

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 195 CUTTACK, TUESDAY, JANUARY 29, 2013/MAGHA 9, 1934

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 17th January 2013

No. 483—IR-(ID)-97/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th December 2012 in Industrial Dispute Case No. 68 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of the Managing Director of M/s Deuli LAMPCS Ltd., Deuli, Dist. Mayurbhanj and its workman Shri Pradeep Chandra Prusty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 68 OF 2010

Dated the 19th December 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Managing Director,
M/s Deuli LAMPCS Ltd.,
At/P.O. Deuli,
Dist. Mayurbhanj.

. . First Party —Management

And

Shri Pradeep Chandra Prusty,
S/o Sadhu Chandra Prusty,
At/P.O. Deuli,
Dist. Mayurbhanj.

. . Second Party —Workman

Appearances :

Shri Susanta Dash, . . . For the First Party —Management
Advocate.

Shri Trilochan Lenka, . . . For the Second Party —Workman
Advocate.

AWARD

The Government of Odisha in their Labour & E.S.I. Department, exercising power conferred upon them by Section 12 (5), read with Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, 'the Act') have referred the following dispute to this Tribunal for adjudication vide their Order No.7839—ID-97/2010-LE. dated the 17th September 2010 :—

“Whether the termination of services of Shri Pradeep Chandra Prusty, Assistant Accountant by the Managing Director, M/s Deuli LAMPCS Ltd., At/P.O. Deuli, Dist. Mayurbhanj with effect from the 14th February 2008 is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. The short case of the workman as narrated in his claim statement is that initially he was appointed as a Salesman in the first party Co-operative Society and subsequently his post was upgraded to Assistant Accountant and he had been working in the said establishment since 1983. In the year 2008 the Managing Director of the Society issued order vide Letter No. 138 Dt. 14-2-2008 placing him under suspension. On 7-5-2008 he was charge sheeted on eight counts. He submitted his explanation to the charges but the management did not communicate its decision on his explanation. An Enquiry Officer (for short, E.O.) was appointed to enquire into the charges and the workman fully co-operated in the enquiry proceeding. The E.O. submitted his report on 2-2-2009 exonerating him from all the charges but the management discharged him from service with effect from 18th February 2009 without supplying him even a copy of the enquiry report and without giving him a second show cause notice. Being aggrieved the workman moved the Assistant Registrar, Co-operative Societies, Baripada to interence who after considering his case instructed the Managing Director of the Society to take appropriate step to settle the matter amicably to avoid future complicacies but the management did not pay any heed thereto. It is also asserted by the second party that while charges have been framed by the President of the Society, the order of suspension and the order of discharge have been passed by the Managing Director of the Society.

3. The first party in reply to the claim statement has contended that while working as Assistant Accountant with effect from the 27th July 1990 the workman had committed serious and major misconducts for which he was suspended with effect from the 14th February 2008 on the following charges :—

“Charge No.1—You Shri Pradeep Chandra Prusty during your incumbency as Asst. Accountant at Deuli LAMPCS, Deuli, it reveals that your father Shri Sadhu Charan Prusty had taken a loan from Deuli LAMPCS falsely showing that he had land to the extent of Ac. 4.46 Decs. That on 30-7-1998 on behalf of the M.D., Deuli LAMPCS you have signed the Land Register showing Sadhu Charan Prusty has land to the extent of Ac. 4.46 Dec. That on subsequent enquiry made by the M.D. of the

LAMPACS it was found that Sadhu Chandra Prusty has no such land and has sold his whole land prior to availing the loan. In this connection this Office issued a letter vide Letter No. 66 Dt. 7-8-2007 to Sadhu Chandra Prusty to produce his R.O.R. and E.C. and letter is also issued to you to clarify the matter. That inspite of the letter received by you and your father did not clarify the office about existence of the land in favour of Shri Sadhu Chandra Prusty. That knowing very well that your father has no such land but in order to facilitate the loan in favour of your father you had shown favouritism for availing the loan and you had not taken any step for clearance of the said loan by putting the LAMPACS under loss. That you have deliberately taken step fully knowing that Shri Sadhu Chandra Prusty is not entitled to loan but due to favouritism shown by you, You have acted beyond your jurisdiction resulting loss to the LAMPACS.

