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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 1st June 2013

No. 5163—li/1(B)-1/2001(Pt)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th March 2013 in Industrial Dispute Case No. 75 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Kandoi Transport Ltd., Cuttack and its Workman Shri Kamal Kumar Mohanty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 75 OF 2002

Dated the 11th March 2013

Present :

S.A.K.Z. Ahamed, o.s.j.s. (Jr. Branch),
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Managing Director, . . . First Party—Management
M/s Kandoi Transport Ltd.,
Professorpara,
Cuttack-753 003.

And

Shri Kamal Kumar Mohanty, . . . Second Party—Workman
At Tenament, Qrs. No. 111,
P.O. Charbatia, Via Choudwar,
Dist. Cuttack.

Appearances :

For the First Party—Management . . . Shri A. K. Moharana, Authorised
Representative.

For the Second Party—Workman . . . Shri Trilochan Lenka, Authorised
Representative.

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of 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. 7662—li/1(B)-1/2001-LE., dated the 22nd June 2002 :—

“Whether the action of the management in dismissing the service of Shri Kamal Kumar Mohanty, Clerk-*cum*-Supervisor with effect from the 3rd May 2000 by the management of M/s Kandoi Transport Ltd., is legal and/or justified ? If not, to what relief Shri Mohanty is entitled ?”

2. The case of the second party workman, in short, is that he was employed under the management as a Clerk-*cum*-Supervisor with effect from the 1st April 1992 and continued as such till 23-8-1999 when he was placed under suspension followed by a charge sheet Dt. 7-9-1999. It is stated that despite of his submitting written show-cause to the charges, the management got the matter enquired through an Advocate Shri B.C. Jena by appointing him as Enquiry Officer and Shri Subash Kandoi as the Marshalling Officer.

It is his specific stand that on receipt of enquiry notice on 28-12-1999, he although submitted an application on 29-12-1999 for adjournment of the enquiry and to supply him the required documents in connection with such enquiry, but the Enquiry Officer refused to accept the same for which he sent the said application to the Enquiry Officer by registered post with A.D. It is further alleged that on the said date i.e. 29-12-1999 the Enquiry Officer without considering the prayer of the workman, recorded the statement of the Marshalling Officer Subash Kandoi and compelled him to sign at the margin of such statement and did not afford him an opportunity to cross-examine the said witness. On 30-12-1999 when he received the copy of the statement of Subash Kandoi it revealed therefrom that the Enquiry Officer had written thereon that the workman had nothing to ask to the said witness in cross-examination, which according to the workman is a whimsical act of the Enquiry officer. It is stated that on 30-12-1999 again the Enquiry Officer recorded the statement of another witness Shri Kasal Kumar Agrawl and on demand of a copy of such statement he was told that such statement would be made available to him on adjourned date of enquiry i.e 4-1-2000. Being harassed, the second party made an application to the Enquiry Officer with a copy to the Senior Executive of the management to change the Enquiry Officer but no action on such complaint was taken the management. Rather the Enquiry Officer informed him that his complaint was based on falsehood and thereafter communicated him that the date of enquiry was fixed to 12-2-2000. On receiving such information the workman submitted a letter on 11-2-2000 but as the same was neither accepted nor acknowledged, the workman sent the same through Registered Post with A.D. It is pleaded that about two months thereafter on 21-4-2000 he received a letter together with a copy the enquiry report whereon he was asked to submit his show cause by 30-4-2000. It is averred that although the workman requested the management to supply him the copies of documents, enquiry proceeding and also the copies of depositions of witnesses and to allow him seven days time to file his second show-cause but without considering the request the management dismissed him from service vide letter Dt. 3-5-2000. Upon the back grounds narrated above, the workman has prayed to declare the action of the management as illegal and unjustified with a direction to reinstate him in service with full back wages and other service benefits.

3. The management entered contest in the proceeding and filed its written statement stating therein *inter alia* that the workman has been dismissed from service on account of his proved misconduct which was duly enquired into in a domestic enquiry. It is averred that in the said domestic enquiry the workman was afforded all reasonable opportunities to defend himself against the charges. It is pleaded that there having no infraction of the principles of natural justice either at the stage of conducting the domestic enquiry or at the level of the disciplinary authority, the action taken against the workman needs to be approved disentitling the workman from any relief.

