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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th August 2013

No. 10885—li-1(B)-4/2009-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd August 2013 in Industrial Dispute Case No. 9 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Synergy Institute of Engineering & Technology, Dhenkanal and their Workman Shri Sumanta Kumar Mohapatra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 9 OF 2009

Dated the 2nd August 2013

Present :

Shri P. K. Ray, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal, Bhubaneswar.

Between :

The Management of . . . First Party—Management
Synergy Institute of Engineering & Technology,
Dhenkanal.

And

Their Workman, . . . Second Party—Workman
Shri Sumanta Kumar Mohapatra,
S/o Shri Bairagi Charan Mohapatra,
At/P.O. Chandrasekharprasad,
P.S. Sadar, Dist. Dhenkanal.

Appearances :

Shri N. K. Mishra, Advocate	. .	For the First Party—Management
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Shri S. K. Dash, Advocate	. .	For the Second Party—Workman

AWARD

This case has been instituted under Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & E.S.I. Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 3601—li-1(BH)-4/2009-LE., dated the 15th April 2009 with the following schedule :—

“Whether the termination of services of Shri Sumanta Kumar Mohapatra, Driver with effect from the 20th February 2008 by the management of Synergy Institute of Engineering & Technology, Dhenkanal is legal and/or justified ? If not, to what relief the workman is entitled to ?”

2. The claim of the workman is that he was initially engaged as a Security Guard under the management in February, 2000. Subsequently, appointed as a Driver under the said management with effect from the 1st July 2005 on a monthly consolidated salary of Rs. 2,000 and confirmed in the said post with a consolidated salary of Rs. 2,500 per month with effect from the 1st July 2007 vide letter dated the 28th June 2007 of the management. While continuing as such he received a charge sheet dated the 16th February 2008 from the management with the following charges leveled against him:—

1. You have taken out 2 bags of cement at odd hours in the night without any requisition or instruction which seems to be clear-cut case of theft.
2. You have taken out the cements by giving the false statement to Security Guard on duty that Mr. Sagar Pattnaik, Security Supervisor has told to take out the cement bags. It is clear case of fraud and misguiding the Security Guard on duty.
3. You have taken out red Maruti Van in the odd hours without any order or instruction or requisition for *mala fide* intention.
4. You have given the false statement to the Security Guard on duty in main gate that you are going to drop Hiranya Lenka, Driver in his house as per office order issued which is also false and *mala fide* intention you have misguiding the Security Guard on duty.

The workman has stated that on the 1st February 2008 in the night while he was on duty at the Institute on the request of another Driver, Shri Hiranya Lenka the workman with hesitation took Shri Lenka in the office vehicle to his house for which Shri Lenka had to make some endorsement in the Security Register at the main gate. Irrespective of the same the workman returned back to the Institute after dropping Shri Lenka at his house. But, the workman refused to the charge of theft of two cement bags from the Institute premises. Accordingly in his explanation dated the 18th March 2008 the workman begging apology for the mistake of taking Shri Lenka in the office vehicle

refuted the charge of the theft. But the management terminated the services of the workman with effect from the 20th February 2008 without conducting any domestic enquiry. The aforesaid action of the management being illegal and in violation of the principles of natural justice he submitted a complain before the District Labour Officer on the basis of which the present reference has been made to this Tribunal for adjudication of the dispute.

3. The management in its written statement rebutting the statements made by the workman has stated that he had taken away two bags of cement from the Institute in the office vehicle on the 1st February 2008 in the night and along with Shri Hiranya Lenka left the college premises without proper requisition and authority. On the basis of such report by the Security Guard on duty, the Security Officer brought it to the notice of the management on the 4th February 2008. On receipt of the said report the Security Officer enquired into the matter and submitted a report to the authority on the 16th February 2008 on the basis of which a charge sheet was issued to the workman with the above-referred four charges. Though the workman in his explanation admitted to have taken out the vehicle from the college premises without authority he remained silent on other charges namely, taking away of two bags of cement in odd hours by giving false statement to the Security Guard. Since the explanation of the workman amounts to admission of the charges, he was dismissed from service with effect from the 20th February 2008 by the management vide its letter dated the 20th February 2008.

4. In the aforesaid premises the issues framed are as follows :—

ISSUES

- (i) Whether the second party had taken two bags of cement from the cement stockyard of the first party carrying the same in the first party's college vehicle (Red Maruti Van) without showing any vehicle requisition to the Security Guard on duty ?
- (ii) Whether the second party admitted the charges *in toto* for which no domestic enquiry is necessary ?
- (iii) Whether the order of termination of service of the second party vide order dated the 20th February 2008 is legal and/or justified ?
- (iv) Relief, if any ?
- (v) Whether the disciplinary action taken by the management even without conducting a formal disciplinary enquiry is proper and/or valid ?

