one Sunitra Mishra, then Assistant Manager, Operation of the first party Hospital. According to M. W. 3 this statement was recorded on the very date of the incident in course of a preliminary enquiry before the order of dismissal was passed by the Management. The victim has stated that on the date of incident her statement was recorded vide Ext. B at about 2 or 2.30 P. M.. In Ext. B there is clear allegation against the second party that he had touched and pressed the victim's breast and that he had fondled her body from all sides demonstrating how to position her chest up right when standing in front of the X-Ray plate.

The victim's brother supports her by saying that immediately after coming out from the X-Ray room the victim narrated to him the incident that happened inside the X-Ray room. He has specifically stated the victim to have told him that the second party had touched the secret parts of her body repeatedly. He has also stated that having heard the same he had immediately rushed to the Managing Director to lodge a written complaint. According to him, Ext. A is his written complaint. Also in Ext. A it is alleged that the concerned Technician on duty had attempted some immoral act against Madhusmita Dash.

There is nothing to disbelieve M. W. Nos. 2 and 3 who had no prior acquaintance with the second party. So, there cannot be a presumption that they had any axe to grind against the second party. Therefore, the plea of false implication is to be disbelieved. Rather there are materials to believe that on the 8th January 2005 the second party while on duty had sexually harassed the victim by touching her body including her breast and being annoyed the victim and her relatives reported the matter to the Management. There are no materials to presume that it might be a case of false accusation.

10. A copy of General Service Rules of Kalinga Hospital Ltd. (first party) has been placed in this record for reference. Clause 21(B) states what are the major misconducts. At Sl. No. 8 of Clause 21(B) of the Rules it is stated that any act subversive of discipline within the Company premises committed by an employee of the establishment is a major misconduct. The act of sexual harassment as found proved against the second party is nothing but subversive of discipline committed with the premises of the Hospital. Therefore, the second party is found to have committed an act of major misconduct. On the materials placed before this Tribunal it is concluded that the second party is guilty of a major misconduct.

11. *Issue No. 2*—For an act of major misconduct an employee may be punished with any of the seven different kinds of punishment including dismissal from service as enumerated in Clause 23 of the Rules. Therefore, it is to be considered as to whether the punishment of dismissal is justified or not.

It is true that there is no material showing that the past conduct of the second party was not good. However, solely on that ground it cannot be said that the punishment is unjustified or grossly disproportionate to the act of misconduct. It is rightly submitted by the first party that such kind of immoral act on the part of the Hospital staff is harmful to the patients as well as the reputation of the Hospital. The second party has outraged the modesty of a lady patient who was admitted in the Hospital to undergo an operation. Single instance of such immoral as well as criminal misconduct is sufficient for the management to loose confidence on the delinquent employee. Therefore, the punishment of dismissal is found to be justified and proper.

12. *Issue No. 3*—In view of answers to Issue Nos. 1 & 2, the second party is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
26-09-2012  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH  
26-09-2012  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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By order of the Governor  
J. DALANAYAK  
Under-Secretary to Government