4. On the basis of pleadings of the parties, the following issues have been settled :—

ISSUES

- (i) Whether the domestic enquiry against the workman was fair and proper ?
- (ii) Whether the action of the management in dismissing the service of Shri Kamal Kumar Mohanty, Clerk-*cum*-Supervisor with effect from the 3rd May 2000 by the management of M/s. Kandoi Transport Ltd. is legal and/or justified ?
- (iii) If not to what relief Shri Mohanty is entitled ?

5. To substantiate their respective stand, both parties have adduced oral as well as documentary evidence in the case. The workman examined himself as W.W. No. 1 and filed and proved ten documents which have been marked as Exts.1 to 10. The management, on the other hand, has examined its Deputy General Manager, Accounts as M.W. No.1 and Deputy General Manager,Accounts (System) as M.W. No.2 (who was appointed as the Marshalling Officer in the domestic enquiry conducted against the workman). Documents marked Exts. A to J have been filed and proved on behalf of the management.

FINDINGS

6. *Issue No. (i)*—This issue relates to the fairness and propriety of the domestic enquiry that has been conducted against the workman. As the management adduced evidence on all the issues without there being a prayer to take up hearing on issue No. 1 at the first instance, all the issues have been taken-up for hearing simultaneously.

7. Now, it is to be considered first as to whether the Enquiry Officer has conducted a fair and proper enquiry into the charges levelled against the workman by affording him all resonable opportunities in his defence.

8. A conspectus of the oral evidence of M.W. Nos.1 and 2 discloses that the same is nothing but exact reproduction of the averments of the management made in its written statement. The oral evidence adduced on behalf of the management in connection with the domestic enquiry having not been supported with any documentary evidence, it is not safe to relay on those oral testimony of M.W. No.1 and 2. Moreover, the management has not examined the Enquiry officer who was appointed to enquire into the charges framed against the workman. Had he been produced as a witness for the management, the workman would have got a chance to cross-examine him. Non-examination of such a viatal witness, therefore, does not indicate the *bona fideness* of the management.

The pleas advanced in the claim statement with regard to conduct of the domestic enquiry though have been disputed by the management but surprisingly it has not brought on record either the day to proceedings maintained by the Enquiry Officer or the statements of the witnesses recorded by him in connection with the charges legelled against him. Only a xerox copy of the enquiry report (Ext. K) is filed and proved in this proceeding but in absence of the entire proceedings of the enquiry file, it is difficult to come to a conclusion that the enquiry was conducted with all fairness giving sufficient opportunity to the workman to meet the charges. Not even a single document kis filed on behalf of the management showing consideration of the representations made by the workman vide Exts. 3, 4, 5, 6, 7, 8 and 10. Similarly, it is not placed on record that subsistence allowance if any was paid to the workman after he was placed under suspension vide Ext.1. No documentary evidence is also available on record to controvert the plea of the workman that he was not afforded with an opportunity to have his say on the punishment prior to imposition of the same. The infirmities, noted above, therefore show that there has been a complete violation of the principles of natural justice buy the Enquiry Officer while conducting the domestic enquiry against the workman and also thereafter by the Disciplinary Authority while coming to a conclusion that a major penalty in the form of dismissal would be imposed on the workman.

9. In the result, the enquiry conducted against the workman is held to be neither fair nor proper and accordingly the issue No.1 is answered in the negative as against the management.

10. *Issue No. (ii)*—In view of my finding on issue No.1 the punishment of dismissal imposed on the workman proceded by an unfair and improper enquiry can not be said to be either legal or justified.

The issue is answered accordingly holding that the dismissal from service of the workman with effect from the 3rd May 2000 is illegal as well as unjustified.

11. *Issue No. (iii)*—In view of the discussions made above, the workman is held entitled to reinstatement in service. He is however, not entitled to full back wages in absence of pleadings to the effect that during the period of his unemployment he was not gainfully employed elsewhere and in lieu thereof a compensation to the tune of Rs. 20,000 is considered to be appropriate in the facts and circumstances of the case.

Dictated and corrected by me.

S. A. K.Z. AHAMED
11-3-2013
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED
11-3-2013
Presiding Officer
Labour Court, Bhubaneswar

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