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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 17th December 2012

No. 10410—IR ID)-11/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd November 2012 in I. D. Case No. 2 of 2011 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Shyam DRI Power Ltd., At Pandoloi, Rengali and their Workman Shri Santosh Kumar Jena was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 2 OF 2011

Dated the 2nd November 2012

Present :

Shri Srikanta Mishra, LL.M.
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of the M. D.,
Shyam DRI Power Ltd.,
At Pandoloi, Rengali,
Dist. Sambalpur. .. First Party—Management

And

The Workman,
Shri Santosh Kumar Jena,
At Adarsha Nagar, Qrs. No.B-38,
P.O. Orient Colliery,
Dist. Jharsuguda. .. Second Party—Management

Appearances :

Shri K. C. Dash, Authorised Advisor (P & A).	.. For the First Party—Management
Self	.. For the Second Party—Workman

AWARD

This award arises out of a reference under Section 10 (1) (c) of the I. D. Act, made by the Government of Odisha, Labour & Employment Department vide their Notification No. 2310—I.D.-11/2011-L.E., dated the 8th March 2011 for adjudication. The schedule of reference is as follows :—

“Whether the action of Shyam DRI Power Ltd., in terminating the services of Shri Santosh Kumar Jena (Ex. workman), with effect from the 2nd August 2008 is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The case of the second party workman is that he was employed by the first party management on 19-4-2007 and was assigned the job of making entries of incoming goods to the factory in the security gate such as raw materials (Coal, Iron, Dolomite and other store items). He was also scrutinising the challans and discharged his work in the Weigh Bridge of the factory. While in continuous service under the management, he was suddenly refused to work with effect from the 2nd August 2008 without assigning any reason. According to the second party, his employer, i.e. the first party did not observe the procedure laid down under Section 25-F and 25-N of the Industrial Disputes Act. His termination from service amounts to illegal retrenchment. The second party then lodged a complaint before the Labour Officer, Sambalpur but since the first party management did not attend the conciliation, the District Labour Officer, submitted report to the Government. The workman prays to declare his termination from service with effect from 2-8-2008 as illegal and void and direct the first party to reinstate him in service along with payment of back wages and cost of litigation.

3. The first party filed written statement stating *inter alia* that the second party was engaged by it as an Office Assistant on 19-4-2007 in ERP Department and his job was supervisory in nature including feeding and analysis of various secret and confidential data regarding raw materials, utilisation for production of various products of the factory. His engagement was purely against temporary requirement of the first party management. It is specifically narrated in the written statement that it was informed to the personnel department of the factory by inter office Memo. No. 8—IOM-SDPL-Accts-9/2007, Dt. 2-7-2008 that the second party while in ‘G’ shift duty on 28-6-2008 leaked out very vital secret information to outside party, namely Mr. Bibhu Panda the Proprietor of M/s Akhankashit Enterprise. The matter was investigated internally by the Manager, ERP, Mr. Ashok Mishra and the Manager, Commercial and it was established that the second party passed the secret information of the Company illegally and without permission of authorities, which amounts to misconduct and warrants disciplinary action. The second party was then informed in a letter, Dt. 5-8-2008 that the charges levelled against him was of serious nature and his service was no more required from 8-7-2008. He was asked to collect his full and final payment including one month

notice pay. He was called upon to show cause or explain in defence within 24 hours of receipt of the notice and in case of his failure to reply within the stipulated period, it would be presumed that he has nothing to say in the matter. The second party did not reply to the show cause notice and rather vide letter, Dt. 7-8-2008 asked the management to consider his case within 10 days otherwise he would take legal action. According to the management after a proper enquiry and when the charge was established against the second party, it was decided that the continuance of the workman in service was against the interest of the organisation and employees as a whole. The conduct of the second party injured the business of the first party and tarnished its image and reputation. With such averments, the first party submits that its action in terminating the service of the second party was legal and justified and as such he is not entitled to any relief.

4. The second party workman filed a rejoinder after receipt of copy of written statement and he denied to have leaked out the vital information and confidential materials of the Company to any outside party. According to him, the contents of the written statement are misleading on facts and law. He further narrated in the rejoinder that he has no personal internet facility and he depends upon his Head Manager for internet facility and his entire work was within the knowledge of his head/authority.

5. On the basis of the pleadings of the parties. the following issues have been settled for adjudication.

ISSUES

- (i) "Whether the action of Shyam DRI Power Ltd. in terminating the services of Shri Santosh Kumar Jena (ex-workman) with effect from the 2nd August 2008 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?"

