

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1307 CUTTACK, SATURDAY, JULY 6, 2013/ASADHA 15, 1935

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th June 2013

No. 5874—IR (ID)-118/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th May 2013 in Industrial Dispute Case No. 01 of 2012 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Community Welfare Society, AM-50, Basanti Colony, Rourkela and their workman Smt. Draupati Paswan was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 01 OF 2012
The 8th May 2013

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of
Community Welfare
Society represented
through the Secretary,
AM-50, Basanti Colony,
Rourkela.

. . First Party—Management

And

Their workman
Smt. Draupati Paswan,
Gopabandhupali,
Near Amarnath Temple,
Ward No..3 Rourkela-13.

. . Second Party—Workman

Appearances :

For the First Party—Management	..	Shri John Alapatt, Secretary.
<hr/>		
For the Second Party—Workman	..	Herself.

AWARD

This award arises out of a reference made by the Government of Odisha, Labour & Employment Department under the power 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 (14 of 1947) (for short the “Act”) vide Order under Memo. No. 105 (5), dated the 5th January 2012. The dispute involved under the Schedule of reference is as follows :

“Whether the termination of service of Smt. Draupati Paswan, part-time Ayah with effect from the 1st July 2007 by the management of Community Welfare Society, Rourkela without complying Section 25 (F) of the I.D. Act is legal and/or justified ? If not, what relief she is entitled to ?”.

2. The case of the second party workman as revealed from her statement of claim is that she was employed by the first party (management) on monthly payment basis on continuous basis since 1-1-1999. During the month of May 2007, she fell ill and was admitted to the Community Welfare Society Hospital located at Jagda, Rourkela. During her illness she was forced to sign one resignation letter and thereafter on 1-7-2007 she was not allowed to join in her duties which according to her, amounts to retrenchment. The workman has further pleaded that she was not paid any retrenchment compensation and her termination of service is totally illegal and void. She lodged a complaint against the illegal termination before the Labour Machinery at Rourkela and though the matter was admitted for conciliation, no settlement could be arrived due to adamant attitude of the first party. It is specifically mentioned in the statement of claim that the first party has retained service of some junior workmen violating the Section 25-G of the I.D. Act, 1947. It is further case of the workman that since the date of retrenchment from service, she is unemployed and leading a miserable life. She asserted that the management is a vast and profitable industry. With such averments the second party claims for her reinstatement in service and payment of back wages.

3. The management filed written statement denying the claims of the second party. As per the written statement, the Community Welfare Society, in short CWS, was founded in the year 1976 by a group of philanthropically minded people with aim to help the poor and down trodden people of the slum areas. The CWS first took the responsibility of digging wells to meet the need of pure drinking water in the slum at Gopabandhupalli. Then the CWS started a Day Care Centre for children in the age group of two to five in the said village which is otherwise know as “CRECHE” where the children were given food and clothes. In order to take care and look after the children, one maid servant was engaged. In the year 1992 the CWS started income generating programme by preparing binding note books and selling the same to Schools at nominal price. In the process, the CWS could built two more CRECHE. According to the first party, the CWS is not an ‘Industry’ and it is only a charitable and philanthropic organisation registered under the Societies Registration Act with an

objective to undertake the noble cause for the benefit and welfare of poor and slum dwellers. As regards the status of the second party, it is narrated in the written statement that she was engaged as a part-time “Ayah” for the CRECHE by the CWS at Gopabandhupalli to take care of the kids of poor parents who go out for work to earn their livelihood. The second party worked for 8 years since 1-1-1999. She fell critically ill and was treated twice as indoor patient during the month of May, June and July, 2007. In the CWS Hospital at Jagda, Rourkela, free of cost though the total bill for her treatment was more than Rs. 14,000 on two counts. After discharge from the Hospital the second party showed her unwillingness to work due to her ill health. On 1-7-2007 the second party, of her own volition submitted a retirement letter. The first party denies the allegation about taking forcible signature of the second party on the resignation letter during her illness. It is, further narrated in the written statement that the second party voluntarily left service and was paid a sum of Rs. 10,000 as full and final compensation on 8-8-2007 which was also acknowledged by her without prejudice and with such averments the management claims that the second party is not entitled to reinstatement nor back wages.

4. The second party workman filed a rejoinder to the written statement wherein she submitted that the management is trying to mislead the Court and divert its attention under a claim of philanthropic association meant for poor and down trodden people. It wants to skip up from its responsibility towards the workman. The workman further claims that she rendered service under the first party with much sincerity and never submitted any letter for voluntary retirement. She reiterated her claim for reinstatement and back wages.