5. In the aforesaid case the workman having been dismissed from service this Tribunal vide its order dated the 24th November 2011 had taken up issue Nos. (ii) and (v) for preliminary hearing. On the aforesaid issues in order to substantiate their respective case while the workman examined himself as W. W. No. 1 and filed documents namely, copy of the charge sheet dated the 16th February 2008, copy of his explanation dated the 18th February 2008, copy of the order of dismissal dated the 20th February 2008 and copy of his Savings Bank Passbook, marked Exts. 1 to 4 respectively, the management adduced evidence of two witnesses and filed documents namely,

copy of confirmation letter of the workman, copy of show cause notice, dated the 10th June 2008, copy of letter, dated the 27th February 2007, copy of letter, dated the 28th April 2007, copy of show cause notice, dated the 4th October 2007, copy of written intimation furnished by Sribatcha Parida, copy of letter, dated the 4th February 2008, copy of order of the Administrative Officer, dated the 6th February 2008, copies of statement of witnesses, copy of enquiry report, dated the 16th February 2008 & copies of inter-office memo, dated the 6th February 2008 issued to five persons including the workman, marked Exts. A to H/4, respectively. This Tribunal after maintaining all the formalities decided the said preliminary issues against the management, giving further leave to the management to adduce evidence to independently establish the charges against the workman. In pursuance of the aforesaid order while the management adduced evidence of four witnesses, the workman further adduced rebuttal evidence which are taken up for consideration for final disposal on merit.

FINDINGS

6. *Issue No. (i)* The allegation of the management is that the workman had taken away the red Maruti Van from the institute premises on the 1st February 2008 without any permission from the Authority with two cement bags. But the workman admitting to have taken the vehicle without permission on the repeated persuasion of Hiranya Lenka, another Driver to drop him at his residence even against his own institution, has consistently refused to have taken any cement bags from the premises of the institute far less to speak of in any other pretext as alleged in the charge framed against him. The workman while refuting the said charge also placed reliance on the statement of Shri Hiranya Lenka, another Driver, whom he had taken in the said vehicle, before the Assistant Security Officer. The management who alleges such charge adduced the evidence of the Security Guard (M. W. No. 3) the Assistant Security Officer (M. W. No. 4) who confronted the workman as well as Hiranya Lenka whom the second party workman had given the lift, the Administrative Officer (M. W. No. 5) who conducted the disciplinary enquiry against the workman and the Associate Professor of the Institute (M. W. No. 6) who being in-charge of the vehicle terminated the services of the workman on account of his misconduct. On scrutiny of their evidence it is found that M. W. No. 3, the only witness to the occurrence in Para. 12 of his cross-examination has stated that he had not seen the workman loading any cement bag in the maruti van though he speaks of to have seen the cement bags being loaded in the van which was standing near the cement stockyard. M. W. No. 4 who enquired into the matter on the report of removal of cement bag clearly admits that he had not verified the cement stock position to prove the theft. No explanation has been furnished as to why the vehicle was not detained by the security guard when it left without any authority or with any cement bag as alleged by him nor there is any reflection in the Security Register to the effect of removal of cement bag though there is entry by Hiranya Lenka to have left the premises with the vehicle. Add to it the reason for delay of two days to report the matter to the Authority gives rise to a scope of after thought. Further though the statement of Shri Hiranya Lenka, another Driver who was also in the vehicle when it left the premises of the institution was recorded by the Assistant Security Officer (M. W. No. 4) not a single word was put to him about the theft of the cement bag

nor there is any whisper from his side. In the aforesaid background it would not be proper to hold that any cement bag had been taken away by the workman in the concerned office vehicle with any *mala fide* intention which amounts to theft. But, there is no dispute that the workman had taken the maruti van to give lift to Shri Hiranya Lenka to his house without any permission of the Authority.

Thus the issue No. (i) is answered accordingly.

7. *Issue Nos. (iii) & (iv)* In this case the charge of theft has not been proved, but at the same time on the admission of the workman that he had taken the vehicle out of the college premises in the said night without any permission to take another Driver namely Shri Hiranya Lenka to his house amounts to a misconduct. The service of the workman has been terminated on the allegation of taking away of the vehicle without permission and committing theft of two cement bags. Since the allegation of theft of cement bags has not been proved the punishment of termination on the only allegation of taking away the vehicle without permission is grossly disproportionate to the misconduct proved. In the aforesaid background, the order of dismissal passes by the management is not sustainable and is set aside.

8. On the issue of relief to which the workman is entitled in the present proceeding, considering the loss sustained by the workman and the fact that a part of the allegation, which is a minor one, is proved against him, the management is directed to reinstate the workman in service with 25% of back wages from the date of his dismissal till reinstatement.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
02-08-2013
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. K. RAY
02-08-2013
Presiding Officer
Industrial Tribunal, Bhubaneswar

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