Charge No.2—That on 14-7-2007 and 21-7-2007 as you did not attend the office, red cross mark was given by the M.D. of the LAMPACS in the attendance register after closing of the office hour of above two dates. That subsequently it reveals that you have signed on those two days over the said cross marks without assigning any reason for your absence. This speaks about your dereliction in duty.

Charge No.3—It further reveals that on 27-12-1986 you had brought Rs. 51,100 from Shri Gokul Ch. Mohanty, S.M. (Retired) towards sale proceeds of Kanimatuli Sale Centre but you have not given receipt for the total amount received by you. You have given receipt as per your sweet will and subsequently gave a receipt on 31-3-2007 towards the total amount received by you which amounts to a temporary misappropriation.

Charge No.4—It reveals that as an Accountant you were keeping the account of PDS business. It is complained by Shri Bisweswar Ghosh (Power of Attorney Holder of Jhunarani Ghosh), the Storage Agent of PDS Stock that on 31-3-2007 you had not given Rs. 23,783 towards cost of PDS stocks and thereby have misappropriated the said amount.

Charge No.5—A check bearing No. 190710 of Rs. 20,000 was presented at U.B.I. Bank, Deuli on 15-10-1998. That you had not entered the same in Cash Book up to 2-5-1999, but letter on 3-5-1999 you have made the said entry which amounts to temporary misappropriation.

Charge No.6—That you had collected Rs. 8,000 from Shri Udai Hembram on 25-11-2002. Receipt was given to him for the same amount. But in Cash Book on Dt. 25-11-2002 has shown receipt of Rs. 4,000. It is noticed that you have used white colour in Cash Book on 25-11-2002 and in four dates have corrected the Day Book without showing what happens to the rest four thousand rupees. That by the act you have put the LAMPACS under loss which is not desirable from an Accountant of the LAMPACS and amounts to misappropriation. That on 13-12-2007 the same has been shown as collection without any receipt and after three days shown payment in the Cash Book without showing to whom such payment is made. That on 27-1-2004 you have shown deposit of this Rs. 4,000 which amounts to temporary misappropriation.

Charge No.7—That it reveals that on date 21-3-2001 the salesman Pravakar Raj deposited Rs. 6,000 towards his cement liability in Anlakuda Mini Bank. That the deposit slip was produced by Shri Pravakar Raj before you but you have not shown deposit of the said amount in the Cash Book. That Audit shows recovery of the said amount by way surcharge against Pravakar Raj. You paid the said amount to Pravakar Raj on 19-11-2004 which Pravakar Raj has deposited towards his liability. Rest Rs. 1,897 was paid to you by Shri Raj but you have paid Rs. 1,698 on 19-8-2005 and Rs. 199 on 5-9-2005.

Charge No.8—That during your incumbency as Asst. Accountant you have harassed both loanees, staff and institution by your negligent act for which the LAMPCS has sustained a huge loss and the institution has been defamed.”

The workman submitted his explanation to the charges and thereafter an Enquiry Officer was appointed to conduct the domestic enquiry following the procedure and giving due opportunity to the workmen as per law. The E.O. submitted his report on 2-2-2009 which was considered by the Disciplinary Authority i.e. the Committee of the Management of the first party society and it was decided to discharge the workman from service. It is denied by the first party that the E.O. had exonerated the workman from all the charges. With regard to the passing of the discharge order by the Managing Director, it is contended that the matter was placed before the management which took the decision to take appropriate action against the second party and as such the Managing Director has issued the order of discharge.

