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LABOUR & EMPLOYEES' STATE INSURANCE DEPARTMENT

NOTIFICATION

The 13th February 2013

No. 1382—li/1(S)-10/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th November 2011 in Industrial Dispute Case No. 29 of 2006 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of the Thebra Primary Fisherman Co-operative Society Ltd., At/P.O. Thebra, Dist. Jharsuguda and its Workman Md. Ajar was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 29 OF 2006

Dated the 16th November 2011

Present :

Shri Pradipa Kumar Sasmal,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The Management of the President,
Thebra Primary Fisherman
Co-operative Society Ltd.,
At/P.O. Thebra, Dist. Jharsuguda. . . First Party—Management

And

Its Workman
Md. Ajar,
At/P.O. Baghmunda,
Via Lakhanpur, Dist. Jharsuguda. . . Second Party—Workman

Appearances :

Shri A. K. Mishra & Associates	. . For the First Party—Management
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Shri K. C. Rath, Advocate	. . For the Second Party—Workman

AWARD

The present dispute arose out of the reference made by the Government of Odisha, Labour & Employment Department, made in their Order, dated the 21st September 2006 under letter No. 8590—li/1(S)-10/2006-LE., giving rise to the registration of the present case under Sections 10 and 12 of the Industrial Dispute Act, 1947 (for short, "Act"). The dispute involved is scheduled as follows :—

"Whether the termination of services of Md. Ajgar, workman by the management of Thebra Primary Fisherman Co-operative Society Ltd., Thebra, Dist. Jharsuguda with effect from the 1st April 2003 is legal and/or justified ? If not, to what relief the workman is entitled ?"

2. In the statement of claim submitted by the workman he asserted that he was appointed as a Depot Manager by the first party management more than 25 years back and since then he worked at different depots by discharging his duties to the satisfaction of his higher authorities. But, in the passage of time, when he was working as such Manager of Sunari Depot, the Secretary of the first party management without any just cause or excuse refused employment to him with effect from the 1st April 2003. Such refusal, according to the workman, amounts to termination of service.

Saying so, the workman asserted further that on 22-1-2001 the General Body of the first party Society passed a resolution to retrench his service and to appoint him in the same post on commission basis. Subsequent thereafter the Select Committee, in view of the above resolution, decided on 30-1-2007 (?) for appointing him on commission basis and the same was communicated to him. But the second party workman asserted that the above exercise was only a paper transaction as for all practical purposes he was performing the same duty which he did previously. He, therefore, averred that the retrenchment was neither legal nor justified inasmuch as he was never called upon to explain for any misconduct nor charge sheeted and even no enquiry was conducted on notice nor he was paid with the retrenchment compensation. Instead he claimed to be faithful in duty all through. He then stated to have represented his stand before the first party management but when the same was not heeded. Approached the Labour Officer before whom the management agreed to reinstate in service but later on backed out.

On the other, it was alleged by the workman that the first party management took the receipt book, etc., from him for solving the matter but did not return the same in spite of his request. He alleged further that an amount of Rs. 2,000 was instead taken from him as security by false representation besides collecting an amount of Rs. 1,000 due from him on false charges. According to him, he was not paid with his wages for the duty period from 1-10-1997 till termination of service and no commission was also paid otherwise.

He, therefore, prayed the Court to answer the reference in his favour holding the termination of service as illegal, and to reinstate him in service with back wages besides the wages for the duty period with interest.

3. The first party management in their written statement submitted that the appointment of the second party workman as Depot Manager, was communicated to him on 20-4-2001 and that the decision made by the Selection Committee of the Society on 31-1-2001 was nothing but, to implement the decision made and such communication was also sent to all the concerned department for information. It, therefore, submitted further that on accepting the appointment, the first party management did not challenge it and, rather, worked as Commission Agent which is also made clear from the report prepared by the concerned Labour Officer on the failure of conciliation proceeding. According to the management, the second party workman was completely satisfied with the post on 25% commission basis but his work was not satisfactory as he failed to deposit the amount collected by him as Depot Manager and when such activity of the workman continued by defaulting and cheating the Society on misappropriation of the amount collected, there was no due to be paid by the first party management/Society to the workman particularly when he himself did not turn up to work and, instead, came up with a false claim. On the other hand, it was asserted by the management that as a Depot Manager on commission basis the second party workman cannot claim as a matter of right to regularise his service inasmuch as his working on commission basis is exclusively a part of the contract and, thus, there was no question of termination of his service with effect from the 1st April 2003. Consequently the workman cannot also be entitled to reinstatement in service and the back wages and other dues as claimed by him. The specific case of the management is that the dispute in question comes under the Odisha Co-operative Societies Act than the Industrial Disputes Act and the claim advanced by the workman is nothing but self made plan to harass the Society.