6. The second party workman examined himself and another witness, namely Subrata Kumar Pradhan (ex-employee of first party) and proved several documents which were marked as Ext. W-1 to Ext. W-7. The first party on the otherhand examined 3 witnesses and proved documents which were marked Ext. M-1 to Ext. M-9.

FINDINGS

7. *Issue No. (i)*—There is no dispute that the second party was employed by the first party in its raw material section with effect from the 19th April 2007. Although no appointment letter is proved to have been issued in favour of the second party the documents filed by the first party indicate that he was assigned Employee Code No. 00105 and was discharging his duties regularly till his service was terminated on 2-8-2008. The second party has filed a xerox copy of his Identity Card issued by the first party management as Ext. W-2. Besides, he has also filed a copy of statement of account maintained by AXIS Bank as Ext. W-3 to Ext. 3/d which indicate that his account was opened with official address of the first party and his salary was credited to his account regularly. It is submitted on behalf of the first party management that the second party can not be treated to be a workman as his job was purely temporary and supervisory. Besides that, he was drawing salary of more than Rs. 5000.00 per month. On perusal of the evidence on record

more particularly the undisputed account statement Ext. W-3 series, I find the second party was receiving his monthly pay regularly for a period of more than one year and therefore his service was not temporary. As regards monthly salary I find, the salary drawn by the second party workman in the month of March 2008 after all deductions was Rs. 3,450.00. The second party has proved his application requesting for increasing his salary which was marked as Ext. W-4. As per this document by the month of June 2008 he was getting salary of Rs. 4,700.00 and he was allowed increment @ Rs. 500.00 per month with effect from the 1-6-2008. Besides the report of the Conciliation Officer-*cum*-District Labour Officer, Sambalpur annexed to the reference reveals that while making complaint the workman disclosed that his monthly salary was Rs. 5,200.00. Therefore it is proved that the second party was drawing salary of more than Rs. 5,000.00 on the date of his retrenchment. So far as the claim of the management that the job of the second party was merely supervisory, I find the management has suppressed the appointment letter which could have thrown light on the actual nature of job assigned to the second party. The evidence of the second party that he was entrusted with the work of making entries of incoming goods to the factory in the security gate, entry of raw materials (ERP Module) like Coal, Dolomite, Iron and other store items and discharging his work in Weigh Bridge of the factory is not challenged during cross-examination. During cross-examination, he has stated that he applied for the post of Data Entry Operator-*cum*-Office Assistant under the first party. The management on the otherhand has not adduced any specific evidence that the second party was doing any supervisory job. It reveals from the evidence on record that the second party was doing clerical work under the first party and was not employed in a supervising capacity. Admittedly, the first party is a big company engaged in a production of materials and as such it is an "Industry" within the meaning of the I.D. Act. The second party being assigned with clerical job he is a workman within the meaning of Section 2 (s) of the said Act although his salary was more than Rs. 5,000.00 per month.

8. Admittedly, service of the second party was terminated by the first party with effect from the 2nd August 2008. It is the allegation of the first party that on 26-6-2008 the second party passed out certain vital and secret information of the company to an outside party i.e. M/s Akhankshit Transport which amounts to breach of service conditions, breach of faith with the business of the Company. The first party also alleged that the leaking out of secret information caused loss and injury to the interest of the management and its image and reputation was tarnished. On the contrary it is the stand of the workman that he has never leaked out any confidential material. The concerned information according to the second party was passed out to one of the Transporter of the Company who was not a stranger. He alleges that his service was dispensed with without any fault of him and it was due to some personal grudge. On a close scrutiny of evidence adduced by both the parties I find the disciplinary action was taken against the second party on the basis of inter Office Memo. Dt. 2-7-2008 of Mr. D. K. Tiwari, Director Commercial of the first party Company addressed to Mr. U. S. Lal, Personnel & Administration Department of the Company. A copy of the said letter has been marked as Ext. M-2. In this Memo. it was informed that the second party had been found leaking very vital information to outside party through the Company internet service which was detected by the ERP Department. For breach of factory discipline the management of the Company decided to initiate disciplinary action against him. On 5-7-2008 the first party Company gave a notice to the second party mentioning therein that he passed some vital informations of the Company to a outside party and such act was amounted to misconduct warranting disciplinary action. In the said letter to copy of which has been marked as Ext. M-3 it was intimated to him that his service

