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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 5th September 2013

No. 11085—li/1(BH-1)-1/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th June 2013 in Industrial Dispute Case No. 91 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Balasore Regional Co-operative Marketing Society Ltd., Balasore and their workman Shri Hadibandhu Samal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 91 OF 2006

Dated the 18th June 2013

Present :

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

Between :

The Secretary, .. First Party—Management
M/s Balasore Regional Co-operative
Marketing Society Ltd., Balasore.

And

Shri Hadibandhu Samal, .. Second Party—Workman
S/o Late Chhachindra Samal,
At Dolagohira,
P.O. Udambar, Via Remuna
Dist. Balasore.

Appearances :

For the First Party—Management	..	Shri Bansidhar Choudhury, Secretary.
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For the Second Party—Workman himself	..	Shri Hadibandhu Samal

AWARD

The Government of Odisha in the Labour & Employment 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. 11283—li/1(BH-1)-1/2006-LE., dated the 20th December 2006.

“Whether the dismissal of the workman Shri Hadibandhu Samal, Ex Clerk-*cum*-Typist from services by the management of M/s Balasore Regional Co-operative Marketing Society Ltd., Balasore with effect from 1st January 2001 is legal and/or justified ? If not, what relief Shri Samal is entitled to get ?”

2. The case of the workman, in short, is that he joined under the management as Clerk-*cum*-Typist on 15th February 1971 and while continuing as such he was placed under suspension on the 24th November 1999 followed by a charge sheet. It is stated that though he submitted an explanation to the said charge sheet yet the management get the charges enquired by appointing an Enquiry Officer, who was a practising Advocate. It is alleged that the Enquiry Officer without giving him opportunity closed the enquiry and submitted his report. Further allegation of the workman is that basing on such enquiry report the management asked him to show cause but did not forward a copy of the enquiry report and subsequently on his application a copy thereof was supplied whereafter he submitted necessary show-cause. Thereafter, it is alleged, the management without affording him a chance of personal hearing, straight away dismissed him from service with effect from dated the 31st December 2000. It is averred in the claim statement that the workman was charge sheeted on 10 counts and out of the same the three charges on which he was found guilty were considered to be major misconducts and he was visited with the extreme punishment of dismissal from service. According to him, he is not at all liable under charge Nos. 6,7 and 8 which the Enquiry Officer has found to have been proved against him. It is stated that charge Nos. 6,7 and 8 relate to overwriting of date of birth in service book, non-furnishing of his matriculation certificate and negligence in duties etc. The specific stand of the workman with regard to charge No. 6 is that he was not at all the custodian of Service Books of the employees including himself and the Service Book basing on which charge No. 6 has been framed against him was his personal rough copy kept by him for his own purposes. As regards charge Nos, 7 and 8, the stand of the workman is that basing on the information of Shri T.P. Bahadur, his date of birth was recorded as the 22nd July 1938 but subsequently Shri Bahadur reported his date of birth as the 22nd July 1939 and accordingly it was corrected with due approval of the Secretary of the Society. Under the circumstances, the workman claims that he being innocent, the action of the management is illegal as well as unjustified and he is entitled to the reliefs prayed for.

3. The management entered contest and filed its written statement contending therein, *inter alia*, that due to unsatisfactory performance of the workman he was charge sheeted followed by a domestic enquiry in which he participated and ultimately on conclusion of such domestic enquiry he having been found guilty of three charges the management of the Board dismissed him from service. The management has taken the stand that all reasonable opportunities were extended to the workman in course of the domestic enquiry and so also the management of the Board strictly adhering to the principles of natural justice have imposed the punishment of dismissal on the workman taking into consideration the gravity of the charges. Lastly, it is averred in the written statement that in the event the domestic enquiry is found to be unfair/improper, it should be afforded a chance to prove the charges on merit.

With the averments as above, the management has prayed to disallow the claim of the workman.

4. A rejoinder to the written statement has been filed by the workman wherein he has alleged as follows :

- (i) The management appointed an outsider i.e. an Advocate to be the Enquiry Officer in absence of any provision in the Rules and Regulations and thereby did not afford him an opportunity to be represented through a lawyer.
- (ii) The enquiry was simply an eye-wash, in as much as no witnesses were examined in support of the charges nor the documents utilised in the enquiry were supplied to him earlier so as to explain and defend the charges. The day to day proceedings of the enquiry was not recorded by the Enquiry Officer.
- (iii) The charges said to have been established against the workman are not supported by adequate reasons.

5. Basing on the pleadings, as aforesaid, the following issues have been framed :—

ISSUES

- (i) “Whether the dismissal of the workman Shri Hadibandhu Samal, Ex-Clerk-cum-Typist from services by the management of M/s Balasore Regional Co-operative Marketing Society Ltd., Balasore with effect from the 1st January 2001 is legal and/or justified ?
- (ii) If not, to what relief Shri Samal is entitled to get ?”