In the rejoinder to the written statement filed by the first party management, the workman submitted that since the illegal termination of service of the second party is in dispute, the same would be covered under the Industrial Disputes Act and not under the Co-operative Societies Act. Denying the assertion that he did not turn up to work as alleged by the management, the workman reiterated that he had worked as a Depot Manager and not a Commission Agent but he was not paid with his arrear wages and when asked the management in that behalf he was asked to deposit all the relevant records with a disclosure that he would be paid with his arrear wages due to him. He also submitted to have deposited certain other amounts as claimed by the Society without knowing the correctness or otherwise of the demand made by the management.

ISSUES

4. On the pleadings of the parties, the following issues have been framed for adjudication :—

- (i) "Whether the termination of services of Md. Ajar, workman by the management of Thebra Primary Fisherman Co-operative Society Ltd., Thebra, Dist. Jharsuguda with effect from the 1st April 2003 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?"

5. The second party workman got himself examined as the lone witness. On the other hand, the first party management got examined the President of the Society as M.W. 1, another employee of the same status of the workman as M.W. 2 and of late, with the permission of the Court, they examined the present Secretary of the Society as M.W. 3. No documentary evidence was adduced by the workman. The management, however, through M.W. 2 proved the acquittance

roll and the signatures of the workman therein whereas it brought into evidence certain other papers as Exts. M-2 to M-14/2. through M.W. 3.

FINDINGS

6. *Issue No. (i)*—The second party workman when got himself examined as W.W. 1 among other things deposed that he joined in the service during the year 1978 but was terminated therefrom since the 1st April 2003 when the Secretary of the Society verbally directed him not to continue with his work after the 31st March 2003. He deposed with vehemence that there was absolutely no reason for the management to terminate him from the service in the aforesaid manner inasmuch as there was no allegations against him before them by that time nor any explanation was called for from him during his service tenure, much less service of any charge sheet on him or holding of any enquiry on that score. He also deposed that the management had not given him one month notice before the termination from the job and no compensation was also paid to him by them. He, therefore, deposed that to the best of his knowledge he could say that the management had removed him from service most unceremoniously without having any justifiable reason and, as such, termination of the service would absolutely be illegal. It is, however, found from the statement of this witness that he was well aware about the passing of the resolution, dated the 22nd January 2001 by the management in which it was resolved by the management to terminate all the Depot In-charge personnels from the Society and the further decision to employ those persons on commission basis. He admitted fairly to have been issued with a letter in that behalf by the management but, in the next breath, stated that the said resolution had not worked as the same was not given effect and he continued in the job as before. M.W. 1 deposed further that he had verbally requested the management to re-employ him in the Society but it did not pay any heed to his request for which he filed an application before the District Labour Officer, Jharsuguda for necessary action. It is seen from the further evidence of the witness that the District Labour Officer called the management to ascertain about the dispute during which the management agreed to take him back under the employment and also to pay him all his dues pending with them by that time but thereafter, the management did not keep their words and give the job to him. This witness deposed that he was getting the salary of Rs. 1,700 per month when he was terminated from the job but deposed further that the management had not paid him any salary since 1st October 1997 till termination of his service. But when cross-examination, he admitted fairly to have not protested about the resolution, dated the 22nd January 2001 of the management nor had given in writing any protest in that behalf. Instead, he admitted to have remained present in the meeting on the relevant date when the resolution was passed along with the other officials who were in-charge of different Depots. M.W. 1 admitted further that the other Depot In-charge had not raised any objection before the management in respect of the aforesaid resolution. When attempt was made on behalf of the management to ascertain the status of the other Depot In charge subsequent to the resolution, dated the 22nd January 2001. M.W. 1 at Para. 7 of his evidence stated that he cannot say as to how they are being paid by the management. On the other hand, it is seen from the answers given by him in the next Para. that his salary was never raised from Rs. 1,700 per month till the time he was removed from the job. But, at the same time, it is also seen that he admitted to have not written to the management about the non-payment of his wages since 1-10-1997 by appending an explanation that the acquittance roll can prove that he was not paid with his wages from that date. Questions were found to have been asked to this witness for the statement given by him that there was no allegation against him before the management nor any explanation was called for during his service tenure and on that score he denied the suggestion that the management had served notices upon him intermittently

for depositing the Society money which was in his custody and that he had not complied the same in accordance with their instruction. But he admitted to have collected money on behalf of the Society as a Depot In-charge and a duty was cast on him to submit the same to the management of the Society. He even ventured to deny the suggestion that several allegations were also made against him before the management for misappropriating the Society fund. Among other things he denied to have served in the Society as a Depot Manager on commission basis as per the resolution, dated the 22nd January 2001. This witness was found to have never read in any school in view of the admission made by him at Para. 11 of the evidence. However, though he admitted to have agitated his grievances before the Director of Fisheries and District Labour Officer, denied on the other hand, that number of resolutions were passed by the management of the Society with regard to the allegations received by them against him and also in respect of misappropriating the Society fund by him. He denied to have remained absent for prolonged period and also not to have deposited the money which he had collected on behalf of the Society.

