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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 19th December 2012

No. 10508—li/I(B)-4/2007-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd July 2012 in Industrial Dispute Case No. 37 of 2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Magnum Polymers (P) Ltd., Bhubaneswar and their Workmen Shri Bhagaban Sahoo and Shri Sashikanta Tripathy represented through the General Secretary, Magnum Polymers and Fibres Industries Employees Union, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 37 OF 2007

Dated the 23rd July 2012

*Present :*

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

*Between :*

The Management of . . . First Party—Management  
M/s Magnum Polymers (P) Ltd.,  
Bhubaneswar

And

Their Workmen . . . Second Party—Workmen  
Shri Bhagaban Sahoo &  
Shri Sashikanta Tripathy

represented through the  
General Secretary, Magnum Polymers  
and Fibres Industries Employees  
Union, Bhubaneswar.

*Appearances :*

Shri M. R. Mohanty, Advocate . . . For the First Party—Management

Shri L. K. Behera, Advocate

Shri P. Sethy, Advocate

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Shri Subrat Mishra, Advocate . . . For the Second Party—Workmen

Shri Manasi Parhi, Advocate.

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of the 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. 9501–I/I(B)-4/2007-L.E., dated the 10th August 2007:—

"Whether the action of the management of M/s Magnum Polymers Pvt. Ltd., Mancheswar Industrial Estate, Bhubaneswar in dismissing Shri Bhagaban Sahoo and Shri Sashikanta Tripathy from their services vide Letter No. 1238, dated the 30th March 2006 and No. 1243, dated the 30th March 2006, respectively is legal and/or justified? If not, what relief these workmen are entitled to?"

2. On behalf of the members of the second party workmen, Shri Premananda Dash, General Secretary, Magnum Polymers & Fibres Industries Employees Union appeared and filed statement of claim stating that the workman, Shri Bhagaban Sahoo was working under the management with effect from the 25th June 1995 as Fishing Net Making Machine Operator and had completed more than ten years of service under the management till the date of illegal dismissal on the 30th March 2006. Since the management did not fulfil the genuine demands of its workers, they formed a Trade Union and the workman Shri Sahoo was elected as Joint Secretary of the said Union. So the management became vindictive as a result the office bearers of the Union were thrown out of the employment bringing false allegations against them. On the 3rd August 2005, the management arranged a meeting for discussion with the workers of 'A' Shift and 'B' Shift. So the workman Shri Sahoo was also present in the said discussion. After the discussion, all the workers except Bhagaban Mohanty, Manoj Swain and the present workman Bhagaban Sahoo were not allowed to join in their duty and the above named three workers including the workman Shri Sahoo were forced to receive a charge sheet, dated the 3rd August 2005 written in English. Therefore, the workman Shri Sahoo requested the management to supply the above charge sheet in Odia language. Thereafter, he was placed under suspension. The General Secretary of the Union has stated that basing upon the charge sheet, a domestic enquiry was conducted by an advocate, Shri D. C. Mohanty. Being a pet man of the management, the advocate, Shri Mohanty conducted the enquiry in a biased manner.

During enquiry, no signature was taken from the workman Shri Sahoo on the recorded statement and also some false information were added at appropriate places in the recorded statement in order to establish the charges framed against the workman. Further, according to the workman Shri Sahoo, in spite of his request to allow him to represent by a co-worker on his behalf, but the Enquiry Officer did not allow the prayer of the workman Shri Sahoo which is also not in accordance with the rule. The management has got no Standing orders of its own and the Model Standing Order is not yet made applicable to the workers of the management. It is further stated that the workman Shri Sahoo had not committed any mistake nor irregularities. So, the punishment awarded to the workman Shri Sahoo by the management is disproportionate in the eye of law. In this background, the workman has prayed for his reinstatement in service with full back wages and all consequential benefits.

3. On the other hand, the management appeared and filed written statement. According to it, the workman was dismissed from service on the 30th March 2006 for committing the acts of gross misconduct and that too after considering the recommendation of the Enquiry Officer who was appointed to hold a domestic enquiry on the charges levelled against him. According to the management, it was compelled to issue charge sheet against the workman as he along with others have been occupying the Company premises without attending duty and also instigating the other workers to stop work. Due to unruly behaviour of the workman inside the factory premises, the management was constrained to suspend him from service. The advocate who was appointed as Enquiry Officer was an independent advocate. He conducted the enquiry in a fair and proper manner and all reasonable opportunities were afforded to the workman to defend his case properly. In these averments, the management has contended that the punishment awarded to the workman is just and the workman is not entitled to get any relief as prayed for.