5. On the basis of the pleadings of the parties, the following issues were framed for adjudication :—

ISSUES

- (i) “Whether the termination of service of Smt. Draupati Paswan, part-time Ayah with effect from the 1st July 2007 by the management of Community Welfare Society, Rourkela without complying Section 25 (F) of the I.D. Act is legal and/or justified ?
- (ii) If not, to what relief she is entitled ?”

6. The workman examined herself as sole witness and the Secretary of the Community Welfare Society, Rourkela was examined as sole witness for the first party. The second party has not filed any document in support of her claim but the management relied upon 3 documents which are marked Exts. A B and C. The exhibits A and B are the Brochures containing the activities of the CWS and the Ext.C is the copy of the alleged resignation letter of the workman.

FINDINGS

7. *Issue No. (i)*—The workman categorically deposed that she being employed by the first party in its establishment worked since 1-1-1999 continuously and during the month of May 2007 when she fell ill and admitted into the Community Welfare Society Hospital located at Jagda, Rourkela, she was forced to sign on the resignation letter prepared by the first party and latter from

1-7-2007 she was not allowed to join her normal duty. The management witness stated in his affidavit evidence that the second party was appointed as Ayah in the CRECHE managed by the first party as a permanent employee in the year 1999. He further admitted that prior to the said year the second party worked as a temporary employee for 9 months. It is further admitted by the management witness that the second party was ill and admitted in Hospital during the year 2007. He has also clearly stated that the second party was admitted in the CWS hospital on 3rd May 2007 and was discharged on 23rd May 2007. She again fell ill and was admitted in said hospital from 13th June 2007 to 18th July 2007. This witness, for the first time deposed that there was no much improvement in the health of the second party and she and her attendant decided to go for jaributi (Ayurvedic) treatment. According to him, in the meanwhile, the second party tendered her resignation on 1-7-2007 and applied for P.F. in order to go for such jaributi treatment. During the course of recording evidence of the M.W.1., a copy of the alleged resignation letter of the second party has been marked as Ext.C. It is, therefore, crystal clear that the second party was appointed as a permanent employee under the first party from 1-1-1999. She continued to work under the first party till the month of July 2007 when she became seriously ill and was admitted into the Hospital managed by the first party. Since the workman continuously served under the management for more than one year, she must be said to be in continuous service as per Section 25-B of the I.D. Act, 1947. In such circumstances, her service cannot be terminated without giving her one month notice in writing and without payment of retrenchment compensation as required under Section 25-F of the I.D. Act.

8. Now the question is whether the workman voluntarily tendered resignation from service. The workman has clearly deposed that in the month of May 2007 while, she was undergoing treatment in the CWS Hospital at Jagda, Rourkela she was forced to sign on a resignation letter prepared by the first party and later on she was not allowed to join her normal duty. The management witness has fairly admitted that the workman was under treatment in CWS Hospital in the month of May 2007 so also in the month of June and July 2007. The evidence of the workman that her signature was forcibly obtained during her treatment in the Hospital has not been shaken in cross-examination. When the management witness has admitted that from 13th June 2007 to 18th July 2007 the second party was under treatment in the CWS Hospital (managed by the first party), there is absolutely no reason as to why the second party would tender resignation during her treatment as an indoor patient in the Hospital. The copy of alleged resignation letter relied upon by the management marked as Ext.C is not proved to be in the handwriting of the second party. The Ext.C is a xerox copy and the management witness while being cross-examined stated that the original of the Ext. C may be available in the office. However the management did not file the original letter in Court. When the resignation letter is the basis of claim of the first party and the said letter in original is not filed in Court, the contents of the xerox copy marked Ext. C cannot be taken as substance evidence. Besides the management witness who represents the first party has specifically admitted that he has not received the resignation letter from the second party personally. He deposed that the said letter was sent by some lady attendant of the second party but he is unable to say her name. There is absolutely no independent evidence to arrive at a conclusion that the second party voluntarily tendered resignation during the period of her treatment in the Hospital. The plea of the workman that her signature was obtained by force cannot be disbelieved particularly when she herself has not written the resignation letter nor tendered the same before the first party personally. On a

careful scrutiny of the evidence available on record and discussions made above I am constrained to hold that the management has failed to establish that the second party tendered her resignation from service voluntarily.

