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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 7th June 2013

No. 5369—li/1(BH)-8/1999 (Pt)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th May 2013 in Industrial Dispute Case No. 49 of 1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Kumar Ceramics Pvt. Ltd., Balasore and its Workman Shri Ratnakar Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 49 OF 1999

Dated the 10th May 2013

Present :

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

Between :

The Employer of .. First Party—Management
M/s Kumar Ceramics Pvt. Ltd.,
Ganeswarpur, Balasore.

And

Shri Ratnakar Das, .. Second Party—Workman
At/P.O. Januganj,
Balasore.

Appearances :

For the First Party—Management .. Shri Mukul Kumar, Manager
For the Second Party—Workman .. Shri G. K. Mohapatra, 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. 6539—li/1(BH)-8/1999-LE., dated the 17th May 1999.

“Whether the action of the management of M/s Kumar Ceramics Pvt. Ltd., Ganeswarpur, Industrial Estate, Balasore in discharging Shri Ratnakar Das, from service with effect from the 2nd February 1999 is legal and/or justified ? If not, what relief he is entitled to ?”

2. The averments made in the claim statement of the second party workman may be stated as under :

The workman being a Trade Union member was espousing the cause of the workers before the management and in order to curb his Union activities the management with a *mala fide* intention chargesheeted him and subsequently got the said charge enquired through an Advocate, who in a partial manner supported the management and did not afford him reasonable opportunity to defend the charges. Ultimately, it is pleaded, the management basing on such enquiry report passed an order discharging him from service with effect from the 2nd February 1999 and while doing so the Disciplinary Authority also violated the principles of natural justice, inasmuch as, before inflicting the punishment a chance of personal hearing was not afforded to him. According to the workman, the action of the management is neither legal nor justified and as such he is entitled to reinstatement in service with full back wages.

3. The management contesting the claim advanced by the workman has filed its written statement stating therein that the second party was employed under it with effect from the 4th July 1986 and while in employment in-between 8-3-1987 and 16-11-1995 he was proceeded against for committing various misconducts and in all such occasions he having admitted his guilt was let-off after furnishing undertakings to the effect that he would not report such conduct in future. It is stated that even in one occasion he was suspended for three days without wages as a measure of punishment.

Stating about the incident that led the management to frame charge against the workman, it is pleaded that on 17-4-1998 the second party while on duty abused the supervisor and co-worker Shri Gajendra Sethi in filthy and obscene languages and when Shri Gouranga Maharana, another co-worker of the second party, objected to such behaviour of the second party, the second party also abused Shri Maharana. On the written complaint of Shri Sethi and Maharana the management asked a show cause from the second party and on receipt of the reply, which was found unsatisfactory, a charge sheet was issued to the second party asking him to show cause to such chargers. It is pleaded that though the second party offered a written reply to such charge, yet the same being found not satisfactory an enquiry was ordered to be conducted into such misconducts of the second party and accordingly an Advocate of the Local Bar was appointed to enquire into the

charges levelled against the second party. The management has pleaded that the workman was afforded with all reasonable opportunities in his defence during conduct of the domestic enquiry and on conclusion thereof the Enquiry Officer submitted his report holding the workman guilty of the charges. Thereafter, it is pleaded, the management taking into consideration the past antecedents of the workman together with the findings arrived at in the enquiry, imposed on him the punishment of discharge from service and before arriving at such conclusion, the workman was supplied with a copy of the enquiry report and further he was afforded with a chance of personal hearing. According to the management there having no infraction of the principles of natural justice either at the stage of the enquiry or at the hands of the Disciplinary Authority, the action taken against the workman is just and proper.

It is in the written statement of the management that in the event the domestic enquiry conducted against the workman is found to be unfair and improper, it should be given a chance to prove the misconducts of the workman by adducing evidence before this Court.

4. Basing on the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether the domestic enquiry conducted by the management against the workman was fair and proper ?
- (ii) Whether the action of the management of M/s Kumar Ceramics Pvt. Ltd., Ganeswarpur, Industrial Estate, Balasore in discharging Shri Ratnakar Das, from service with effect from the 2nd February 1999 is legal and/or justified ?
- (ii) If not, to what relief he is entitled to ?”