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

#### ISSUES

- (i) "whether the action of the management of M/s Magnum Polymers Pvt. Ltd., Macheswar Industrial Estate, Bhubaneswar in dismissing Shri Bhagaban Sahoo and Shri Sashikanta Tripathy from their services Wide Letter No. 1238, dated the 30th March 2006 and No. 1243, dated the 30th March 2006, respectively is Legal and/or Justified ?
- (ii) If not, what relief these workmen are entitled to ?"

5. In order to substantiate his plea, the workman Shri Bhagaban Sahoo has examined himself as W. W. 1 and proved the documents under the cover of Exts. 1 to 12. On the other hand, the management has examined two witnesses altogether out of whom, M.W. 1 is the Executive Director and M. W.2 is the Director of the management and proved the documents under the cover of Exts. A to V.

6. During the course of hearing, it is noticed that though the reference was made by the State Government for adjudication of dispute regarding dismissal of Shri Bhagaban Sahoo and Shri Sashikanta Tripathy with effect from the 30th March 2006, but the General Secretary of the Union has only filed the statement of claim in favour of the workman Shri Bhagaban Sahoo but not in favour of the workman Shri Sashikanta Tripathy. More over, the workman Shri Sashikanta Tripathy himself has neither filed his statement of claim nor contested the present proceeding, for which,

this Court vide order, dated the 28th April 2012 directed the Union as well as the concerned workman Shri Tripathy for filing statement of claim, if any, and for taking part in the hearing for the interest of justice. But neither the Union nor the workman Shri Tripathy himself appeared and filed statement of claim. On the other hand, the management on the 29th June 2012 filed a copy of Form "K" showing that the matter has already been compromised with the workman Shri Sashikanta Tripathy and prayed to accept the same and accordingly the Form "K" is accepted and marked as Ext. V. So in view of the above facts and circumstances, the answer of the present reference is only applicable to the workman Shri Bhagaban Sahoo and not in favour of the workman Sashikanta Tripathy as he has already been compromised with the management regarding his dispute.

#### FINDINGS

7. *Issue Nos.(i) and (iii)*—Both the issues are taken up together for the sake of convenience

The present reference was raised by the workman stating that while he was working as a Machine Operator, the management placed him under suspension on the 2nd August 2005 and on the basis of the charge sheets dated the 3rd August 2005 and 23rd August 2005, a domestic enquiry was conducted which was not fair and proper and lastly he was dismissed from service on the 30th June 2006 which is also illegal and unjustified and also disproportionate to the gravity of his conduct. So he has prayed for his reinstatement in service with full back wages. On the other hand, the management has stated that the workman was dismissed from service after a due enquiry and all reasonable opportunities were afforded to the workman in the enquiry to defend his case. So in view of the above pleadings of the parties, now it is necessary to see whether the domestic enquiry conducted by the management against the workman was fair and proper and the punishment of dismissal of the workman from service was proportionate or not. To substantiate the above plea of domestic enquiry as well as the merit of the case, both the parties have adduced evidence at a length.

8. The advocate for the workman urged that the advocate who was appointed as the Enquiry Officer being a pet-man of the management is not a fair officer to be appointed as such, this bald statement is not sufficient to prove that the Enquiry Officer was not impartial to the workman. It is not explained as to how the Enquiry Officer is a pet-man of the management. The advocate for the workman further urged that the biased attitude of the Enquiry Officer is exhibited in his enquiry report in which the Enquiry Officer has incorporated some false information in support of the charges. On this point also the workman has failed to establish that how the Enquiry Officer has incorporated some false information in support of the charges. It is argued by the learned counsel for the workman that in the charge sheet the management did not mention the specific conduct rules that constituted the alleged misconduct. It is not in dispute that the management has got no certified standing orders of its own. So the Model Standing Orders is applicable to the employees of the management's establishment. This is the statutory provision contained in the Industrial Employment (Standing Orders) Act, 1946. Therefore, omission of mentioning the specific conduct rules in the charge sheet is not a ground to presume that the workman was prejudiced.

9. The learned counsel for the workman further urged that the copy of the day-to-day proceeding of the enquiry was not supplied to him. But at the same time, it is found from the enquiry proceeding file that in different sittings the Enquiry Officer has noted the day-to-day of the proceeding of the enquiry in which the workman has also signed on it. More over, it is not shown that the workman had ever ask the Enquiry Officer for the copy of the day-to-day proceeding of the enquiry. So on this sole ground, the enquiry proceeding cannot be said to be unfair and improper. 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 x – ordinarily in the presence of the employee – in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the Enquiry Officer records his findings with reasons for the same in his report."

