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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 3rd April 2012

No. 2683—IR-ID-20/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th March 2012 in Industrial Dispute Case No. 8/2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Palasole Service Co-operative Society Ltd., Palasole, Dist. Jagatsinghpur and their Workman Shri Sunanda Kumar Ray was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 8 OF 2010

Dated the 14th March 2012

Present :

Shri Raghubir Dash, O. S. J. S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The President/Secretary-*cum*-Chief Executive, . . . First-party Management
Palasole Service Co-operative Society Ltd.,
At/P.O. Palasole,
Dist. Jagatsinghpur.

And

Shri Sunanda Kumar Ray, . . . Second-party Workman
At Sundargarh,
P. O. Madhusudanpur Sasan,
Dist. Jagatsinghpur.

Appearances :

Shri Manas Ranjan Swain, Advocate.	..	For the First-party Management
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Shri Susanta Kumar Dash, Advocate.	..	For the Second-party Workman

AWARD

The Government of Odisha in the Labour & Employment Department (presently the Labour & Employees State Insurance Department) in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the Act) have referred the following dispute for adjudication vide their Order No. 1886—I.D.-20/2010-L.E., dated the 9th March 2010.

"Whether the termination of services of Shri Sunanda Kumar Ray, Ex-Assistant Secretary with effect from the 29th April 2008 by the President, Palasole Service Co-operative Society Ltd., Palasole, Dist. Jagatsinghpur is legal and/or justified ? If not, what relief Shri Ray is entitled to get ?"

2. The case of the second-party as narrated in the claim statement is that he was appointed as Assistant Secretary-*cum*-Salesman under the first-party Service Co-operative Society and as such he had worked under the Society from the 10th August 2007 to 28th April 2008 with a consolidated pay of Rs. 1,000 per month and thereby he had completed one year of continuous service. But, his service was terminated by the Society with effect from the 29th April 2008 without compliance of the mandatory provisions of Section 25-F of the Act. In the claim statement it is further mentioned that on the 12th April 2008 the Management passed a Resolution to terminate the service of the second-party on the ground that his appointment was null and void. It is further mentioned that vide the same Resolution the Management also abolished the post of Assistant Secretary.

3. The Management does not deny that the second-party was appointed as Assistant Secretary and that his service was terminated with effect from the 29th April 2008. But, it is denied that the second-party had joined on the 10th August 2007. According to the Management, on the 10th August 2007 a Resolution was passed by the then Authorised Officer of the Society to engage temporarily one Assistant Secretary and as against that the second-party was given appointment. The second-party submitted his joining report on the 27th August 2007 and worked as such till the date of termination of his service. It is claimed by the first-party that after the new Managing Committee was constituted it came to light that the second-party was appointed illegally. So, the Committee passed a Resolution on the 12th April 2008 to terminate his service which has subsequently been approved by the General Body of the Society.

4. In terms of the reference the following issues have been settled :—

ISSUES

- (i) "Whether the termination of services of Shri Sunanda Kumar Ray, Ex-Assistant Secretary with effect from the 29th April 2008 by the President, Palasole Service Co-operative Society Ltd., Palasole, Dist. Jagatsinghpur is legal and/or justified ?
- (ii) If not, what relief Shri Ray is entitled to get ?"

5. The workman has examined himself as W. W. No. 1. He has exhibited documents which have been marked Exts. 1 to 6 on admission. The management has examined its Secretary In-charge as M. W. No. 1 who has exhibited documents marked Exts. A to H.

FINDINGS

6. *Issue No. (i)*—Though on the date of joining of the second-party there is dispute between the parties, there is no contention that the second-party had not completed 240 days of work during the period of his employment. Even if the stand taken by the Management is assumed to be correct the number of days of continuous work comes to 241 days as it is admitted by the Management that the workman had worked from the 27th August 2007 to 28th April 2008.

It is also not claimed that while terminating the services of the second-party the procedure laid down under Section 25-F of the Act was followed by the Management. It is also not claimed that the second-party is not a 'workman' and the first-party is not an 'industry' as defined in the Act. Therefore, the unavoidable conclusion is that the termination of service of the second-party being in contravention of Section 25-F of the Act is illegal. However, the Management has successfully established that it is justified. It is admitted that at the relevant time there was no Managing Committee of the Society for which the then Co-operative Extension Officer was the Authorised Officer In-charge of the Society. During his tenure a Resolution was passed on the 10th August 2007 to engage one person on temporary basis for collection of loan dues from different loanees and in the said Resolution it was decided that the second-party should be given appointment as Assistant Secretary-cum-Salesman. It is also not in dispute that after a new Managing Committee was constituted another Resolution was passed on the 12th April 2008 terminating the services of the second-party on the ground that his appointment was irregular and illegal. It is also not in dispute that the Managing Committee also passed Resolution not to engage any one as Assistant Secretary. It is not alleged by the second-party that after his termination the Society has engaged any other person to work in his place. It is argued on behalf of the Society that the appointment of the second-party is in contravention of the Service Rules of the Staff of the Service Co-operative Societies (Ext. B). Attention of the Tribunal is drawn to the relevant provisions of the said rules. Admittedly, the second-party was not given regular appointment. The Managing Committee of the Society had decided to engage a person on temporary basis and the same Committee at a later stage decided not to engage any one as Assistant Secretary on temporary basis. It is not shown that there was availability of work and yet the workman was removed from employment. The Management has not engaged any other person on temporary basis in place of the second-party. Therefore, the retrenchment is held to be justified.

The Issue is answered accordingly.

7. *Issue No. (ii)*— Though the retrenchment of the second-party is illegal it is found to be justified. It is also found that his appointment was not in accordance with the Service Rules of the Staff of Service Co-operative Societies which is marked as Ext. B. It is found that the second-party was not eligible to be appointed as an Assistant Secretary. As per the service Rule (Ext. B), the minimum qualification of a person directly recruited to the post of Assistant Secretary is Intermediate or +2 Arts, Science or Commerce with typing speed of 40 words per minute and he/she should not be more than 32 years in case of a General candidate (the maximum age limit is 35 years in the case of candidates belonging to SC/ST/OBC/SEBC/Ex-serviceman). But, the second-party was aged about 43 as on the date of his appointment and he had not passed the Matriculation Examination. Under such circumstances, the relief of reinstatement with back wages should not be allowed in favour of the second-party. Since the retrenchment is held to be illegal, the second-party should be

compensated by the first-party. In this regard the Judgement of the Hon'ble Supreme Court reported in AIR 2010 (SC) 502 (Ashok Kumar Sharma Vrs. Oberoi Flight Services) may be taken note of. It is observed that though earlier view of the Hon'ble Supreme Court was that if the termination of an employee was found to be illegal the relief of reinstatement with full back wages would ordinarily follow, but in recent past there has been a shift in the legal position and in long line of cases the Supreme Court has consistently taken the view that the relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. In Jagbir Singh Vrs. Haryana State Agriculture Marketing Board, AIR 2009 (SC) 3004 it is held that the Award of reinstatement with full back wages, particularly in the case of daily wagers, is not proper and in stead compensation is to be awarded. In this case the Hon'ble Supreme Court have distinguished a daily wager who does not hold a post and a permanent employee. It is further observed that the nature of employment, method and manner of appointment and length of service are relevant factors to be considered while determining the relief to be granted to an employee. In the facts and circumstances of this case the Tribunal considers it appropriate to Award a sum of Rs. 10.000 (Rupees ten thousand) only as compensation in favour of the second-party.

8. In the result, the Management is to pay a compensation of Rs. 10,000 (Rupees ten thousand) only to the workman within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
14-3-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
14-3-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

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