

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 159 CUTTACK, TUESDAY, JANUARY 22, 2013 / MAGHA 2, 1934

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 10th January 2013

No. 348—li-I(SS)-30/2008-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th October 2012 in I. D. Case No. 2 of 2009 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Valley Club, Joda, Dist. Keonjhar and its Workman Shri Naresh Chandra Sitary 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. 2 OF 2009

Dated the 12th October 2012

Present :

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

Between :

The Management of
M/s Valley Club, Joda,
Dist. Keonjhar.

.. First Party—Management

And

Their Workman,
Shri Naresh Chandra Sitary,
S/o Shri Banamali Sitary,
At/P.O. Chamakpur, Via Remuli,
Dist. Keonjhar.

.. Second Party—Workman

Appearances :

Shri K. C. Rath, Advocate	.. For the First Party—Management
Shri N. Kar, Advocate	.. For the Second Party—Workman

AWARD

This proceeding was initiated on the basis of a reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 made by the Government of Odisha, Labour & Employment Department vide Notification No. 917—li-1(SS)-30/2008-LE., dated the 30th January 2009 for adjudication. The schedule of reference is as follows :—

“Whether the termination of services of Shri Naresh Chandra Sitary, ex Marker by way of refusal of employment by the management of M/s Valley Club, Joda with effect from the 19th December 2007 is legal and/or justified ? If not, what relief Shri Sitary is entitled to ?”

2. The case of the second party (workman) as per the statement of claim is that he was appointed as a Marker in the Valley Club, Joda as per the advise of the General Manager (OMC), At/P.O. Noamundi, Dist. Singhbhum, Jharkhanda with effect from the 30th March 2001. He worked under the Secretary, Valley Club, Joda (first party) as a regular employee and received remuneration @ Rs. 3,000 per month from the first party. He actively participated in several activities of the Valley Club at Joda. He was allotted with a quarter and supplied with medical card of the hospital run by the TISCO, Joda and availed medical facilities as a regular employee. The second party alleges that on 19-12-2007 the first party told him over telephone that his service is no more and when he immediately went to his service place, the authorities present there did not allow him to work saying that his service has been terminated. According to the second party, his service was terminated without giving him any opportunity of hearing which is illegal and arbitrary. The second party has further alleged that he filed representation, Dt. 26-12-2007 before the first party for redressal of his grievance but no action was taken. It is also narrated in the statement of claim that the second party approached the Hon’ble High Court of Orissa in W.P. (C), No. 3385 of 2009 which was disposed of on 17-4-2008 directing him to approach the Industrial Tribunal. Then the second party filed a complaint petition before the Labour Officer, Keonjhar but since his employer did not attend, the Conciliation Officer submitted failure report and ultimately the Government made the reference as detailed above.

3. The first party filed written statement challenging the maintainability of the reference on the ground that the Valley Club, Joda is not an industry and that the second party is not a workman as per the provisions of the I. D. Act, 1947. According to the first party, the Valley Club situated at Joda in the district of Keonjhar is an unregistered and private club meant for recreation of the dignified persons and their family staying at Joda. The administrative body of Club is constituted by persons from among all the members of the Club which manage the day-to-day affairs of the Club. The Club also organises social functions like Holy, Diwali etc. The Club timing is from 7-00 P.M. to 10-00 P.M. which varies with change of seasons and 6 persons are engaged on part-time basis subject to affordability of their payment by the Club members. Such staff can be removed without notice if their attitude, behavior and performance is not found satisfactory by the Club members. It is the specific case of the first party that the performance of the second party was not satisfactory and

most of times he misbehaved the members of the Club and their family members. The administrative body of the Club cautioned him about such fact but he did not change his behaviour and therefore, the administrative body of the Club requested him not to come to the Club with such averments the first party prays for dismissal of the present case with cost.

4. The second party (workman) filed a rejoinder after receipt of the copy of the written statement. In the said rejoinder he reiterated the facts mentioned in his statement of claim.

5. On the basis of the pleadings of the parties, the following issues have been settled for adjudication :

ISSUES

- (i) "Whether the reference is maintainable ?
- (ii) Whether Valley Club, Joda is an Industry within the meaning of I. D. Act, 1947 ?
- (iii) Whether Shri Naresh Chandra Sitary is a workman within the meaning of I. D. Act, 1947 ?
- (iv) Whether the termination of services of Shri Naresh Chandra Sitary, ex Marker by way of refusal of employment by the management of M/s Valley Club, Joda with effect from the 19th December 2007 is legal and/or justified ?
- (v) If not, what relief Shri Sitary is entitled to ?"