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

ISSUES

- (i) Whether the domestic enquiry conducted against the workman is fair and proper ?
- (ii) Whether the dismissal/termination of services of Shri Pradeep Chandra Prusty, Assistant Accountant by the Managing Director, M/s Deuli LAMPCS Ltd., At/P.O. Deuli, Dist. Mayurbhanj with effect from 14th February 2008 is legal and/or justified ?
- (iii) If not, what relief the workman is entitled ?

5. This being a case of discharge from service preceded by a domestic enquiry Issue No.i, which is on the fairness and propriety of the domestic enquiry, has been taken-up as a preliminary issue following the observations of the Hon'ble Supreme Court in M/s Co-oper Engineering Ltd., *vrs.* P.P. Mundhe, reported in AIR 1975 (SC) 1900 besides many other decisions of the Hon'ble Supreme Court. The parties were given opportunity to adduce evidence on the preliminary issue. The workman examined himself as W.W.No.1 and exhibited documents vide Exts.1 to 14. On the other hand, the management examined the Marshalling Officer as M.W. No.1 and exhibited documents vide Exts.A to H, vide Order No.27, Dt. 11-5-2012 this Tribunal has recorded its findings on the preliminary issue which are extracted hereunder for ready reference.

6. Between the parties there is no dispute to the extent that on 7-5-2008 charges on eight counts were framed against the second party. Prior to that, vide letter No. 138, Dt. 14-2-2008 the second party was put under suspension. The Sub-Assistant Registrar, Co-operative Societies, Baripada was appointed as the Enquiry Officer (for short, the E.O.). The second party fully participated in the enquiry. On completion of enquiry a report was submitted by the E.O. and on the basis of report the management passed orders discharging the second party from service with effect from the 18th February 2009.

7. The workman challenges the fairness of the domestic enquiry on the following grounds :—

- (1) The workman had submitted his explanation to the charge sheet but the management before proceeding to conduct an enquiry did not make any communication to the second party on his explanation ;
- (2) the E.O. in his enquiry report had exonerated the workman from all the charges, but the management without application of mind to the evidence recorded by the E.O. passed order of dismissal ;
- (3) before imposition of penalty the management did not supply a copy of the enquiry report to the second party ;
- (4) the management did not serve a second show cause notice on the second party and also did not give him a chance of personal hearing ; and
- (5) subsistence allowance was not paid to the second party in accordance with the management's Standing Orders.

The management's reply to these objections are that the E.O. had found two of the charges established, that a copy of the enquiry report was served on the second party through a staff of the first party but the former refused to accept the same, that the second party, though given a chance for personal appearance, did not avail the opportunity and that subsistence allowance used to be paid to the second in accordance with the Standing Orders but when the workman had violated the terms and conditions of the order of suspension the management stopped paying subsistence allowance for certain period, which was subsequently paid to him.

8. The grounds raised by the second party and the stand taken by the first party require careful consideration. The management has not denied the allegation that no communication on the second party's explanation to the charge sheet was made to second party before the management proceeded to conduct the departmental enquiry. But, it is not shown by the second party as to whether this is a requirement that the management ought to have complied with and that on its failure it would lead to failure of natural justice so that the enquiry proceeding can be said to be unfair. No authority has been cited on this point. In my considered view the management is not required to make any communication in reply to the explanation to the charge sheet. This ground is raised unnecessarily.

9. On the second party's claim that the E.O. had exonerated him from all the charges, it is to be mentioned that Ext.10 is the enquiry report and the second party while deposing as W.W. No.1 has stated that basing on Ext.10 he makes the aforesaid claim. Inviting attention to Ext.10 the first party has pointed out as to how the E.O. has found charge Nos.1 to 4 established. In the enquiry report there is clear mention that two of the eight charges were found established. Therefore, it is not correct on the part of the second party to claim that the E.O. had exonerated him from all the charges.