5. Out of the aforesaid issues, the issue relating to fairness and propriety of the domestic enquiry having been taken up for hearing as a preliminary issue, the parties had adduced oral as well as documentary evidence in support of their respective stand and on conclusion of hearing on the preliminary issue, this Court vide Order No. 69, dated 20-4-2012 have held as under :

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xxx

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In this case, in view of the evidence led by both the parties and report of Enquiry Officer submitted is proper and there is no breach of principles of natural justice took place during the course of enquiry. Except giving a bare suggestion to the management witnesses that the enquiry was not conducted fairly and properly, but there is no material on record to suggest that the domestic enquiry conducted by the management against the workman was not fair and proper. In this view of the matter, I am of the opinion that the domestic enquiry conducted by the management against the workman was fair and proper.

6. *Issue No. (ii)*—Consequent upon the finding that the domestic enquiry conducted against the workman was fair and proper, both the parties again adduced evidence on the question of the legality and justifiability of the order of punishment and now this Court is required to answer issue Nos. 2 and 3 basing on such evidence, both oral and documentary.

M.W. No.2, who has been examined on behalf of the management on the aforesaid issues has deposed to the effect that upon conclusion of the domestic enquiry the workman was afforded a chance of personal hearing and thereafter considering the past antecedents of the workman he was imposed with the punishment of discharge from service. He deposed that for his indisciplined attitude though the workman was called for explanations on several occasions and he admitting his guilt had also undertaken not to commit misconduct in future, yet he did not amend himself and again committed a gross misconduct for which ultimately the management decided to discharge him from service with effect from the 2nd February 1999. He further deposed that in the event the workman gets an reinstatement order it would ultimately result in encouraging hooliganism and vandalism disturbing the peace and harmony of the Industry. He has referred to Ext UU..UU/1, UU/2, UU/3 and UU/4, the xerox copies of letters wherein the workman has admitted his guilt and prayed the management to excuse him for such misconduct with undertakings not to commit such misconduct in future. The exhibited documents, referred to above, are suggestive of the facts that the workman is in the habit of committing various misconducts affecting the discipline of the industry.

The evidence of M.W. No.2 is not at all controverted by the workman in any manner though he has been cross-examined at length. The workman also adduced further evidence with regard to issue No.2 but no extenuating circumstance is gathered therefrom to support his stand that the punishment is shockingly disproportionate to the gravity of charges.

7. The present charges reflect that on 17-4-1998 the workman abused two of his co-workers in obscene and insulting languages and so also passed insulting remarks against the supervisor of the factory, which is nothing but a gross indisciplined attitude of the workman so also exhibiting an act of insubordination against his superior. The charges as above having been established against the workman in a duly constituted enquiry, this Court is not inclined to give a finding that the punishment imposed on the workman is in any way disproportionate to the charges levelled against him. In this connection the observations of the Hon'ble Supreme Court made in *L.K. Verma Vrs. H.M.T. Ltd.* and another, reported in 2006 (108) FLR 1101 may be referred to wherein their Lordships have held that verbal abuse is sufficient for inflicting a punishment of dismissal on an employee.

Here, in the present case, the management seems to have tolerated the conduct of the workman on many occasions. But ultimately when it was found that despite of furnishing undertaking by the workman, he again repeated the misconducts as mentioned above, the management imposed on him the punishment of discharge from service. The punishment of discharge, in the circumstances therefore is not at all found to be disproportionate to the charges levelled against the workman.

8. In the result, the action of the management in discharging the workman from service with effect from the 2nd February 1999 is found to be legal as well as justified one.

9. *Issue No. (iii)*—In view of the findings arrived at on Issue No.2, the workman is not entitled to any relief in the present proceeding.

10. Before parting with this Award, this Court observes that since the workman has been discharged from service, the management should clear all his legal dues including E.P.F., Gratuity and his duty pay if any, within a reasonable period, preferably within a period of thirty days of the date of publication of the Award in the official Gazette.

Dictated and corrected by me.

S. A. K.Z. AHAMED
10-5-2013
Presiding Officer
Labour Court, Bhubaneswar

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10-5-2013
Presiding Officer
Labour Court, Bhubaneswar

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