6. The second party examined himself as the sole witness to prove his case and he also filed several documents which were marked as Ext. W-1 to Ext. M-16. The first party on the contrary, examined one Shri Bimal Kumar Tripathy, a Senior Manager of the Tata Steel Limited who claimed to be an ex Member of the Valley Club, Joda. The first party also relied upon several documents filed by him marked as Ext. M-1 to Ext. M-4.

FINDINGS

7. *Issue Nos. (ii) and (iii)*—This two issues are taken up together to avoid repetition. The second party Shri Naresh Chandra Sitary claims to be a workman under the first party which according to him is an industry. According to the first party the Valley Club at Joda is not an industry within the meaning of Section 2 (j) of the I. D. Act and that the second party is not a workman as per Section 2 (s) of the said Act. The second party has not stated anything regarding the nature and function of the Valley Club at Joda in his statement of claim. The first party, however, has specifically narrated in the written statement that the Valley Club situated at Joda is an unregistered and Private Club meant for recreation of the dignified persons and their family staying at Joda. It is further mentioned that the timing of the Club is only 3 hours i.e. from 7-00 P.M. to 10-00 P.M. which varies with change of season. There were 8 staffs verbally engaged by the Secretary on part-time basis. There is no dispute that the second party was one of the staff engaged by the first party. During course of his evidence, the second party proved one letter, Dt. 20-4-2001 allegedly issued by the Secretary, Valley Club, Joda. The said document has been marked as Ext. W-2. The first party dispute the genuineness of this document. The second party deposed that the then Secretary wrote this letter to the Deputy C.M.O., Joda West Hospital to extend medical facilities as per the rules of the Tata Iron and Steel Company Limited to him and his family members. In Ext. W-2 it is

mentioned that the second party was appointed as a Marker in the Valley Club as per the advise of G.M. (OMG), Noamundi with effect from the 30th March 2001. The second party also proved medical service books issued in favour of him and his daughter which were marked as Ext. W-3 and Ext. W-4. These documents were admittedly issued by TISCO, Mines Division. The second party has further proved one letter, Dt. 26-4-2001 issued to the first party by the TISCO Limited wherein a quarter bearing No. S/1RO-31 at Joda West Lower Camp was allotted in favour of the Secretary, Valley Club, Joda for the residential purpose of the second party.

8. During course of argument it was submitted by the learned advocate appearing on behalf of the workman second party that the Valley Club at Joda is an institution under the Tata Iron and Steel Company Limited and therefore the first party should be treated as an industry and since the second party worked under the Valley Club from 30-3-2001 to 19-12-2007, he should be treated as a workman within the meaning of the definition under the I. D. Act. 1947. On the contrary it is submitted by the learned advocates for the first party that the Clubs engaging less than 10 persons do not come under the definition of industry and therefore the second party is not a workman.

9. The question whether a Club falls within the definition of industry has been subject matter in several cases before the Hon'ble Apex Court. In the case Bangalore Water Supply and Sewerage Board Vrs. A. Rajapp reported in A. I. R. 1978, SC 548. a constitutional bench comprising of 7 Judges of the Hon'ble Court held that Clubs fall within the definition of "industry". However, in the said decision the Hon'ble Apex Court recommended triple test principle. According to the said test the concerned institution (in the present case the Valley Club, Joda) has to be (i) performing a systematic activity (ii) the activity is to be by co-operation of the employers and employee (iii) such activity should be for the satisfaction of material requirements of the people. The Hon'ble Court further, held that absence of profit motive or gainful objective is irrelevant whether the venture is public, joint, private or other sectors. In the present case the workman has not deposed about any systematic activity of the Valley Club, Joda. It reveals from his evidence that he worked as a Marker to help the Club members who were playing a game called pool. There is no evidence that such game was being played regularly in any systematic manner. Besides the activities of the Valley Club, Joda is not proved to be satisfying the material requirements of the general public in any manner. Therefore it is not proved by second party that the Valley Club at Joda was an industry satisfying the test prescribed by the Hon'ble Apex Court. The word industry as defined in Section 2 (j) of the I. D. Act meant any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, engaged or industrial occupation or avocation of workman. In accordance with the suggestion of the Hon'ble Apex Court in the aforesaid case, the Central Legislature passed an amendment act vide Central Act No. 46 of 1982 in which the definition of industry was given more clarification. As per the amended definition "industry" means any systematic activity carried on by co-operation between an employer and his workman (whether such workmen are employed by the employer directly or through any agency, including a Contractor) for the production, supply or distribution of goods or service 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 any capital has been invested for the purpose of carrying on such activity or such activity is carried on with a motive to make any gain or profit and includes any activity of the Dock Labour Board, any activity relating to promotion of sales or business carried on by the establishment but does not include.....(9) any activity, being an activity carried on by a co-operative society or a Club or any other like body of individuals, if the number of person employed..... in relation to such activity is less than 10. In the present case the workman during course of his evidence deposed