10. On the allegation that a copy of the enquiry report was not supplied to the second party, the management has replied that a copy of the enquiry report along with Ext.H was sent to the second party through Shri Ajit Kumar Dhal, a Peon in the establishment of the first party, who returned the

letter along with the enquiry report unserved with a report that the second party refused to receive the same. M.W. No.1 has adduced oral evidence to that effect. His oral evidence is supported by Ext.H. On behalf of the second party it is submitted that the management having not examined the Peon who allegedly offered the letter to the second party, the management cannot be said to have proved this fact. It is also submitted that if the second party refused to receive the letter the management should have sent the same by registered post. This submission seems to be having some force but on the failure of the management to act in the manner as pointed out it cannot be said that the evidence adduced by M.W. No.1 corroborated by Ext.H should be disbelieved. That apart, in *Serv. U.P. Gramin Bank Vrs. Manoj Kumar Sinha*, AIR 2010 (SC) 2491 Hon'ble Supreme Court have held that non-supply of copy of enquiry report will not vitiate the enquiry if no prejudice is shown to have been caused to the workman. In this case the second party has failed to show how non-supply of copy of enquiry report has caused prejudice to him.

11. On the allegation that the second party was not given a chance for personal hearing, it is stated by M.W.1 that a notice for personal hearing was served on the second party but he did not avail the chance. Learned counsel for the first party submits that Ext.G is a copy of the notice calling upon the second party to remain present before the Board of Directors on 17-2-2009 at 8 A.M. It is also submitted that the second party himself has received the notice putting his signature on the original of Ext.G. Ext.G has been marked without objection. M.W. No.1 is not cross-examined on his statement that the letter marked Ext.G was served on the second party and he was called upon to appear before the Board of Directors on 14-2-2009 and that the second party, though received the letter, did not appear before the Board.

But, nowhere in Ext.G there is any mention that the second party was required to present himself before the Board of Directors in connection with the departmental proceeding. Nothing is forthcoming from this notice to say that the second party was made aware to appear before the Board of Directors for a personal hearing in connection with the punishment to be awarded on him, consequent upon the E.O. finding him guilty on two of the charges. But, no provisions of any Rules or Standing Orders are cited requiring the management to give such a chance.

12. Another contention raised by the second party is on non-payment of subsistence allowance in accordance with the provisions contained in the management's Standing Orders but the workman has failed to place on record the Certified Standing Orders of the first party. It is not a case of non-payment of subsistence allowance from the date the second party was put under suspension. In Para. 5 of the claim statement the second party states that the management did not pay him subsistence allowance for November and December, 2008. The management takes the stand that since the workman did not submit non-engagement certificates he was not allowed to draw subsistence allowance. The workman makes an evasive reply saying that he does not remember if he submitted non-engagement certificates. That apart, for non-payment of subsistence allowance for the period of two months, as aforesaid, it is not shown that the workman had suffered prejudice. In this regard the observations of Hon'ble Supreme Court in *U.P. State Textile Corporation Ltd. Vrs. P.C. Chaturvedi*, 2006 (109) FLR 41 may be referred to. In that case it is held that mere non-payment of subsistence allowance cannot *ipso facto* be a ground to vitiate the proceedings in every case.

13. All the objections raised by the second party on the proposed punishment are found not established. So, there are no valid reasons to conclude that the domestic enquiry is not fair and/or proper. The issue is therefore, answered in the affirmative.

14. Since the domestic enquiry was held to be fair and proper, the parties were called upon to adduce evidence on the remaining issues. The workman adduced further evidence and the management examined its present Managing Director as M.W. No.2.

