

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1104 CUTTACK, MONDAY, JUNE 17, 2013 / JAISTHA 27, 1935

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 1st June 2013

No. 5168—li/(BH)-2/2006 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th March 2013 in I. D. Case No. 14 of 2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Mayurbhanj Homeopathic Medical College and Hospital, Baripada, Dist. Mayurbhanj and its workman Shri Jagabandhu Mishra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 14 OF 2007

Dated the 4th March 2013

Present :

S. A. K. Z. Ahamed, O.S.J.S. (Jr. Branch)
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Principal,
Mayurbhanj Homoeopathic Medical
College and Hospital, Baripada,
Dist. Mayurbhanj.

.. First Party—Management

And

Shri Jagabandhu Mishra,
At Tulasichoura,
P. O. Baripada,
Dist. Mayurbhanj.

.. Second Party—Workman

Appearances :

Dr. Dev Kumar Das	.. For the First Party—Management
<hr/>	
Shri Jagabandhu Mishra	.. Second Party—Workman himself

AWARD

The Government of Odisha in the Labour & E.S.I. 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. 2602— li/1-(BH)-2/2006-LE., dated the 19th March 2007 :—

“Whether the termination of services of Shri Jagabandhu Mishra with effect from the 7th May 1989 by the management of Mayurbhanj Homoeopathic Medical College and Hospital, Baripada is legal and/or justified ? If not, to what relief he is entitled ?”

2. The case of the workman, in short, is that he was appointed as a Junior Clerk under the management on 1-12-1982 and during his continuance as such he got promoted to the post of Head Clerk in which he was later on confirmed with effect from the 9th September 1984. It is stated that while rendering services in the post of Head Clerk to the utmost satisfaction of the management suddenly he received letter No. 161, Dt. 11-5-1987 from the management to cause production of certain documents and in reply thereto he informed the management that he was not in possession of the documents. Upon receipt of such reply the management on 12-5-1987 called for an explanation on the allegation that he has misappropriated cash of the College. It is stated that to that explanation he has submitted his reply denying the allegations. It is alleged that soon thereafter the Principal with a threat asked him to put his signature on some blank papers which he complied keeping in view the assurance of the Principal that the matter would be dropped then and there. It is alleged that the Principal thereafter utilised the said signed papers against him and asked the workman to deposit the alleged misappropriated amount in the office at once vide Letter No. 169, Dt. 18-5-1987. Though reply to such letter was furnished by the workman, it is alleged that no acknowledgment in token of receipt of his reply by the management was given to him intentionally. Further averment of the workman is that when the matter stood thus he applied for Casual Leave on 8-6-1987 and thereafter extended the leave for a period of one and half months by intimating his authority about his ailment. It is stated that while on leave he received Regd. Letter No. 210, Dt. 24-6-1987 of the management wherefrom he came to know that he has been placed under suspension. On 23-7-1987 he reported for duty but he was not allowed to perform duty on the ground of his suspension. Subsequently he was charge sheeted and such charge sheet was issued by one S. C. Dash, Advocate in his capacity as Enquiry Officer. However, on 24-9-1987 the workman submitted his reply to the charge sheet denying all the charges levelled against him. It is alleged that in course of conduct of the enquiry in which he participated, the minimum opportunity of inspecting records and documents in connection with the alleged charges was not afforded and more so the principles of natural justice was abruptly violated. Copy of enquiry report, if any, was not communicated to him

nor a second show cause notice was served on him before inflicting the major punishment of dismissal from service. Straight-away the management dismissed him from service which according to the workman, is neither legal nor justified.

The workman has also challenged his suspension from service on the ground that during the period of suspension no subsistence allowance was paid to him. With the pleadings as aforesaid, the workman has prayed to answer the reference in his favour.

3. The plea advanced in the written statement of the management in connection with the action taken against the workman is that the dismissal of the workman is as a result of disciplinary action initiated against him which was found proved in a duly constituted enquiry. Most of the charges levelled against him being on misappropriation of funds of the College, he was afforded with all reasonable opportunities in his defence to meet the charges but he failed to avail such opportunities for which as a disciplinary measure the punishment of dismissal was imposed on him. It is stated in the written statement that there having no infringement of the principles of natural justice in course of the disciplinary proceeding against the workman, the action of the management may be declared as legal and justified. Further the management has indicated in its written statement at Para. 7 that pursuant to the orders of this Court as well as of the Hon'ble High Court the workman having received his subsistence allowance and back wages, he is also not entitled to get such relief in the present reference.

It is also averred in the written statement that for the misconduct for which the workman was charge sheeted 4 criminal proceedings (GR Cases) were initiated against him in which he was found guilty of the offences and punishments have been awarded. It is stated that this is yet another background for which no leniency should be extended to the workman.

4. A rejoinder to the written statement has been filed by the workman wherein he has stated, *inter alia*, that as against the verdict of the GR Cases he has filed appeals which are subjudice before the Sessions Judge, Mayurbhanj and for that this Court is estopped to proceed on that issue which is not at all the subject matter of the present reference. Reiterating the pleas advanced in the claim statement, the workman has prayed for his reinstatement in service with full back wages and consequential benefits.