7. The President of the first party management Society who has been working since the year 2005, was examined as M.W. 1 but on a careful reading of the entire evidence of this witness, it appeared that he has no knowledge on the issue. In fact, during the cross-examination at Para. 2 he admitted fairly that he cannot say anything relating to the instant proceeding. However, another person named Jadab Sahu, shown to have worked as Depot Manager under the first party management, was examined as M.W. 2 during which he supported the case of the management in toto. The evidence given by this witness when gauged establish the fact that he has sufficient knowledge about the initiation of service career of the second party workman as he stated to have worked therein since the year 1978 and among other things the development that took place subsequent to the resolution, dated the 22nd January 2001 of the management. A careful reading of the evidence of this witness also disclosed the fact that in accordance to the said resolution he worked as Depot Manager on commission basis, so also the workman and could stand the test of the cross-examination made on behalf of the workman satisfactorily. Among other things the management could bring into evidence the acquittance roll maintained in its office through this witness and from the entries contained therein proved the signature of the workman to show the remunerations paid to him on different calendar months. The register in question was marked as Ext. M-1 and different signatures of the workman as Ext. M-1/1 to Ext. M-1/25. However, when questioned about the payments made to the employees of the first party management, M.W. 2 at Para. 4 of his evidence admitted that the second party workman joined the establishment of the first party management in the year 1981, that he (M.W. 2) had signed in the acquittance roll vide Ext. M-1 up to the month of November 2000; but no employee was paid salary by the first party management from the month of January, 2001. Taking into account the above evidence of M.W. 1, when the entries in the acquittance roll (Ext. M-1) are perused it is found, that the workman had signed the acquittance roll in token of receipt of pay for each month right from the year January, 1997 till January, 1999. When questioned, further, though this witness was not able to say exactly for how long the second party workman served as an employee under the first party management without verifying the relevant record but stated subsequently that the workman had served under the first party management as an employee till the year 2000 and thereafter, he worked on commission basis only. In his fairness, he, however, at Para. 8 admitted that no register was maintained for mentioning the amount collected by different Commission Agents and the amount paid to them towards their commission in course of their transaction with the management. Though, he was not able to say the exact time when the second party workman had left his job as Commission Agent under the first party management but subsequently stated with vehemence

that in a general body meeting the management of the Society terminated their job in the year 2000 but the authorised officer of the Government appointed them including the second party workman as Commission Agent under the first party management. In the penultimate Para. of his evidence, M.W. 2 deposed that after being appointed as Commission Agent they were using the same receipt books which were being used by them prior to their appointment as Commission Agent for collection of money by sale of fish.

Of late, the present Secretary of the management Society was examined as M.W. 3 and in his examination-in-chief through the affidavit marked Ext. M-2, he deposed that the Society is being guided by its bye-law as well as the Odisha Co-operative Societies Act, 1962 and the Rule, 1965. Mentioning certain legal provisions for prosecution and defence of a proceeding like the present one in view of the provisions of the Societies Act, M.W. 3 stated further, that prior to the resolution of the Society, dated the 22nd January 2001, the second party workman was the paid employee of the Society but after the resolution he was not more the paid employee of the Society, rather was working on commission basis without agitating any grievances about the same. Refuting the allegations advanced by the workman regarding non-payment of the wages to him by the management, M.W. 3 stated that such non-payment was directly related to his dereliction of duty and defrauding the Society by not returning the collection receipt book as shown in the affidavit. According to this witness, the second party workman had collected Rs. 28,309 from December, 2000 till 31st March 2003 but has deposited only Rs. 5,300 with the Society and has misappropriated the balance amount. He, therefore, averred further that the workman has caused deficiency in the on sets of the Society by breach of trust, wilful negligence and had misappropriated money belonging to the Society. On the other hand, he deposed that the acquittance roll and other receipts against the receipt of salary would show the payments made to W.W. 1 whereas the other documents will prove the amount misappropriated by him. While in the box, M.W. 3 among other things proved the true copy of the resolution, dated the 1st April 2003 of the Society as Ext. M-6 and different other letters issued to the workman on different dates as Ext. M-7, Ext. M-8 and Ext. M-9. He also proved the joining report of the workman as Ext. M-12 and the receipt granted by him in relation to the payment of his salary as Ext. M-13 and three other sheets of the photocopies of the cash register of the year 1999-2000 maintained by the Society. By the date of examination of this witness, the workman did not participate in the hearing for which he could not be cross-examined. Consequently the evidence given by M.W. 3 remained unchallenged. In fact, the record disclosed that subsequent to the Order, dated the 7th December 2009 no development could be made in the proceeding and the same continued till 26-8-2011 when it was asked by the Court requiring the parties to advance their argument in the matter. However, subsequent thereafter the management only participated in the hearing.