10. In the case at hand, the workman was charge sheeted on various grounds of misconduct. In the charge sheet the charges levelled against the workman have been clearly narrated. Though several grounds raised, it is not claimed by the workman in clear terms that the workman was not informed clearly of the charges levelled against him. So, I find that the workman was informed clearly of the charges levelled against him. As discussed above, the recording of the day-to-day proceeding and also recording of evidence took place on different dates and found from the enquiry proceeding as well as enquiry report it was done in presence of the workman. The enquiry report reflects that on the 5th October 2005 the workman appeared before the Enquiry Officer, he was permitted to take part in the proceeding, he cross-examined the management's witnesses and also he gave his own statement along with other defence statements. Therefore, it is clear that the management's witnesses were examined in presence of the workman and he was given opportunity to cross-examine the management's witnesses. It is not claimed by the workman that he was denied any opportunity in the matter of examination of witnesses and production of documents. Therefore, it is held that the workman was given a fair chance to examine witnesses in his defence. It is also found from the enquiry report that the Enquiry Officer recorded his findings supported by reasons. It is found from the enquiry report that from the materials placed before the Enquiry Officer the misconduct under Rules 14(3) (a), (b) and (k) of the Odisha Industrial Employment (Standing Orders) Rules, 1946 was made-out. The Enquiry Officer has also observed that the workman did not substantiate his claim by adducing evidence. Therefore, the Enquiry Officer has concluded the enquiry proceeding giving findings that the workman was guilty of misconduct. Thus, the Enquiry Officer has recorded his findings with reasons in his report. So, in the facts and circumstances, it is held that the domestic enquiry conducted by the management against the workman was fair and proper and all reasonable opportunities were given to the workman to defend his case during the enquiry.

11. During argument, the advocate for the management urged that the workman was placed under suspension under the cover of Ext. 1 and was charge sheeted vide letter dated the 3rd August 2005 and the 23rd August 2005 under the cover of Exts. A and B respectively for the alleged misconduct. Thereafter the workman submitted his reply under the cover of Ext. E. As the explanation of the workman was not found satisfactory, the management decided to conduct a domestic enquiry into the charges levelled against him under the cover of Ext. F and Mr. D. C. Mohanty, Advocate was appointed as Enquiry Officer under the cover of Ext. G who intimated the workman about the conduct of the enquiry under the cover of Ext. H and conducted the enquiry after affording reasonable opportunities to defend his case under the cover of Ext. J and thereafter the Enquiry Officer submitted his report under the cover of Ext. K wherein all the charges levelled against the workman have been established. Thereafter the management issued a second show-cause-notice vide letter dated the 2nd February 2006 under the cover of Ext. M proposing the punishment of dismissal from service of the workman and asked to submit his explanation against the second show-cause-notice within a period of 7 days from the date of receipt of the said letter dated the 2nd February 2006. But the

workman instead of submitting his explanation, he approached the management for xerox copies of witnesses statement of all witnesses and himself recorded by the Enquiry Officer in the enquiry proceeding. Accordingly the workman was supplied the xerox copies of all the witnesses statement as well as his statement on the 1st March 2006. Again the workman was asked to submit his explanation within 3 days from the date of receipt of the letter dated the 1st March 2006 under the cover of Ext.P. But the workman approached the management for further time of 4 days vide his letter dated the 4th March 2006. Accordingly the workman submitted his explanation on the 9th March 2006 under the cover of Ext. 11 which was also found not satisfactory. So the management dismissed the workman from service with effect from the 30th March 2006 under the cover of Ext. Q. On these above back grounds, the advocate for the management urged that the dismissal of the workman from service with effect from the 30th March 2006 is legal and justified and also proportionate to the gravity of misconduct. On the other hand, the advocate for the workman urged that the domestic enquiry conducted by the management against the workman was not in accordance with law and the punishment of dismissal of the workman from service was disproportionate to the gravity of misconduct. But the workman has totally failed to establish the above facts. As I have already held in the foregoing paragraphs that the domestic enquiry conducted by the management against the workman was fair and proper and as the workman has not proved his case on merit, he is not entitled to any relief.

12. So on careful consideration of all the materials available in the case record as discussed above and considering the gravity of misconducts, I am of the opinion that the action of the management on dismissing the workman from his service with effect from the 30th March 2006 is legal and justified. However, the workman is entitled to get his legal dues, if any, due.

13. Hence Ordered :

That the action of the management of M/s Magnum Polymer Pvt. Ltd., Mancheswar Industrial Estate, Bhubaneswar in dismissing Shri Bhagaban Sahoo from his service vide Letter No. 1238 dated the 30th March 2006 is legal and justified. The workman Shri Sahoo is not entitled to get any relief except his legal dues, if any, due.

The reference is answered accordingly.

Dicted and corrected by me.

S. A. K. Z. AHAMED  
23-7-2012  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED  
23-7-2012  
Presiding Officer  
Labour Court, Bhubaneswar  
By order of the Governor  
J. Dalanayak  
Under-Secretary to Government