6. In order to substantiate their respective stand, both parties have adduced oral as well as documentary evidence. The workman examined himself as W.W. No. 1 and brought on record documents which have been marked Exts. 1 to 11. The management, on the other hand, examined its Secretary as M.W. No. 1 and relied on documents which have been marked Exts. A to H.

FINDINGS

7. *Issue No.1*— Apparently, this is a case of dismissal preceded by a domestic enquiry. The management although has taken a stand in its written statement to decide the fairness of such domestic enquiry at the first instance but it has failed to file the entire proceeding file including the day to day Order Sheets maintained by the Enquiry Officer, statement of the witnesses, if any,

recorded during the enquiry and the documents, if any, considered by the Enquiry Officer in course of such enquiry. It is strange that the management has not even examined the Enquiry Officer, who could have thrown light on this aspect and thereby the workman could have got a chance to cross-examine him. Because of non-production of the entire proceeding file and non-examination of the Enquiry Officer it is difficult on the part of this Court to express any opinion on the fairness or otherwise of the domestic enquiry.

8. Now, coming to the merit of the case, it is found from Ext. B that the workman was charge sheeted on ten counts and out of them he has been held liable under three charges i.e. charge Nos. 6,7 and 8. The said charges are as follows :—

- (6) “That you have not submitted your Qualification Certificate to the authority till now though you have been instructed so many times for the same at the same time it is found from your Service Book that you have ever written the date of birth in the Service Book, you are the Custodian of the Service Book and personal file. So you have forged the date of birth knowingly and deliberately for which you are failed to submit the Qualification Certificate to the authority.”
- (7) “That you have forged the date of birth of Shri T.P. Bahadur, Watchman of Bampada Rice Mill as per his application mentioning his date of birth as the 22nd July 1939 and accordingly you have put up the file before the President latter on. It has been forged and mentioned his date of birth as the 22nd July 1939 and the same also put up before the Secretary after lapses of near about one year. Therefore you have intentionally forged the date of birth of Shri T.P. Bahadur.
- (8) “Due to your negligency and forge Shri T. P. Bahadur has been retired from service after lapses of one year and for your negligence Shri T. P. Bahadur has taken one year excess salary from this Institution. Why this excess payment of salary to Shri T.P. Bahadur will not be recovered from you for your negligency in duty.”

In his reply to the Second show-cause (Ext. 7) the workman has narrated with regard to charge No. 6 that the management had asked him to furnish Matriculation Certificate for verification of date of birth but as it was lost he had intimated verbally to furnish such certificate soon after receipt of the same from the Board of Seconday Education, Cuttack, whom he had applied for a duplicate copy on the 20th October 2000. As to the tampering of data in the Service Book, the workman has taken the plea that the Service Book basing on which allegation of tampering is made against him is his personal copy retained by him for his own use and that the management was not maintaining Service Book of any employee. To falsify the plea of the workman the management ought to have placed the relevant Service Book before this Court and should have made correspondences with the Board of Secondary Education as to the truth or otherwise of seeking a duplicate copy of the Matriculation Certificate by the workman. No evidence is forthcoming showing that such a course was adopted by the management. Further, Service Book of the workman being a vital document, non-filing of the same gives an impression that had the same been produced the

plea of the workman that it was his personal copy and was not maintained officially could have come to light. for the short comings narrated above, the charge No. 6 is not sustainable against the workman.

9. Charge Nos. 7 and 8 relate to tampering of the date of birth of one employee of the Society namely T.P. Bahadur, Watchman.

In connection with the charge, the plea of the workman is that initially Shri Bahadur reported his date of birth as the 22nd July 1938 and accordingly he was noticed to retire on the 31st July 1998 on attaining the age of superannuation. But when he made an application to correct his date of birth from the 22nd July 1938 to 22nd July 1939, being the Dealing Assistant he only brought this fact to the notice of the Authority (Secretary) and only after his approval the date of birth of Shri Bahadur was corrected from the 22nd July 1938 to the 22nd July 1939. When with the approval of the Competent Authority the date of birth of Shri Bahadur has been corrected, the management ought to have taken a liberal view for the workman and could not have framed a charge solely making imputation against the workman. The act of the workman, (who was the Dealing Assistant) who placed the file before the Authority to settle the grievance of Shri Bahadur can at best he said to be a negligence on his part and for that he should have been let off with a warning. The punishment of dismissal based on such charges before appears to be very harsh. Hence, the action of the management is neither legal nor justified.

10. *Issue No. 2*—In view of my discussion on Issue No. 1 and taking into consideration the admitted fact that the workman has already crossed the age of superannuation, this Court considers it expedient to award some compensation in favour of the workman. Undisputedly, the workman had rendered 28 years of continuous service under the management and had the aforesaid incident not occurred he would have served under it for another 5 to 6 years. Taking into account the unblemished past services of the workman, this Court awards a compensation of Rs. 1,50,000 in his favour, which should be paid to him within a period of one month from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
18-6-2013
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
18-6-2013
Presiding Officer
Labour Court, Bhubaneswar

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