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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 10th January 2013

No. 328—IR-(ID)-96/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th December 2012 in I. D. Case No. 57 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Dreamteam Sahara, Nayapalli, Bhubaneswar and their Workman Shri Ganesh Chandra Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 57 OF 2011

Dated the 29th December 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Chief Executive Officer,
M/s Dreamteam Sahara,
2nd and 3rd Floor, N-5/538, IRC Village,
(SBI Building), Nayapalli, Bhubaneswar. .. First Party—Management

And

Shri Ganesh Chandra Sahoo,
At Qrs. No. VR-5/1,
Kharavel Nagar, Unit-3,
Bhubaneswar-1. .. Second Party—Workman

Appearances :

Miss Suchitra Pattanaik .. For the First Party—Management
(Manager HR)

Shri S. Behera, .. For the Second Party—Workman
Authorised Representative.

AWARD

The Government of Odisha in their Labour & E.S.I. Department, exercising power conferred upon them by Section 12 (5), read with Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) have referred the following dispute to this Tribunal for adjudication vide their Order No. 11376—IR-ID-96/2011-LE., dated the 16th December 2011.

“Whether the action of the management of M/s Dreamteam Sahara, N-5/538 (SBI Building), Nayapalli, Bhubaneswar in terminating the services of Shri Ganesh Chandra Sahoo, ex Driver (Heavy Motor Vehicle) with effect from the 8th April 2011 without following principles of natural justice or complying the provisions as required under Section 25 (G) of the Industrial Dispute Acts, 1947, is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The case of the second party/workman as stated in his claim statement is that on 26-11-2010 he joined in the establishment of the first party/management as a Driver and worked as such till 7-4-2011. His service was terminated with effect from the 8th April 2011 without conducting any enquiry. Even the provisions contained in Section 25-G of the Act were not complied with. He has further stated that during his employment he had participated in a strike on 10-2-2011. For that he was subjected to victimisation. From the next date he was not allowed to join in his duties. He raised a dispute before the District Labour Officer, Khurda on 21-2-2012. Next day, the management issued him a letter asking him to join his duty within seven days. When he reported for duty on 26-2-2011 he was misbehaved and was not allowed to join. The workman lodged a written complaint to the C.E.O. of the first party but without considering his representation the management terminated his service vide Letter No. 290/11, dated the 19th April 2011.

3. The case of the first party as stated in the written statement is that the second party was appointed to work as a Driver with effect from the 26th December 2010 and was under training for 24 months. During the training period his performance was found unsatisfactory. For his negligence there was a vehicular accident on 28-12-2010 causing damage to the first party's vehicle. From 10-2-2011 the workman remained absent from duty without intimation. So, he was called upon to explain vide letter, dated the 22nd February 2011 but the letter was returned undelivered. Thereafter, the management sent several letters to the workman who refused to receive the same. He did not resume his duty and thus voluntarily abandoned his job.

Regarding violation of Section 25-G of the Act, the management takes the plea that the workman has not intimated the names of the Drivers who are still continuing in service. Regarding the alleged

illegal retrenchment the management contends that natural justice was extended to the second party before employment was refused to him. It is also stated that the performance of the workman during the probation/training period was not satisfactory and he used to remain absent unauthorisedly. So, the management has lost confidence in him.

4. In terms of the pleadings the following issues have been settled :—

ISSUES

- (i) “Whether the action of the management of M/s Dreamteam Sahara, N-5/ 538 (SBI Building), Nayapalli, Bhubaneswar in terminating the services of Shri Ganesh Chandra Sahoo, ex Driver (Heavy Motor Vehicle) with effect from the 8th April 2011 without following principles of natural justice or complying the provisions as required under Section 25-G of the Industrial Disputes Act, 1947 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?
- (iii) Whether the second party workman has voluntarily abandoned the service ?”

5. The workman has examined himself as W.W. No. 1 and one of his co-workers as W.W. No. 2. On the other hand, the management has examined its Manager (HR) as M.W. No. 1. On behalf of the workman Exts. 1 to 11 have been marked and on behalf of the first party Exts. A to F/1 have been marked.

FINDINGS

6. *Issue No. (iii)*—The management’s stand as to how the workman’s employment came to an end is not consistent. It is claimed that the workman voluntarily abandoned his service but it is not clarified as to with effect from which date he abandoned his service. In the schedule of reference the date of termination of service of the workman is stated to be 8-4-2011 but in the written statement it is stated that with effect from the 10th February 2011 the workman remained absent from duty without any intimation. There is no further indication also if the workman resumed duties thereafter. However, there is no specific denial by the management that vide Letter No. 290/2011, Dt. 19-4-2011 the workman’s services were terminated. Ext. 12 is the copy of Letter No. 290/2011. Though this is the letter in which the management has communicated to the workman that his services have been terminated with immediate effect, the date of its effectiveness is not specified therein. M.W. No. 1 has stated that when the workman remained absent from 10-2-2011 the management on 22-2-2011 issued a letter to the workman calling upon him to explain why he was absent which was returned undelivered but, it is stated by the M.W. No. 1, the workman in response to the letter, had reported for duty. He has further stated that on 2-3-2011 and 5-3-2011 it was reported that the workman was remaining absent frequently. Under such circumstances, it is to be held that the services of the second party were finally terminated vide Letter No. 290/2011,

