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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 17th August 2013

No. 10579—11-1(B)-42/2009-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st June 2013 in Industrial Dispute Case No. 17 of 2009 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Kanheipur Service Co-operative Society, At/P.O. Bhagatpur, Cuttack and their workman Shri Hrusikesh Rout, Ex-Peon was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 17 OF 2009

Dated the 21st June 2013

*Present :*

S.A.K.Z. Ahamed,  
Presiding Officer, Labour Court, Bhubaneswar.

*Between :*

The Secretary, . . . First Party—Management  
M/s Kanheipur Service Co-operative Society,  
At/Post. Bhagatpur, Cuttack.

*And*

Shri Hrusikesh Rout, . . . Second Party—Workman  
At Kanheipur,  
Post. Bhagatpur, Cuttack.

*Appearances :*

Shri P. K. Praharaj, Advocate . . . For the First Party—Management

Shri Susanta Ku. Dash, Advocate . . . For the Second Party—Workman

## 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. 6601—li-1(B)-42/2009-LE., dated the 20th July 2009.

“Whether the action of the management of M/s Kanheipur Service Co-operative Society, At/Post. Bhagatpur, Cuttack in terminating the services of Shri Hrusikesh Rout, Ex-Peon with effect from the 4th August 1998 is legal and/or justified ? If not, what are the benefits Shri Hrusikesh Rout is entitled to ?”

2. Shortly stated the case of the workman is that he was appointed to work as a Peon under the management with effect from the 2nd January 1981 and accordingly he joined on the said date with a consolidated wages of Rs. 100 per month which was enhanced from time to time and at the time of termination of his employment he was getting Rs. 760 per month. It is alleged that while discharging his duty to the best satisfaction of his Authority, all on a sudden on the 4th August 1998 the management restrained him from discharging his duty and on the 6th August 1998 handedover a letter of suspension pending drawal of detailed charges. It is alleged that after suspension the management did not furnish him a copy of the charge sheet for which he made an appeal before the Assistant Registrar Co-operative Societies (ARCS), Cuttack and only thereafter he was supplied a copy of the charge sheet, dated the 12th August 1998 on the 29th October 1998. Further allegation of the workman is that despite his verbal request before the Secretary to allow him some time to file his showcause to the charge sheet no such opportunity was granted to him and instead he was asked by the Secretary to put his signatures on some blank papers giving him an impression that such papers would be utilised for his show cause reply and for making a representation for his reinstatement in service, which he complied in good faith. The specific allegation as set out in the claim statement of the workman is that no enquiry worth the name was conducted by the management nor he was afforded reasonable opportunity to defend the alleged charges. It is stated that as per the assurance of the Secretary he met him in the month of November, 1998 but as he threatened to kill him with the help of antisocials, he left the place out of fear. Thereafter with the help of local villagers he came to village and requested the management to reinstate him in service but as his request was turned down, he raised a dispute. Under the aforementioned background the workman had prayed for his reinstatement in service with back wages on the ground that after his termination he was unemployed and in spite of his best effort he could not arrange a suitable employment to sustain his livelihood.

3. The management challenging the maintainability of the reference on the ground that the second party is not a “workman” and that the claim preferred by the second party is barred by the law of limitation, had filed its written statement stating therein, *inter alia* that for several misconducts

the Second party was charge sheeted and on receiving the same when he did not file a show cause but chose to file an application on the 3rd September 1998 admitting his guilt, he was reinstated in job vide letter, dated the 13th November 1998 and consequently he joined his duty the 17th November 1998. The management takes the stand that although an Enquiry Officer was appointed to enquire into the charges levelled against the workman but the proceeding was dropped because of his joining under the Management on the 17th November 1998.

It is stated that upon joining on the 17th November 1998 the workman remained on leave on the 18th November 1998 but did not resume his duty thereafter and continued to remain absent unauthorisedly from the 19th November 1998 to the 9th March 1999. Again he joined duty on the 10th March 1999 and worked till the 24th March 1999 and from the 25th March 1999 onwards he absconded from his birth place and returned home in the year 2008. The definite stand of the management as transpires from the written statement is that there having no termination of service of the workman with effect from the 4th August 1998, the workman is not at all entitled to any relief in the present proceeding.

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

#### ISSUES

“(i) Whether the action of the management of M/s Kanheipur Service Co-operative Society, At/Post Bhagatpur, Cuttack in terminating the services of Shri Hursikesh Rout, ex Peon with effect from the 4th August 1998 is legal or justified ?