that he along with 7 others were working at Valley Club, Joda regularly. The management witness clearly deposed that the second party was one of the 8 employees working in the Valley Club, Joda. His such evidence was not challenged in cross-examination. Therefore, it is proved that the Valley Club at Joda at no point of time engaged more than 10 persons to assist its members. Under such circumstances, the said club can not be regarded as an industry. The learned advocate for the workman submitted that the amendment act has not yet come into force by Notification of the Government and therefore all clubs should be treated as industry as per the decision of the Hon'ble Apex Court. It is true that no material has been placed before this Court that a notification giving enforcement to the amendment Act was published. However, since the definition of industry has been amended as per the observation of the Hon'ble Apex Court, the new definition of industry can be taken into consideration for determining the present dispute. Besides, I have already observed that the triple test principle suggested by the Hon'ble Apex Court is not satisfied in the present case. In such view of the matter, I am constrained to hold that the Valley Club, Joda is not an industry within the meaning of the definition under Section 2 (j) of the I. D. Act.

10. Now coming to the question regarding status of the second party I find when the Valley Club, Joda is not regarded as an industry he cannot be said to be a workman within the meaning of Section 2 (s) of the I.D. Act. The second party claims to have been appointed by the Secretary, Valley Club, Joda. He has specifically admitted during cross-examination that he does not know about publication of any advertisement for filling of the post of Marker. He further admits that his name was not sponsored by the employment exchange for appointment in the said post. He was not issued with any interview call letter. During cross-examination he has specifically stated that one Shri Bimal Kumar Tripathy working under the Tata Iron and Steel Company was looking after the affairs of Valley Club, Joda and he called him for the purpose of interview for the said post. He further deposed that Shri Bimal Kumar Tripathy handed over the appointment letter to him and signed on the appointment order. The second party however, has not filed any appointment letter issued in his favour. He relies upon one letter, Dt. 20-4-2001 marked as Ext. W-2 wherein it was mentioned that he has been appointed as a Marker as per the advise of G. M. (OMG), Noamundi. The authenticity of the said letter is seriously disputed by the first party. The aforesaid Bimal Kumar Tripathy was examined on behalf of the first party who deposed that he was never holding the post of Secretary, Valley Club, Joda and he has not issued any letter in such capacity. He does not admit the signature appearing in Ext. W-2 to be of him. During examination of Shri Tripathy in Court, his signature was obtained on the deposition sheet in presence of P.O. The learned advocate for the second party workman submitted that the signature of Shri Bimal Kumar Tripathy taken on the deposition sheet tallies with the signature appearing in Ext. W-2. Admittedly neither party has opted for examination of the signature by an expert. On perusal of the two signatures as aforesaid, I am of opinion that no definite finding can be given that the two signatures are made by the same person. Besides the Ext. W-2 is not an appointment letter but it is a letter of communication about the name of the second party and his family members to the Medical Officer, Joda. As per the contents of this document, copy of the same was not given to anybody and therefore, the production of said document by the second party is a matter creating reasonable doubt in the mind of Court. The second party workman himself has not clarified as to how this letter came to his possession. The medical service books Ext. W-3 and Ext. W-4 appear to have been issued on the basis of Ext. W-2. It reveals from the evidence on record that the second party and his family members availed medical benefits being the employee of Valley Club, Joda. It also clearly reveals from the documents marked Ext. W-6 that on the request of the Secretary, Valley Club, Joda a quarter was allotted for residential purpose of the second party. The second party has further proved a document marked

