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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 1st May 2012

No. 3384—li/1(B)-148/2000-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd March 2012 in Industrial Dispute Case No. 106 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Odisha Remote Sensing Application Centre, Bhubaneswar and its Workman Shri D. Bhagaban was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 106 OF 2002

Dated the 23rd March 2012

Present :

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

Between :

The Management of
Odisha Remote Sensing Application
Centre, Bhubaneswar. First-party—Management

And

Their Workman
Shri D. Bhagaban. Second-party—Workman

Appearances :

Shri B. P. Tripathy, Advocate For the First-party—Management

Shri S. Dash, Advocate For the Second-party—Workman

AWARD

The Government of Odisha 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 have referred the following dispute by the Labour & E.S.I. Department, Bhubaneswar vide their Order No. 12496—li/1(B)-148/2000-LE., dated the 10th October 2002 for adjudication.

"Whether the termination of services of Shri D. Bhagaban, Watchman by the management of Odisha Remote Sensing Application Centre, Sahidnagar, Bhubaneswar with effect from the 25th February 2000 is legal and/or justified ? If not, what benefits he is entitled to ?"

2. The case of the workman, in brief, as set out in his statement of claim is that while he was performing Watchman duty in the laboratory building situated at Plot No. 201, Sahidnagar, Bhubaneswar, on the strength of Watchman, there was a theft of F. I. Pump of the office vehicle No. OR-02-C-9900 in the night of 15-7-1999. On the incident, the police was informed by the Enquiry Officer, Shri Sudam Charan Pradhan, Administrative-cum-Accounts Officer of the management and the workman was placed under suspension. Basing on the negligence played by him (workman) during his working period enquiry was initiated against the workman and the enquiry report was submitted by the Enquiry Officer to the management. Basing upon the enquiry report filed by the Enquiry Officer, the management took action by terminating the workman from his service. So in this background, the workman has raised an industrial dispute before the labour authority and when the conciliation failed, the matter was informed to the Government and this reference has been received from the Government and this I.D. (industrial dispute) Case has been initiated wherein, the workman has prayed for his reinstatement in service with full back wages.

3. On the other hand, the management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, it is not a profit making research and application institute dealing with space application in general and remote sensing application in particular. It is not engaged in commercial/industrial activities. So the establishment of the management is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and the reference is not maintainable.

4. The management has further stated that the workman was placed under suspension for dereliction of his duty on the alleged date of the incident and accordingly charge was framed, domestic enquiry was initiated by the Enquiry Officer who is none then an Administrative-cum-Accounts Officer of the management office. During enquiry, inspite of the direction of the management, the workman remained absent on the date of enquiry, enquiry report was submitted and basing on the report, the workman was terminated from service. It is also stated that the enquiry was fair and proper on the principles of natural justice. So in this back ground, the management has prayed for answering the reference in negative without granting any relief to the workman.

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

ISSUES

- (i) "Whether the termination of services of Shri D. Bhagaban, Watchman by the management of Odisha Remote Sensing Application Centre, Sahidnagar, Bhubaneswar with effect from the 25th February 2000 is legal and/or justified ?

(ii) If not, what benefits he is entitled to ?"

PRELIMINARY ISSUE

"Whether the management had conducted a fair and proper domestic enquiry against the workman adhering to the principles of natural justice and by giving reasonable opportunity to the workman to defend himself properly during the enquiry ?"

FINDINGS

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

Before going to discuss the above issues, it is pertinent to mention here that this Court has already decided the preliminary issue, whether the domestic enquiry is fair and proper and the same has not violated the principles of natural justice in the favour of the workman vide Order, dated the 7th September 2011 after being from both the sides and decided that the Enquiry Officer had submitted the enquiry report in breach of principles of natural justice as observed by the Apex Court and ultimately this Court has passed an order that the domestic enquiry conducted by the Enquiry Officer/management against the workman was not fair and proper.

7. After the order passed by this Court on the question of domestic enquiry and when this Court already held that the domestic enquiry conducted against the workman was not fair and proper, a duty is cast on the management to lead evidence. Now it is to be seen whether the management has proved its case on merit.