FINDINGS

15. *Issue Nos. (ii) & (iii)*—On perusal of the enquiry report marked Ext. 10 it is found that out of the eight charges, Charge Nos.1 and 4 are found to have been established and the workman was exonerated from the rest of the charges. The workman takes the plea that Charge Nos. 1 and 4 are also not sustainable and even if those are sustainable, punishment of discharge from service cannot be based on those charges. The charges have already been reflected in Para. 3 of this Award. Charge No.1 is based on the allegation that the second party during his incumbency as Assistant Accountant of the Society had shown undue favour to his father by falsely showing in the Society's Register that his father had landed properties to the extent of 4.46 acres and had even signed the land Register of the Society on behalf of the Managing Director of the Society, though his father had already disposed of the whole of his landed properties prior to availing of the loan. Charge No.4 is based on the allegation that the Power of Attorney Holder of one Jhunurani Ghosh, Storage Agent of PDS Stock, had complained that on 31-3-2007 the second party had not paid Rs. 23,783 to the Storage Agent towards the cost of PDS Stock and thereby misappropriated the said amount. Ext.4 is the workman's reply to the said charges. The E.O. considering the materials placed before him held that the workman had knowingly made false entries in the Society's Land Register and committed dishonesty in connection with the business of the Society. With regard to Charge No.4 the E.O., having dealt with the materials placed before him, has concluded that the workman being the Accountant of the Society had reflected in the Books of Accounts as if the whole amount due to the Storage Agent had been paid to the Power of Attorney Holder of the Storage Agent but in fact he had retained the amount of Rs. 23,783 with him. Ultimately, the E.O. has held that the workman is found guilty of misuse of official position, breach of trust and misappropriation of Society's cash, besides causing harm to the goodwill of the Society.

16. The workman in his affidavit evidence has taken the stand that since he was not the competent authority to sanction loan and that since the loan taken by his father had already been cleared up before framing of the charges, he cannot be held guilty of the said charge. With regard to Charge No.4, the workman has stated that the first party has no jurisdiction to take any action against the transaction between him and the Power of Authority Holder of the Storage Agent which was nothing but their personal affairs. It is also contended that for the said transaction the management has not sustained any loss. These contentions do not appear to be tenable. The findings of the E.O. on Charge Nos. 1 and 4 are based on evidence adduced during the enquiry proceeding. Therefore, at this stage it cannot be said that the charges could not be established by the management.

17. It is submitted that the punishment in the shape of discharge from service is shockingly disproportionate to the misconducts found proved. In reply, the management has rightly submitted that the first party Society deals with public money and being the custodian of public money it is a sensitive Institution. Therefore, it is submitted, maintaining discipline to save the Society from incurring loss on account of dishonesty of its employees is highly necessary. Considering that the second party was working as an Assistant Accountant and has been found guilty of dishonesty, the punishment inflicted on him is not found to be either disproportionate or severely harsh.

18. It is neither pleaded nor stated by the second party in his evidence as to who is the Disciplinary Authority. It is also not denied by the workman by way of filing rejoinder to the written statement that the Board of Management in its meeting held on 17-2-2009 took a decision to discharge the workman from his service with effect from the 18th February 2009. Though the order of discharge (Ext. 11) has been signed by the Managing Director of the Society, it is clearly stated in the order that the decision had been taken by the Board of Management. The workman has made no clear averment stating that the Board of Management is not the Disciplinary Authority competent to discharge him from service. Therefore, merely on the ground that the order of discharge has been signed by the Managing Director it cannot be held that the Disciplinary Authority has not passed the order of discharge.

19. Here, it is pertinent to mention that in the Schedule of reference it is wrongly stated that the termination of service of the second party was given to effect from the 14th February 2008. In the claim statement the workman has clearly stated that he was discharged from service with effect from the 18th February 2009. Even in the conciliation failure report copy of which is annexed to the order of reference, it is clearly stated that the workman was discharged with effect from the 18th February 2009. The date "14-2-2008" is the date with effect from which the workman was kept under suspension. This is also reflected in the conciliation failure report. It is nobody's case that the services of the second party were terminated with effect from the 14th February 2008. The parties have not raised any dispute over the correctness of the date of termination of service as reflected in the schedule of reference. Therefore, the term of reference should be read as one with regard to termination of service of the second party with effect from 18th February 2009.

In view of the observations made above, it is held that the order of discharge from service of the second party with effect from the 18th February 2009 is legal and justified and the workman is not entitled to any relief.

The reference is disposed of accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
19-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
19-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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