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## LABOUR AND E. S. I. DEPARTMENT

### NOTIFICATION

The 28th March 2012

No. 2399—II/1(B)-85/2005-(Pt.)LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th January 2012 in Industrial Dispute Case No. 55/2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Markona Service Co-operative Society, Markona and their Workman Shri Manmohan Raul was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 55 OF 2005

Dated the 24th January 2012

Present :

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

Between :

The Management of M/s Markona  
Service Co-op. Society,  
Markona.

. . First Party—Management

And

Their Workman  
Shri Manmohan Raul

. . Second Party—Workman

## Appearances :

Shri R. N. Rath, . . For the First Party—Management  
Legal Advisor.

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Shri Niranjana Sahoo . . For the Second Party—Workman

## AWARD

The Government of Odisha in its Labour & Employment Department vide Order No.8750–li/1(B)-85/2005-LE., Dt. 20-10-2005 have referred the matter in dispute to this Court for adjudication in exercise of powers conferred by sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947.

## 2. The reference reads as follows :

“Whether the action of the management of M/s Markona Service Co-operative Society in dismissing its workman Shri Manmohan Raul from employment with effect from Dt.24-10-2003 vide Order No. 7, Dt. 25-5-2004 is legal and/or justified ?

If not, what relief Shri Raul is entitled to ?”

3. The case of the workman in brief, as set out in his statement of claim is that he was appointed as salesman by the management on 4-11-1977. On 18-12-1979 he was promoted to Assistant Secretary with a consolidated salary of Rs. 2,400 per month and thereafter he was directed to act as Secretary in-charge during the period of May, 1990 to December 1991, May 1994 to June 2000 and 17-2-2001 to 5-11-2002. Further the case of the workman is that on 24-10-2003 he was placed under suspension while he was working as Assistant Secretary of management and charges were framed on 12-12-2003. On 12-12-2003 he was directed to submit explanation on the charges within 30 days from the date of receipt of charges levelled against him. On 29.12.2003 he submitted his explanation and accordingly the then Assistant Registrar, Co-operative Society, Bhadrak was appointed as enquiry officer on the request of management. On 31-3-2004 enquiry was conducted by the Enquiry Officer in his office premises and that too in presence of the parties. On 28-5-2004, the management without serving the copy enquiry report, show cause notice and without giving opportunity of being heard, passed dismissal order giving effect of the dismissal from service from 24-10-2003. In spite of protest of non-supplying the copy of enquiry report before the Secretary of the management, the Secretary turned deaf ear and ultimately obtained a copy of the enquiry report and on perusal of the same came to know that basing upon the audit report of the management 2001-02. A surcharge proceeding case No. 36 of 2003 was initiated against him under Section 67 of the Odisha Co-operative Societies Act, 1962 and against the order of the proceeding he filed a review petition before the Assistant Auditor General of Co-operative Society under the provision of Section 111 of the Odisha Co-operative Societies Act, 1962 praying modification of the order passed in surcharge case No. 36 of 2003, which was subjudice. On the above score,

the workman has stated that the findings of enquiry officer under charges 1 and 2 is not final and the order of dismissal is not legal by the management. Above all, the workman has stated that no subsistence allowance was paid. In view of the above averments, the workman has prayed for reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman and challenged the reference on the point of maintainability. According to the management, the workman was suspended with effect from 24-10-2003 on the ground of disobedience of the orders of higher authority, unauthorised leave and sustained heavy financial loss the management. The explanation submitted by the workman was not satisfactory. The management has further stated that the enquiry conducted against the workman was fair and proper after following the principle of natural justice and sufficient opportunities were given to workmman to defend his case properly and enquiry report was supplied to the workman. Above all, the management has stated that after going through the enquiry report passed by the enquiry officer wherein the workman was found guilty of the charges and the management rightly punished the workman by way of dismissal. In the back ground, the management has prayed that the workman is not entitled to get any relief as prayed for.

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

#### ISSUES

- (i) “Whether the action of the management of M/s Markona Service Co-operative Society in dismissing its workman Shri Manmohan Raul from employment with effect from 24-10-2003 vide Order No. 7, Dt. 25-5-2004 is legal and or justified ?
- (ii) If not, what relief Shri Raul is entitled to ?

#### ADDITIONAL ISSUE

- (iii) Whether the domestic enquiry into the charges against the workman was fair and proper and as to whether the reasonable opportunity has been given to the workman to defend himself properly during the domestic enquiry ?”

6. In order to substantiate their plea, the management has examined two witnesses altogether namely Shri Kailendra Bala, the then Secretary and Shri Mahesh Chandra Behera, the then Director of the management as M.Ws.1 and 2 respectively and proved the documents under the cover of Ext.A to U. Similarly the workman has examined himself as W.W.1.

#### FINDINGS

7. *Issue Nos. (i), (ii) & (iii)*—All the above issues are taken up together for the sake of convenience.

Before going to discuss the evidence in details, it is pertinent to mention here that inspite of opportunities taken by the management vide this Court's Order Dt. 28-2-2007 the management has not examined the Enquiry Officer in this case. It appears that though additional issue has been framed relating to the question of fairness of domestic enquiry but the management has not adduced any evidence to that effect.

