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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 19th December 2012

No. 10503—IR(ID)-6/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th December 2012 in Industrial Dispute Case No. 06 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s BPTCL & Dream Team Sahara, Bhubaneswar and their Workman Shri Ashok Kumar Patra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 6 OF 2012

Dated the 4th December 2012

Present :

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

Between :

The Chief Executive Officer . . . First Party—Management
M/s BPTCL & Dream Team Sahara,
2nd & 3rd Floor, Plot No. N/5/538,
IRC Village (SBI Building), Nayapalli,
Bhubaneswar.

And

Shri Ashok Kumar Patra . . . Second Party—Workman
At. Qrs. No. VR - 5/1, Kharavel Nagar,
Unit - 3, Bhubaneswar.

Appearances:

| | |
|--|------------------------------------|
| Miss S. Pattanaik (Manager, HR) | . . For the First Party—Management |
| Shri S. Behera, Vice-President, City Bus Karmachari Sangha. | . . For the Second Party—Workman |

AWARD

The Government of Odisha in their Labour & Employment Department (presently, the Labour & E. S. I. Department) 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. 1339—ID-06/2012-LE., dated the 22nd February 2012 :—

“Whether the action of the Management of M/s BPTCL & Dream Team Sahara, Bhubaneswar in terminating the services of Shri Ashok Kumar Patra, Squad workman with effect from the 6th April 2011 without following the principles of natural justice is legal and/or justified ? If not, what relief Shri Patra is entitled to ?”

2. The case of the second party workman in short, is that he was appointed as a Bus Conductor by the first party management. He continuously worked in the said establishment from the 15th October 2010 till his service was arbitrarily terminated with effect from the 6th April 2011 contravening the provisions of Section 25-F and 25-G of the Act. It is further contended that though his service was terminated on the ground of misconduct, no domestic enquiry was conducted for the alleged misconduct. It is further asserted that from the date of his retrenchment the workman is going without gainful employment. Challenging the termination of his service as illegal, the workman claims for his reinstatement with full back wages.

3. In the written statement, the first party management contends that the second party workman was on probation, that during the period of his probation his performance was not satisfactory, that he was in the habit of not attending duties in time, that he was not willing to carry out the instructions of his authority, that he was depositing less amount than the amount collected by him from the passengers in different trips, that on the 2nd March 2011 the workman was instructed and informed about his indiscipline conduct and was asked to deposit the amount which was collected from the passengers but not deposited by him and that ultimately order was passed against the workman terminating his services with effect from the 6th April 2011.

4. Basing on the terms of reference as well as the pleadings of the parties, the following issues have been settled :—

ISSUES

- (i) “Whether the action of the management of M/s BPTCL & Dream Team Sahara, Bhubaneswar in terminating the services of Shri Ashok Kumar Patra, Squad workman with effect from the 6th April 2011 without following the principles of natural justice is legal and/or justified ?
- (ii) If not, what relief Shri Patra is entitled to ?”

5. The workman filed affidavit evidence as W. W. No. 1. The management have failed to participate in the proceeding and was set *ex parte* and consequently, W. W. No. 1 was not cross examined. Exts. 1 to 5 have been marked at the instance of the workman.

FINDINGS

6. *Issue No. i* —A bare perusal of the written statement discloses that the services of the workman was terminated on the ground of misconduct but no domestic enquiry was conducted before the order of termination of service was passed by the management. Contending that the workman was instructed and informed about his misconduct with direction to deposit the balance amount which he had failed to deposit with the management. It is claimed that the management had given due opportunity to the workman before the order of termination was passed. But this plea is liable to be rejected without any consideration inasmuch as, there is no claim that an enquiry into the alleged misconduct was directed against the workman. Ext. 4 is the order terminating the services of the workman. It reflects that on the ground of alleged misconduct the workman was disengaged/terminated from service with immediate effect. Since no enquiry has been conducted, the order of termination is not sustainable. Consequently, it is held that the action of the management in terminating the services of the workman without following the principles of natural justice is neither legal nor justified.

7. *Issue No. ii* —The management in its written statement has neither claimed to have conducted a domestic enquiry nor sought for leave of the Tribunal to lead evidence to establish the misconduct to support its action. That apart, the management has been set *ex parte*. Therefore, there is no occasion on the part of this Tribunal to allow the management to prove the misconduct by adducing evidence in this proceeding. Consequently, the workman is entitled to be reinstated in service. In the statement of claim, it is ascertained that the workman is not in any gainful employment. This is not rebutted by the management by way of denial in the written statement. Therefore, the workman is also entitled to full back wages.

8. Thus both the issues are answered in favour of the workman. The management to reinstate the workman and to pay full back wages from the date of his retrenchment till the date of his actual reinstatement with a liberty to take up disciplinary proceeding against the workman for the alleged misconduct.

The reference is answered accordingly

Dictated and corrected by me.

RAGHUBIR DASH
04-12-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
04-12-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

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