was no more required with effect from the 8th July 2008 and he was advised to collect his full and final settlement from Accounts Department on Dt. 8-7-2008. On a close perusal of Ext. M-3, I find there is no mention about the date on which the alleged secret information of the Company was passed out to outside party. When the communication regarding termination of service of the second party does not contain the date of commission of misconduct by the second party the same is a serious infirmity. Although the management claims that the disciplinary enquiry was conducted in a fair manner I find, it is not proved that before initiating the disciplinary action it served any notice upon the workman asking him to show cause in the matter of alleged leaking of secret information. It reveals from the copy of the enquiry report marked Ext. M-6 that the allegation against the workman was enquired into without giving any opportunity to the second party. His presence was not procured during enquiry. Therefore, the domestic enquiry conducted by the first party was improper and in violation of the principles of natural justice. It may be mentioned here that for the same alleged cause of action the first party issued a warning letter to one Subrata Kumar Pradhan (W.W. 2) on Dt. 2-7-2008. A copy of the said letter has been marked as Ext. W-6. This document reveals that the second party was working as a staff under the W.W. 2. It was informed to him that on verification of enquiry it was found that the second party leaked out vital official information to outside party within his knowledge. By Ext. W-6, W. W. 2 was warned not to indulge in any such illegal activity in future and instruct his staff accordingly. W.W. 2 was further warned to desist from such unethical activities and also instructed to properly monitor the jobs of the staff to arrest such anomalies in future failing which the management will be compelled to take disciplinary action against him and his related staff. When the Controlling Officer of the workman was issued with warning letter along with direction to properly monitor the job of his staff, it stand to no reason why the management thought it proper to dismiss the workman for no previous misconduct. It reveals from the evidence on record, more specifically the Ext. W-4 that on Dt. 1-6-2008 the workman was allowed an increment on his salary and therefore his job was satisfactory. But for only one mistake the Company terminated his service. It may be pertinent to mention here that the first party has not specifically proved any document such as the Internet Communication made by the second party to the outsider. There is absolutely no material to show that the passing of the information as alleged by the first party actually caused any looser damage of the Company. In absence of the details about the vital information alleged to have been leaked out by the second party, the first party can not claim that its action in terminating his service was legal and justified. After a careful perusal of the materials on record and discussion made above I am constrained to hold that the action of the Shyam DRI Power Limited in terminating the service of Shri Santosh Kumar Jena, the second party with effect from the 2nd August 2008 is illegal and unjustified. The issue is answered accordingly in favour of the second party.

9. *Issue No. 2*—Since it has been held that the termination of the service of the second party with effect from the 2nd August 2008 by the first party is illegal and unjustified, the second party is entitled to reinstatement in service. As regards the claim of back wages it is submitted on behalf of the first party that when the matter was referred for adjudication before this Court, it called the second party and offered for employment but he refused to join and demanded wages for the back period and therefore he should not be allowed the back wages. It is further submitted that the second party engaged himself as LIC agent on commission basis and therefore he is not entitled to back wages or compensation on the basis of “no work no pay”. The workman has admitted during cross-examination that on Dt. 30-6-2011 the first party management invited him in writing for

discussion about his job and on that day he appeared before them. He further admits that the management was interested to take him in the job but he claimed for back wages and other facilities to which the management did not agree. The claim of the workman is genuine and therefore he can not be blamed for not conceding to the invitation of first party. Particularly when the move was made after institution of this case. The workman during cross-examination deposed that from Dt. 2-8-2008 he has not engaged himself in any other job. He however, admits that since 2002 he is doing the job of LIC agent on commission basic. There is no evidence regarding approximate income of the second party as LIC agent. Therefore the first party can not take advantage of the admission of the second party regarding his job of LIC agent. On consideration of the facts and circumstances as discussed above I am constrained to hold that the second party is entitled to full back wages from the date of his termination i.e. Dt. 2-8-2008. The issue is also answered accordingly in favour of the second party workman. Hence the following Award.

AWARD

The reference is answered on contest in favour of the workman (second party) without cost. The action of Shyam DRI Power Ltd. in terminating the services of Shri Santosh Kumar Jena (ex workman) with effect from the 2nd August 2008 is illegal and unjustified. The first party management is directed to reinstate the second party workman in service within 3 months from the date of passing of award. The first party management is further directed to pay full back wages and other service benefits to the second party workman within a period of 3 months from the date of publication of the award in *Odisha Gazette*.

Dictated and corrected by me.

SRIKANTA MISHRA
2-11-2012
Presiding Officer
Labour Court
Sambalpur

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2-11-2012
Presiding Officer
Labour Court
Sambalpur

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