5. In terms of the reference, the following two issues have been framed :—

ISSUES

- (i) "Whether the termination of service of Shri Jagabandhu Mishra with effect from the 7th May 1989 by the management of Mayurbhanj Homeopathic Medical College and Hospital, Baripada is legal and justified ?
- (ii) If not, what relief he is entitled to ?"

6. To substantiate their respective stand, both parties have adduced oral as well as documentary evidence. The workman examined himself as W.W. No.1 and brought on record documents which

have been marked Exts. 1 to 20. Similarly, the management in its turn has examined as many as five witnesses as M.W. Nos. 1 to 5 and relied on documents which have been marked Exts. A to Ext. GG.

FINDINGS

7. *Issue No. (i)*—This is a case of dismissal from service of the workman preceded by a Departmental Enquiry. The management instead of taking a plea in its written statement or asking this Court to proceed preliminarily on the question of fairness of the domestic enquiry has choosed to adduce all its evidence, both oral and documentary, before this Court on merit and therefore the proceeding is going to be adjudicated/disposed of on the basis of materials available on record.

8. Since it is the admitted position that upon an enquiry conducted into the charges the management imposed the punishment of dismissal on the workman. It is necessary to delve into such enquiry to findout whether the Enquiry Officer while conducting the enquiry into the charges adhered to the principles of natural justice, inasmuch as, all reasonable opportunities were afforded to the workman in placing his defence during such enquiry and further the Disciplinary Authority without being biased with the findings of the Enquiry Officer had formed his independent opinion to oust the workman from employment observing the principle “Audi Alteram Partem”.

9. Before entering into a discussion with regard to the merit of the claim, I feel it proper to deal with the argument advanced on behalf of the workman. It is argued that in view of the workman’s acquittal from Criminal charges vide Judgments marked Exts. 17 to 20, the reference should be answered in favour of the workman. Law is well settled that Departmental Proceeding stands in a different footing than the Criminal charge framed against an employee. Even if an employee is set free from the Criminal charge, it can not be presumed that he would not be held guilty in the Departmental Proceeding which arises due to misconduct of an employee. Therefore, the conclusion arrived at in the Criminal Proceedings is not at all required to be taken into consideration while adjudicating the present reference in which the punishment of dismissal has been inflicted on the workman for his committing misconducts. In this connection, the decision of our own Hon’ble High Court reported in 2004 LLR 676 (Prasanta Kumar Panda Vrs. Central Electricity Supply Company of Odisha) may be taken note of.

10. Now, coming to the merit of the claim, it is seen that the workman has been charge sheeted on 51 counts and most of the charges (i.e. Charge Nos. 1 to 47) related to misappropriation of funds of the management. In this regard the workman challenges the action of the management in framing the charges so also asking his show cause on the said charges by the Enquiry Officer. The submission, as laid, is found sustainable, inasmuch as, a perusal of the record reveals that the disciplinary authority, who had made up his mind to charge sheet the workman, has never served a copy of the charge sheet on the workman. Rather, Ext. 9 which is the charge sheet indicates that it has been sent to the workman by the Enquiry Officer and he was asked therein to submit his show-cause.

The documents exhibited in the proceeding disclose that the Secretary of the first party College is the Appointing Authority in respect of the workman. But the disciplinary proceeding seems to have been initiated against the workman (by issuing charge sheet to the workman) by the Enquiry Officer, who is a legal Practitioner. The general law is that any person who has got the power to

appoint has also the power to take disciplinary action. In other words, the appointing authority has got the power to issue or frame the charge sheet. It therefore follows that the framing of the charge sheet, holding of enquiry, notice to show-cause are all steps to be taken by the disciplinary authority. The letter of dismissal marked Ext. 13 issued to the workman has been signed by the Principal/Secretary of the first party. On the face of such documentary evidence it is crystal clear that the Principal/Secretary was the competent authority to frame charge against the workman and call for from him show-cause to such charge and only after his dissatisfaction to such show-cause an enquiry could have been conducted by appointing an Enquiry Officer. The procedure, as above, having not been followed by the first party while initiating disciplinary action against the workman, it can conclusively be held that there has been violation of the principles of natural justice by the first party, inasmuch as, the bias attitude of the management is clearly visible to the extent that by appointing an Enquiry Officer it handed over all connected papers to act both as the disciplinary authority and Enquiry Officer and subsequently on the recommendation of the Enquiry Officer inflicted on him the punishment of dismissal.

11. The circumstances as narrated above therefore lead me to draw a conclusion that there has been complete violation of the principle of natural justice by the first party while taking up disciplinary action against the workman and accordingly I am not inclined to record a finding that its action in dismissing the workman with effect from the 7th May 1989 is either legal or justified.

Issue No. (i) is answered accordingly

12. *Issue No. (ii)*—In view of the discussions made above, the workman is held entitled to reinstatement in service. He is however, not held entitled to any back wages in absence of any evidence to the effect that during the period of his unemployment he was not gainfully employed elsewhere. On reinstating the workman the management is at liberty to initiate a fresh Departmental Proceeding against him strictly adhering to the principles of natural justice.

The reference is disposed of accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
4-3-2013
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
4-3-2013
Presiding Officer
Labour Court
Bhubaneswar

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