(ii) If not, what are the benefits Shri Hrusikesh Rout is entitled to ?”

5. The workman has examined himself as W.W.No.1 and filed and proved documents which have been marked Exts. 1 to 3. The management on the other hand has examined as many as three witnesses in its turn and out of them M. W. No. 1 and M. W. No. 2 are the present Secretary and Assistant Secretary of the Society, respectively and M. W. No. 3 is the Co-operative Extension Officer of Tangi-Choudwar Block, who claims to have made enquiry into the petition lodged before the Assistant Registrar, Co-operative Societies (ARCS), Cuttack by the workman.

#### FINDINGS

6. *Issue Nos. (i) and (ii)* The question that posed for determination in this reference is with regard to the legality and justifiability of the termination of the workman with effect from the 4th August 1998 and the resultant relief to which he is entitled to.

The documents, i. e. Exts. 1 and 2 filed and proved on behalf of the workman reveal that vide Ext. 1 the workman has been suspended from service with effect from the 4th August 1998 and

therefore it is wrong to assume that he has been terminated from service with effect from the said date. Further, Ext. 2, the copy of the charge sheet reflects that for certain misconducts the workman was asked to explain. This part of the fact is admitted ; the same being matters of record. The workman takes the stand that after framing of the charge no enquiry worth the name was conducted whereas the management takes the plea that instead of filing a show cause reply to the charge the workman pleaded guilty of the charges and considering the same the management Ordered for his reinstatement and pursuant to such order he joined his duty on the 17th November 1998. In the above scenareo, the management has pleaded, there was absolutely no necessity of conducting any enquiry into the alleeged charges. The stand taken by both the parties, therefore, needs thorough consideration.

W. W. No. 1 in his examination in chief has reiterated the facts mentioned in his claim statement. He admits that upon his suspension the management had charge sheeted him on the 2nd August 1998 which he received on the 29th October 1998. Though he alleges that no opportunity was extended him to furnish reply to such charges, but in his cross-examination at Para. 17 he has admitted that on an application made by him on the 3rd September 1998 the management issued Ext. Q and pursuant to that he resumed duty on the 17th November 1998 vide his joining report marked Ext. P. On perusal of Ext. Q it transpires that the management taking into consideration the prayer of the workman and the admission of his guilt in connection with the charges dropped the proceeding initiated against the workman by treating the period of suspension as such and asked him to join service. Ext. P is the joining report of the workman, dated the 17th November 1998. The xerox copy of the Attendance Register (Ext. 5) also discloses that the workman was attending to his assignment under the management after resuming duty on the 17th November 1998. The circumstances, indicated above, do not disclose that the services of the workman were ever terminated by the management with effect from the 4th August 1998, as alleged by the workman. Even assuming for a moment that the management had terminated the services of the workman on the 4th August 1998, still then his subsequent act of joining the services under the management on the 17th November 1998 proves that such termination is no more to be adjudicated; the same being non-est in the eye of law.

7. Several other pleas have been taken both by the workman as well as the management as to what happened after joining of the workman on the 17th November 1998. But, in my considered view those factors are not at all relevant to be discussed in this proceeding which would ultimately onlarge the scope of the present reference. The settled position of law being that the Tribunal/ Labour Court should not transgress beyond the term of the reference, this Court refrains itself to observe anything on the point of dispute that had arisen after the 17th November 1998, i. e. the date of joining of the workman.

8. A part from the above, the workman seems to have knocked the door of the Labour Machinery after a long period of ten years and in that connection he has failed to explain the delay in raising such dispute. The stand of the management that he was absconding gets little support from the document marked Ext. W, which discloses that he was staying outside for such a long period.

9. In view of the fact that there was no termination of service of the workman, as alleged, the reference is ought to be answered against the workman. However, before parting with the Award this Court feels it proper to refer to a decision of the Hon'ble Supreme Court, reported in 2007 (113) FLR-831 (Haryana Urban Development Authority Vrs. Om Pal) wherein their Lordships even if have observed that the respondent was not entitled to any relief but granted him some compensation. Here, in the present case the workman has rendered more than 17 years of service under the management. So, taking into consideration that aspect, this Court considers that some compensation should be awarded in his favour and accordingly the management is directed to pay a compensation of Rs. 15,000 (Rupees Fifteen thousand) only to the workman.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K.Z. AHAMED  
21-06-2013  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED  
21-06-2013  
Presiding Officer  
Labour Court, Bhubaneswar

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