Dt. 19-4-2011 and it was given effect to soon after 19-4-2011. Therefore, the management's plea that with effect from the 10th February 2011 the workman remained absent without any intimation and he did not resume duties thereafter despite of several letters issued to him does not bear any significance. Ext. 12 is the letter of termination of service. It reflects that the workman's services were terminated on the ground that on account of the workman's unsatisfactory performance and indisciplined conduct a show cause notice was issued to him but he failed to file any explanation. The letter further reflects that the management had lost confidence in the workman and his further continuance was considered to be detrimental to the interest of the company as well as the general public. Thus, it transpires that on the ground of misconduct the workman was discontinued from employment.

In the result, it is held that it is not a case of abandonment of service. The issue is answered in the negative.

7. *Issue No. (i)*— It is not claimed that a domestic enquiry was conducted and in that enquiry the workman was found to have been guilty of committing any misconduct. The termination of service of the second party on the ground of indisciplined conduct and unsatisfactory performance is punitive in nature. Such termination of service without any domestic enquiry, even if the termination took place during the training period, is illegal.

Ext. 1 is the order of appointment containing the terms and conditions of employment. One of the terms is that there should be a training period of 24 months which can be extended at the discretion of the management. Another term is to the effect that after the expiry of the training period if the workman would be found suitable for the post he would be confirmed in the post and in case he would not be found suitable for the post the appointment might get terminated at the discretion of the company. These terms clearly indicate that the workman stood in the footing of a probationer. As per the terms of employment the workman, after expiry of the training period if found unsuitable for the post, would be liable to be terminated which implies that it is only after the training period his service was liable to be terminated. But, in the present case the management has terminated his services before expiry of the period of training/probation. This is in contravention of the terms and conditions of employment. That apart, the workman has been removed from employment on the ground of different misconducts. So, his termination from service is with a stigma. In that case the management should have conducted a domestic enquiry to enquire into the charges of misconduct. The Tribunal's finding that the retrenchment of the workman has been effected as a punitive measure is evident from Ext. 9, the letter, dated the 28th May 2011 which the management had addressed to the Asst. Labour Officer, Bhubaneswar. It is stated in Ext. 9 that from the date of his joining there were reports against the workman that he was guilty of indisciplined conduct and habitual absence from duty without intimation to the management and that due to the workman's negligence in duty in March 2011 and April 2011 the management sustained financial loss to the extent of Rs. 1,500 and Rs. 250, respectively.

Thus, it is a clear case of discharge from service of the workman with a stigma which, in the absence of a domestic enquiry, is illegal. In *Arindam Chattarjee Vrs. Coal India Ltd. & others*, 1996

Lab. I. C. 416 (Calcutta High Court), it is observed that if during the period of probation a workman's performance is not satisfactory the employer can either terminate his service in terms of the offer of appointment on the expiry of the probationary period or extend the period of probation. But, in the present case the workman was removed from employment before expiry of the training period as contemplated in the order of appointment. In LIC of India Vrs. Raghavendra Seshagiri Rao Kulkarni, 1998, Lab. I. C. 411 (SC) it is observed that if the termination of a probationer is punitive in nature and is brought about on the ground of misconduct, an opportunity of hearing has to be given to the person whose services, even during probation or extended period, are sought to be terminated.

8. That apart, the management does not claim that while denying employment to the workman it had followed the provisions contained in Section 25-G of the Act. It is true that the workman has not pleaded as to who are the Drivers junior to him those have not yet been removed from employment. But, in view of the terms of the reference the management ought to have pleaded and proved that the provisions contained in Section 25-G of the Act have not been violated. It is admitted by M.W.No. 1 that after the removal of the second party from service the management has engaged new Drivers. In the facts and circumstances, it is held that the termination of service of the workman is in contravention of Section 25-G of the Act.

The issue is answered in favour of the workman.

9. *Issue No. (iii)*—The first party is a Private Company which is operating City Bus Service under the Scheme 'Jawaharlal Nehru National Urban Renewal Mission (Jnnurm)'. It is not denied that about 150 buses are in operation under the first party company. The workman got appointment after having appeared in a test/interview (as reflected in Ext.1). His removal from service is found to be punitive in nature and also in contravention of Section 25-G of the Act. Under such circumstances, he is entitled to be reinstated in service. However, considering that the second party, who is aged about 38, is a Driver and the field of employment in the case of a Driver is very wide, he is held entitled to 50% of back wages.

The reference is answered accordingly. The management to implement the Award within a period of two months of the date of its publication in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH
29-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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29-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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