8. During the course of argument, the management urged that the reference is not maintainable. On this score, law is well settled that :

“The Labour Court is the creation of statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference.”

So in view of the position of law the contention piloted by the management is rejected being devoid of any merit.

9. On perusal of the evidence adduced on behalf of the parties, it is an admitted fact that the witnesses examined on behalf of the management have not uttered a single word that the enquiry conducted by the enquiry officer was fair and proper and the Enquiry Officer during enquiry adopted the principle of natural justice. 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 ordinarily in the presence of the employees in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine the 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. On the above score, M.W.1 has simply stated that while the workman was working under the management, mis-appropriated the money and misbehaved the management's staff for which disciplinary proceeding was initiated and accordingly charges were framed against him and the same was communicated to the workman and on receipt of explanation, he was placed under suspension and accordingly the enquiry report was submitted on 24-5-2004. In pursuance to the enquiry report on 28-5-2004 the management dismissed the wlorlmen from his service. Almost to the effect is the evidence of M.W.1. On their cross-examination, they have stated that the allegation of misappropriation was proved basing upon the report of the Auditor of the management and the report of Auditor is pending before the appellate forum for consideration. M.W.2 has categorically stated in his cross-examination that the management has not filed any document to show that the enquiry report as well as the second show cause notice was served on the workman. He has simply stated that the workman has received the letters under the cover of Exts.B and G. Ext.B reveals that letter issued by the management relating to negligence in duty and misappropriation of funds as well as disobedience of orders. On the other hand, the workman denied the allegations of the management and he was punished pre-maturely and the enquiry conducted by the

Enquiry Officer without following the principle of natural justice. He has stated that the Enquiry Officer has rightly dropped the proceeding in respect of the charges framed against him except charge Nos. 1 and 2 which comes under the provision of surcharge proceeding and the said proceeding is still subjudice before the Assistant Auditor General, Co-operative Society, Balasore. He further stated that no opportunity has been given to him nor he has received the show cause notice as well as the enquiry report. Above all, it is an admitted fact that the enquiry report was submitted on 24-5-2004 and the Order of dismissal was issued on 28-5-2004. On the above score, it appears that the management has not given any opportunity to the workman for submission of his explanation and hastily took action against the workman.

11. The above being the evidence of record, on perusal of the same it appears that the enquiry report under the cover of Ext.S remain silent about the examination of the witnesses, on behalf of the parties, date of posting of enquiry by the Enquiry Officer and there is no material on record to suggest that the documents were furnished to the workman during the proceeding. Besides the above, there is also no material to suggest that the charges were read-over and explained to the workman nor any liberty was given to the workman for filing of any additional explanation. Above all, explanation was submitted by the management for non-examination of the Enquiry Officer in the facts and circumstances of this case.

12. On perusal of the case record and the enquiry report submitted by the Enquiry Officer and after going through the evidence of both the parties, the procedure as adopted by the Enquiry Officer appears to be not fair and proper and the Enquiry Officer has not adopted the principle of natural justice while conducting the enquiry. More particularly, when the Enquiry Officer has every knowledge relating to the pending of surcharge proceeding case No. 36 of 2003 and also had every knowledge that the order of the surcharge proceeding is appealable in nature. So, on careful consideration of all the materials available in the case record as discuss above in my opinion the dismissal of service of the workman from employment with effect from 24-10-2003 is neither legal nor justified.

13. Regarding arrear wages, it is an admitted fact that the workman has not worked under management after his dismissal from the service. In view of the settled position of law, when the workman had not worked for the management during the period in question and he had not proved by any cogent evidence that he was not gainfully employed elsewhere, payment of wages is not justifiable. Similarly, in view of the settled principle of law, the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration.

14. Above all, there is no materials on record to suggest that the workman has attained the age of superannuation. On perusal of the case record, it appears that the workman joined under the management in the year 1977 and he must be attained the age of superannuation. So in the present case, on careful consideration of all the materials available in the case record, I am of the

opinion that instead of granting full back wages, the management is directed to pay 60% of the back wages from the date of suspension i.e. 24-10-2003 till the date of his actual retirement on superannuation. So, all the Issues are answered accordingly.

15. Hence it is ordered :

That the action of the management of M/s Markona Service Co-operative Society in dismissing its workman Shri Manmohan Raul from employment with effect from 24-10-2003 vide Order No. 17 Dt. 25-5-2004 is neither legal nor justified. The workman Shri Raul is entitled to get 60% back wages from the date of suspension till the date of actual retirement on superannuation. The management is directed to implement this Award within a period of two months from the date of its publication in the official Gazette, failing the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated & corrected by me.

S. A. K. Z. AHAMED  
24-1-2012  
Presiding Officer  
Labour Court  
Bhubaneswar

S. A. K. Z. AHAMED  
24-1-2012  
Presiding Officer  
Labour Court  
Bhubaneswar

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By order of the Governor  
T. K. PANDA  
Under-Secretary to Government