8. As stated earlier, the workman did not participate in the hearing subsequently for which the furtherance of the dispute proceeded ahead and argument was heard accordingly on behalf of the management on 4-11-2011.

The learned counsel for the management initiating his argument submitted that vide resolution, dated the 22nd January 2001 of the Society the workman was resolved not to be a paid employee and it was resolved that he would work on commission which was well supported from the testimony of M.W. 2; the colleague of the workman; and even the workman himself in accordance to the aforesaid resolution submitted his joining report afresh on 30-4-2001 vide Ext. M-12. The

further contention of the learned counsel was that the workman himself even at Para. 4 of the statement of claim, admitted about the above facts. Thus, there having been no objection raised by the workman against the resolution, dated the 22nd January 2001 and once the workman opted to act on commission basis he cannot claim reinstatement in his employment as he has already lost his right to work as a regular service holder, particularly when he has already received the salaries as shown from the entries in the acquittance roll (Ext. M-1) so also the receipts granted by him and proved as Ext. M-13 and Ext. M-14 series.

Coming to the claim of the workman that during his incumbency, no explanation was ever called for from him, no charge sheet was submitted nor any enquiry was made, the learned counsel for the management repelled such claim *vis-a-vis* the conduct of the workman. It was urged by the learned counsel for the management that the workman had received more than Rs. 34,000 from the fishermen as disclosed from the entries in Ext. M-4 but had not deposited the sum with the Society and, instead, found to have misappropriated an amount of more than Rs. 28,000 as shown in Ext. M-5 series. He, therefore, contended further that the workman has to pay the misappropriated amount to the Society but to avoid the criminal liability he has raised the false claim and remained himself mum on the issue of misappropriation of the fund before this Court during the furtherance of the present proceeding. The learned counsel concluded his argument with the submission that when the workman, for the reasons best known to him, did not raise any objection before any officials of the Society or its Committee when he was asked on 1-4-2003 not to work and instead one year thereafter raised objection before the District Labour Officer, the claim advanced by him in the premises cannot be tenable and for the self same conduct of the workman, he would not be entitled to any relief in the present dispute.

9. To strengthen the contentions raised by the learned counsel for the management, he banked upon the above documents from which it appeared that much earlier to the present proceeding, the workman had submitted a joining report afresh and thereafter under different communications of the management he was asked to deposit the amount collected on behalf of the Society, the fact of which was also placed by the management before the Assistant Labour Officer, Jharsuguda, in accordance to the reply given to Letter No. 1784, dated the 29th October 2004 of the said officer. In that communication, among other things the management has intimated the Labour Officer regarding misappropriation of fund of the Society made by the workman but, despite all these developments the workman during the furtherance of this proceeding did not disclose anything about the same nor could explain the good, if any, made on his behalf regarding the allegation advanced against him. Instead, he ventured to depose on oath that no explanation was ever called for from him, no charge sheet was supplied nor any enquiry was conducted and he was neither noticed in that behalf. But, as the truth was to come out, during the cross-examination the workman himself as W.W. 1 admitted at Para. 9 that he has collected money on behalf of the Society as Depot In-charge and duty was cast on him to submit the same to the management of the Society. Such behaviour of the workman disclosed the fact that he has not approached the Court with all frankness and full disclosure of the facts. Consequently his conduct is found to be blameable. Judicial precedent is to the effect that the case of a person who approaches the Court without all frankness and full disclosure of the facts is to be thrown out at any stage. AIR 1991 S.C. 1726 (G. N. Swami Vrs. State of Karnataka—referred to).

Thus, to conclude the discussion on issue No. (i), it appeared to me that the termination of service of the workman by the management with effect from the 1st April 2003 could not be proved either illegal and/or unjustified, hence the same is answered against the workman.

10. *Issue No. (ii)*—For the discussion made at issue No. (i) and the answer given thereto, the workman would not be entitled to any relief as prayed for by him in this case. Hence answering this issue also against the workman. It is ordered :

AWARD

That the reference is answered on contest against the workman but without any cost.
Dictated and corrected by me.

P. K. SASMAL
16-11-2011
Presiding Officer
Labour Court, Sambalpur

P. K. SASMAL
16-11-2011
Presiding Officer
Labour Court, Sambalpur

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