9. The management witness during cross-examination, has made a voluntary statement that there was no termination of service of the second party and she voluntarily resigned from service which was approved by him. Since I have already held that the management has failed to establish voluntarily resignation by the second party, the inevitable conclusion must be that there was no termination of services of the second party in true sense of the term. On admission of the management, the second party is not being assigned any work from 1-7-2007. Since the workman was a regular and continuous employee under the first party and she was refused to work with effect from the 1st July 2007 without observing the procedure under Section 25-F of the I.D. Act, she is entitled to reinstatement in service.

10. The management takes a plea that its establishment is not an Industry and therefore, the reference is not maintainable. The Section 2(j) of the I.D. Act defines “industry as any systematic activity carried on by co-operation between an employer and his workman.....(for production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature, whether or not,—

- (i) any capital has been invested for the purpose of carrying on such activity or
- (ii) such activity is carried on with a motive to make any gain or profit.....”

The said section has excluded certain institutions under category of industry. The establishment of the first party is a Community Welfare Society and admittedly its object is to render service to the people. There may not be any profit motive of the first party but the services rendered by the first party is in the nature of satisfying human wants and the establishment can not run without co-operation of the workman which are paid employees. In such view of the matter, I have no hesitation to hold that the establishment of the first party comes under the definition of the industry and as such the second party is a workman. The reference is therefore held maintainable. The termination of service/refusal to work of the second party by the first party with effect from the 1st July 2007 under the facts and circumstances is held to be illegal and unjustified for non-compliances of Section 25-F of the I.D. Act. The issue is accordingly answered in favour of the workman.

11. *Issue No. (ii)*—Since it is held that the second party was illegally terminated from service with effect from the 1st July 2007, she is entitled to reinstatement in service. The management submitted during the course of argument that the second party is unable to perform her duties in the manner in which she was rendering service earlier and therefore, she should not be reinstated in service. It is true that the second party was ill for certain period in the year 2007 but there is no evidence that by now she is having any infirmity either physically or umentally to render service under the first party. According to the management, the second party was serving as Ayah and was taking care of the minor children within the age group of 2 to 5 in the CRECHE maintained by the first party. Such work does not require much physical strength. The management witness deposed that the second party is working in hotel. A lady who is able to work in a hotel can very well take care of minor children which is comparatively a less hard task. On a scrutiny of the evidence available on record I am of the view that the second party is not under any infirmity to render service under the first party and do the works as was assigned to her earlier.

12. So far as the claim of the back wages is concerned, I find the workman during course of her evidence has admitted that in the year 2007, she suffered from jaundice for a long period and her entire treatment in hospital was free. Besides, she admitted that she received a sum of Rs. 10,000 from the management in the year 2007. She has not deposed as to why she received such amount from the management when her medical treatment was free and the cost of the treatment was borne by the management. The workman has also admitted that from July 2007 to February 2011 she did not approach any labour forum and waited with a hope to be re-engaged by the first party. She managed to sit idle for 4 years without any written correspondence with the management and without raising any dispute before the appropriate authorities and therefore, she can not claim full back wages for the whole period. There is no independent evidence that after recovery from illness, the workman took any step to be re-engaged in the establishment of the first party or that she had any intension to work in establishment of the first party. The management witness deposed that after recovering from sickness the second party worked for some time as house hold servant in the house of a Manager of Petrol Depot at Gopabandhupalli and presently she is working in central park hotel and getting Rs. 3,500 P.M. so also food. He has also deposed that the second party earns some amount by letting out rooms on rent. Such evidence has not been disturbed during cross-examination. Considering the evidence of the management regarding elsewhere engagement of the second party and her receipt of Rs. 10,000 in the year 2007 from the management I am constrained to hold that the second party is not entitled to back wages particularly, when she did not express her desire to work under the first party for a long period i.e. from 2007 to 2011, and did not insist for engagement under the first party for such a long period. The issue is accordingly answered partly in favour of the second party.

13. In view of the determination of the issues in the manner aforesaid the reference needs be disposed of in favour of the second party. Hence the following award :—

AWARD

The reference is answered on contest against the first party without cost. The termination of service of Smt. Draupati Paswan, part-time Ayah with effect from the 1st July 2007 by the management of Community Welfare Society, Rourkela without complying Section 25 (F) of the I.D. Act is held to be illegal and unjustified. The first party is directed to reinstate the second party in service within a period of one month of publication of the Award in the Official Gazette.

Dictated and corrected by me.

SRIKANTA MISHRA
8-5-2013
Presiding Officer
Labour Court, Sambalpur

SRIKANTA MISHRA
8-5-2013
Presiding Officer
Labour Court, Sambalpur

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