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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th November 2013

No. 13365—li/1(B.)-79/2007-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 1st October 2013 in Industrial Dispute Case No. 22/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar, to whom the industrial dispute between the Management of M/s Lyka Labs Ltd. and its Workman Shri Durga Prasad Mishra, Sales Promotion Employee was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 22 OF 2008

Dated the 1st October, 2013

Present :

Shri P. K. Ray, O. S. J. S. (Sr. Branch)
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of . . . First Party—Management
M/s Lyka Labs Ltd.,
Lyka Hetero Health Care Ltd.,
At 101, Shivashakti Industrial Estate,
Andheri, Kurla Road, Marol, Andheri (East)
Mumbai-400 059, Maharashtra.

And

Their Workman

Shri Durga Prasad Mishra, . . . Second Party—Workman
 C/o Shri P. K. Mishra
 D/931, Sector-6, CDA,
 P.O./P. S. Bidanasi
 Dist Cuttack.

Appearances :

Shri Amar Kumar Sahoo, Adv. . . . For the First Party.
 Shri S. K. Mishra, Advocate. . . . For the 2nd Party

AWARD

This case has been instituted u/s 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & Employment Department of the Government of Odisha u/s 12(5) of the Act vide its letter No. 4331-li/1-(B)-79/07/LE., dated the 9th April 2008 with the following schedule:—

"Whether the dismissal of Shri Durga Prasad Mishra, Sales Promotion Employee from service with effect from the 31st October 2006 by the management of M/s Lyka Lab Ltd., 101, Shivashakti Industrial Estate, Andheri, Kurla Road, Marol, Andheri(East), Mumbai (Maharashtra) is legal and/or justified ? If not, what relief Shri Mishra is entitled to ?"

2. This case instituted on reference made by the Government of Odisha, Labour and Employment Department vide its Order No. 4331, dated the 9th April 2008 relates to the adjudication of the legality of the dispute regarding dismissal of the second party workman, a Sales Promotion Employee from his service by the management of M/s Lyka Lab Ltd., 101, Shivashakti Industrial Estate, Andheri, Karla Road, Maroe, Andheri(East), Mumbai, Maharashtra, w.e.f. the 31st October 2006.

3. The claim of the second party workman is that he initially joined as a medical representative in M/s Lyka Lab Ltd., w.e.f. the 13th September 1993 and posted at Berhampur. Subsequently, his service was confirmed w.e.f. the 13th March 1994 and he discharged his duty to the best satisfaction of his authority without any scar or blemishes for a period of thirteen years. In the year 2002, the management entered into joint venture with another company namely, M/s Hetro Drugs Ltd. and a third company called as M/s Lyka Hetro Drugs Ltd. was formed. In the circumstances, all the Medical Representatives enmass requested the said new company for their transfer to the existing service conditions. As the management did not agree the employees represented by Federation of Medical Representatives Associations of India and All India Lyka Workers Union jointly filed a complaint ULP No. 554/2002 before the Industrial Court, Mumbai. During the pendency of the said case as the second party workman received an offer from M/s Lyka Hetro Health Care for fresh appointment as the territory sales executive without any service continuity having less favourable service

conditions, he did not accept the same in spite of the pressure exerted upon him by the first party management and informed the fact to the Industrial Court by way of an affidavit. Subsequently, the management vide its letter, dated the 7th July 2003 transferred the second party workman from Cuttack to the Administrative Office of the company at Mumbai in its strategy and plan to procure and improve the business of the company. Since the aforementioned work in which he was proposed to be engaged is completely different from his earlier job profile and did not have any experience and skillness in the said work he protested against the said order vide his letter, dated the 19th July 2003 but the management vide its letter, dated the 7th August 2003 informed the second party workman that he has been marked absent since the 15th July 2003 . In reply, the second party workman vide his letter, dated the 29th August 2003 expressing his apprehension protested the action of the management. But the first party vide its letter No. 11th September 2003 informed the second party workman that his designation and nature of duties have not been changed and simultaneously threatened him that unless he joins within two days, he would relinquish his lien in service. Being apprehensive of any punitive action, the second party workman alongwith two other similarly treated employees approached the Industrial Court at Mumbai in ULP 696 of 2003 challenging the legality of their transfer order and simultaneously obtained interim protection restraining the management from terminating their services without following the due process of law. Subsequently, he was issued with a charge sheet by the management on the 2nd September 2005 with some false and baseless allegations and was asked to furnish written explanation within 48 hours and simultaneously decided to conduct enquiry against him. Since the charges were vague, the second party workman sought for clarification from the management vide his letter, dated the 17th September 2005 so as to reply the charge framed against him and protested against the pre-meditative action of conducting the enquiry. In the enquiry which was conducted without observing the principles of natural justice, the second party workman was found guilty on three out of the five charges and was intimated by the first party management vide its letter, dated 1st September 2006 granting him seven days time to showcause as to why punitive action shall not be taken against him. The second party workman though submitted his reply on the 30th September 2006 pointing out the infirmities in the enquiry and to grant him opportunity to properly represent the case the first party management vide its letter, dated the 31st October 2003 dismissed him from service with immediate effect.

4. The first party management in its written statement disputing the case on various points challenged the maintainability of the case on the ground that the second party is not a "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947 and further neither the Labour Officer, Cuttack nor the Industrial Tribunal, Bhubaneswar has got jurisdiction respectively for conciliation and adjudication of the case because of specific stipulation in the agreement between the parties that in case of any dispute between the company and its employees in connection with employment or any other matter, the Courts situated in the city of Bombay will have jurisdiction to try and entertain such matters and filed a petition for hearing on maintainability as preliminary issue.

5. In this case the second party workman does not challenge the terms and conditions of his service at the time of his appointment on the 4th October 1993. The Item No. 15 of the said terms and conditions relates to the jurisdiction of Courts situated in the City of Bombay alone to have jurisdiction to entertain any dispute between the parties. It is the case of the second party workman

that on his transfer to Mumbai vide first party management letter, dated the 7th July 2003 when he protested apprehending any punitive action he alongwith two other similar situated employees approached the Industrial Court at Mumbai in ULP B No. 696 of 2003 challenging the legality and justifiability of their transfer order and obtained interim protection restraining the first party management from terminating their services. The aforesaid matter clearly speaks that the Courts in Bombay city alone have got jurisdiction to entertain any dispute between the parties.

6. On behalf of the second party workman, emphasis has been given on the principle decided by the Hon'ble Supreme Court in Bikash Bhusan Ghosh and others *Vrs.* M/s Novartis India Ltd. and others reported in AIR 2007 SCW 2990. In the case in hand there is specific stipulation regarding jurisdiction of the Court which is found absent in the case of Bikash Bhusan (*supra*). Therefore, I am of the view that the principle decided in the case of Bikash Bhusan (*supra*) is not applicable in the present one. Hence, the District Labour Officer does not have jurisdiction to entertain the complaint and consequently the reference made on his report is bad in law and this Industrial Tribunal in Bhubaneswar has got no jurisdiction to adjudicate the dispute.

Hence, this case is not maintainable.

Dictated and corrected by me

P. K. RAY
1-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar.

P. K. RAY
1-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar.

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