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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 17th September 2013

No. 11389—li-l(B)-329/1994-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th August 2013 in Industrial Dispute Case No. 89 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Harianta Service Co-operative Society Ltd., Gabasta (Sadar), Cuttack and their workman Shri Maheswar Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 89 OF 2008

Dated the 17th 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
Harianta Service Co-operative Society Ltd.,
Gabasta (Sadar), Cuttack.

And

Their workman .. Second Party—Workman
Shri Maheswar Behera,
At/P.O. Gabasta, Cuttack Sadar, Cuttack.

Appearances :

Shri P. C. Das, Advocate	. . .	For the First Party—Management
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Shri B. N. Das, 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. 13322—li(B)-1-239/1994-LE., dated the 25th September 1995 with the following schedule :—

“Whether the termination of services of Shri Maheswar Behera, Secretary by the President, Harianta Service Co-operative Society Ltd., Gabasta, Cuttack with effect from the 3rd September 1990 is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The claim of the second party workman is that as per the decision of the First Party Management he was appointed as the Secretary, Harianta Service Co-operative Societies Ltd., and joined as such on the 25th November 1977 on a consolidated pay of Rs. 140 per month which subsequently was enhanced to Rs. 750 per month. It is stated that due to his simplicity he was put to several harassment, even without any valid reasons one Shri B. C. Behera was illegally appointed in his place vide Board Resolution, dated the 23rd March 1979 but after few months on resignation of Shri B. C. Behera the Managing Committee again appointed the second party workman vide its Resolution, dated the 3rd December 1979 and he continued against the post till the 3rd September 1990. Thereafter the service of the second party workman was discontinued and one Shri S. C. Mohanty was appointed in his place illegally. Since inspite of his representations to the Authorities he was not reinstated in his post, he filed a complaint before the Assistant Labour Officer, Cuttack on the 8th April 1993 who after conciliation submitted his failure report on the basis of which on reference ultimately the present case has been instituted.

3. The first party management in its written statement challenging the maintainability of the case on the ground that the Secretary, Co-operative Society is not a ‘workman’ and that he has not come to the Tribunal in clean hand has stated that while continuing as Secretary of the Society the second party workman misappropriated a huge amount of funds. When the act of misappropriation came to light, the second party workman left the Society and remained unauthorisedly absent from the Office. Even he had taken away the relevant records relating to misappropriation of funds and correspondences made with him for which a criminal case is *sub judice* against him. The Society has also filed a case under Section 68 of the Co-operative Societies Act, 1962 for recovery of money misappropriated by him. But the second party workman suppressing the fact approached this forum. Since the second party workman after detection of such misappropriation left the office, in order to meet the day to day affairs, the Governing Body appointed Shri S. C. Mohanty as the acting Secretary during the absence of the second party workman. As the second party workman did not turn up inspite of repeated intimation and abandoned the service he has got no claim and therefore, he is not entitled to any relief in the present proceeding.

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

ISSUES

“1. Whether it is a case of termination of services of the second party with effect from the 3rd September 1990 or it is a case of voluntary abandonment of service by the second party ?

2. If it is a case of termination of service, whether the same is legal and or justified ?

3. If not, what relief the workman is entitled to ?”

5. The second party workman to substantiate his case while examined himself and filed documents marked as Exts. 1, 2 and 3 series, the Management has examined one Shri P. K. Sundaray, the present Secretary of the Society and filed one xerox copy of the Surcharge Case No. 114 of 2009 vide Ext. A.

FINDINGS

6. *Issue No. 1*—On scrutiny of the evidence it is found that the second party workman in his cross-examination candidly admitted that a criminal case was instituted against him on the allegation of misappropriation of funds of the Society but he has clarified to the extent that though he was convicted in the Trial Court has been acquitted in the Appellate Forum. Simultaneously he has also admitted that a Surcharge proceeding is pending against him for realization of funds of the Society. On behalf of the Management evidence has been adduced in support of its averment that the second party workman absconded from his duty after the allegation of misappropriation of funds. The Hon'ble Supreme Court in the case of G. T. Lad and Chemicals & Fibres of India Ltd., reported in 1979(38) FLR 95 has observed that voluntary abandonment is a question of fact which can be determined basing on the surrounding circumstances. Here the statement of the Management witness finds support from the circumstances that there is a criminal case instituted against the second party workman and simultaneously a proceeding is pending against him for realization of misappropriated funds of the Society. Admittedly there is no order relating to termination of service of the second party workman. But due to the continuous absence of the second party workman consistently an Acting Secretary has been appointed to manage the affairs of the Society. In the aforesaid background it can be well presumed that the second party workman remained absent from discharging his duties which amounts to abandonment of his service.

Hence, it is held that it is a case of voluntary abandonment of service by the second party and issue No. 1 is answered accordingly.

7. *Issue No. 2*—In view of my discussion on Issue No. 1 above, there is no need to answer this issue.

8. *Issue No. 3*—In the aforesaid background, the Second Party Workman is not entitled to any relief in the present proceeding.

Dictated and corrected by me.

P. K. RAY

17-08-2013

Presiding Officer

Industrial Tribunal, Bhubaneswar

P. K. RAY

17-08-2013

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government