At the initial stage the management has challenged that the management is not engaging in any commercial and industrial activities and when it is a scientific organisation purely engaged in research and training activities, it cannot be said to be an industry for which the reference is not maintainable. On the other hand, during the course of hearing, the advocate for the workman has argued that from the activity of the management basing on the materials available in the case record it can safely be concluded to be a industry and the dispute raised by the workman is an industrial dispute for which this Court is competent to adjudicate the same and the reference is maintainable. On the above score, the authority reported in 1997 (76) FLR 212 S.C. wherein it has been held that :

"Physical Research Laboratory though carries on research with help of employees but not producing or distributing services and is not economic venture but an institution discharging the Government functions and is not an industry. But the 'industry' has been defined in Section 2(j) of the Industrial Disputes Act which reads as follows :—

" 'Industry' means any business, trade, undertaking, manufacturer or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen."

Further in view of the authority reported in 1978(2) SCC 213 it has been held that :

"The industry as defined in Section 2(j) and explained in the settled principle of law has a wide import as follows :

(a) where (i) systematic activity, (ii) organised by co-operation between employer and employee (the direct and substantial element is chomerial), (iii) for the production

and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, e.g. making, on a large scale prasad or food), *prima facie*, there is an 'industry' in that enterprise;

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector;

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations;

(d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking."

So basing on the materials available in the case record and in view of the above authorities I came to the conclusion that the establishment of the management is an 'industry' and the reference is maintainable on this point. Perused the documents marked as exhibits on behalf of both the parties.

8. During the course of hearing, the management adduced evidence of Sudam Charan Pradhan afresh after the order passed by this Court on the question of fairness of domestic enquiry. He has stated that on 16-7-1999 the workman was performing his duty in the laboratory building of the management situated at Plot No. 201, Sahidnagar and that too in the first floor and the offending vehicle (management vehicle) was kept in the ground floor of the building and one Sudir Kumar Nayak was on duty on the alleged date of the incident. In his cross-examination he has stated that no document was filed to show that the workman was entrusted the duty of Watcher in the ground floor where the vehicle was parking. Further on perusal of the document it appears that F.I.R. proved under the cover of Ext. B reveals that the Enquiry Officer is also the complainant for the police case and lodged F.I.R. On perusal of the F.I.R. it appears that neither the Driver of the vehicle nor the complainant implicated the workman in any manner in the alleged crime nor whispered a single word for dereliction of duty before the higher authority on the very day of the alleged incident. He has further admitted that the workman during the course of enquiry asked for document from the custody of the management for the purpose of the enquiry, but the management turned deaf ear and no compliance was made in reference to his application filed before the Enquiry Officer/management. The Enquiry Officer has also admitted that he started the enquiry on 5-10-1999 and prepared his enquiry report on the very day after examining two witnesses on behalf of the management. From this, it is very clear that there is no evidence from the side of the management to suggest that the enquiry was fair and proper and proved the same during the course of hearing. So now on careful consideration of all the materials available in the case record as discussed above, I came to the conclusion that the termination of the services of the workman by the management with effect from the 25th February 2000 is neither legal nor justified and he is entitled to be reinstated in service.

9. Regarding back wages, as per 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. Further according to the authority reported in 2001 LLR 182 it has been held that :

"Adjudication of an industrial dispute by the Labour Court—Bus Conductor dismissed after enquiry for not issuing of tickets—Labour Court held the enquiry as neither fair nor proper—

Once the domestic enquiry is held to be not fair and proper, a duty is cast on the management to lead evidence—If no evidence is led, the award must follow in favour of the workman—Reinstatement of the workman is upheld—Instead of full 75% back wages ordered."

So on careful consideration of all the materials available in the case record as discussed above and also giving regards to the decision cited above, I am of the opinion that the workman is entitled to get 75% back wages with continuity of service and all other consequential service benefits. Hence both the issues are answered accordingly.

10. Hence, it is Ordered :

That the termination of services of Shri D. Bhagaban, Watchman by the management of Odisha Remote Sensing Application Centre, Sahidnagar, Bhubaneswar with effect from the 25th February 2000 is illegal and unjustified. The workman is entitled to be reinstated in service with 75% back wages with continuity of service and all other consequential service benefits.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
23-3-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
23-3-2012
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government