Ext. W-7 which reveals that on his application, Dt. 12-12-2008 it was intimated to him that he was paid a sum of Rs. 1,500 as annual tips for the year 2002. His claim for payment of puja tips of Rs. 1,524 for the year 2006 and New year gift of Rs. 200 for the year 2006 was not disputed and he was asked to receive the same on any working day before 14th January 2009. On a close scrutiny of the evidence on record I find, there is no convincing evidence to hold that the second party was appointed to any post on a regular basis. A regular employee is not opposed to ask for puja tips and New Year gift. It is the claim of the second party that he worked under the Valley Club, Joda as per the direction of Tata Iron and Steel Company Limited but he has not filed any document issued in his favour by the said Company. During course of cross-examination he admitted that he was not issued with any employee I.D. Card by the Tata Iron and Steel Company Limited. He deposed that Tata Company deputed him for training for a period of 3 days after his appointment but he admits that no authority in that behalf was issued in his favour. The claim of appointment of the second party is based upon Ext. W-2 which is not an appointment letter but merely a communication made by the Secretary, Valley Club, Joda to the Deputy C.M.O., Joda, West Hospital, TISCO. From the evidence on record it is clear that the second party was never treated as regular employee of either Tata Iron and Steel Company Limited or the Valley Club, Joda. The second party admits that he was refused to work in the Valley Club, Joda with effect from the 29th April 2007. It reveals from the documents marked Ext. W-7 that he filed an application on Dt. 12-12-2008 claiming annual tips, puja tips and New Year gift for the year 2002 and 2006 and the first party agreed to pay his dues as per his claim. The second party has not filed the copy of the application and therefore it is not known whether by the time of demanding tips he claimed to be a regular employee of the Valley Club or a workman under the Tata Iron and Steel Company Limited. The second party made a complaint before the Labour Officer, Keonjhar but there he did not claim to be an employee of Tata Iron and Steel Company but in the present case he claims to be an employee of the said company. The Tata Company and its authorities are not parties before this Court and therefore it cannot be held that the second party is a workman under the Tata Iron and Steel Company Limited as claimed by him.

11. The learned advocate for the workman submitted that the Valley Club, at Joda is operating over a land belonging to the Tata Iron and Steel Company Limited and therefore the said Club should be treated as a part and parcel of the said Company. He relies upon the certified copy of the RoR of Khata No. 53 marked Ext. W-15 which reveals that the said Company owns Gharbari Plot No. 6 measures an area of A0.815 decimal. He also relies upon an information collected under RTI Act marked Ext. W-16 which above that over Plot No. 6, TISCO Limited has a house which is naked Valley Club, Joda and there is Volley Ball and Badminton field within the said plot. The second party further relies upon some paper publication which indicate that the Tata Iron and Steel Company arranges some functions in the Valley Club at Joda. It reveals from the oral evidence adduced by the first party that the Valley Club at Joda consists of members who are basically employees of the Tata Iron and Steel Company Limited and some such employees used to play games in the premisses of the plot recorded in the name of said Company. It further reveals that for a period between 2001 to 2007 the second party was assisting the players on several occasions but the evidence led by the second party is not sufficient to indicate that he was a regular employee so as to designate him as a workman, under the Valley Club, Joda. The claim of the second party that he is an employee of the Tata Iron and Steel Company Limited cannot be adjudicated since the name of the said Company is not mentioned in the schedule of reference and since the said Company is not a party to this proceeding.

12. In view of the discussion made above it is held that the Valley Club at Joda is not an industry and the second party is not a workman within the meaning of the definition provided in the Industrial Disputes Act, 1947. Both the issues are answered accordingly in the negative.

13. *Issue Nos. (iv) and (v)*—The second party alleges that his service as Marker in the Valley Club, Joda was illegally terminated with effect from the 15th December 2007. It is the stand of the first party that no appointment letter was issued by the Valley Club and since his activity towards the members of the Club was not satisfactory, he was refused to work. It is true that no written intimation was given by the first party to the second party regarding termination of his service who worked for the Club for a period of about 6 years. No disciplinary proceeding was instituted against him and without observing any formal procedure, he was refused to work. Such act on the part of the first party is definitely illegal and unjustified. However, since I have already observed that the first party is not an industry and the second party is not a workman, the reference is not maintainable and no relief can be passed in favour of the second party in the frame of the present proceeding. Hence the following awards :—

AWARD

The reference is answered on contest without cost. The termination of service of Shri Naresh Chandra Sitary, ex Marker by way of refusal of employment by the management of M/s Valley Club, Joda with effect from the 19th December 2007 is illegal and unjustified but no relief can be passed in favour of Shri Sitary, the second party, by this Court as the said Club is not an industry and Shri Sitary is not a workman within the meaning of the definition under Section 2 (j) and 2 (a) of the Industrial Disputes Act, 1947.

Dictated and corrected by me.

SRIKANTA MISHRA
12-10-2012
Presiding Officer
Labour Court
Sambalpur

SRIKANTA MISHRA
12-10-2012
Presiding Officer
Labour Court
Sambalpur

By order of the Governor

J. DALANAYAK
Under-Secretary to Government