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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 6th March 2013

No. 2318—li/1(B)-3/2004-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th December 2012 in Industrial Dispute Case No. 29 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Employer of M/s Kalinga Hospital Ltd., Bhubaneswar and their Workman Shri Ratnakar Nayak was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 29 OF 2004

Dated the 15th December 2012

Present :

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

Between :

The Management of .. First Party—Management
M/s Kalinga Hospital Ltd.,
Bhubaneswar.

And

Their Workman .. Second Party—Workman
Mr. Ratnakar Nayak

Appearances :

For the First Party—Management .. Shri P. Sahoo

For the Second Party—Workman himself .. Shri R. Nayak

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. 3175—li/1(B)-3/2004-LE., dated the 31st March 2004.

“Whether the termination of services of Shri Ratnakar Nayak, Accounts Incharge with effect from the 9th April 2002 by the management of M/s Kalinga Hospital Ltd., Bhubaneswar is legal and/or justified ? If not, what relief Shri Nayak is entitled to ?”

2. The case of the workman, in brief, as set out in his statement of claim is that he was appointed as Cashier on 14-1-1998 under the management and thereafter he became the Accounts Incharge on 1-2-2000. While working as such, the management issued a letter on 8-2-2002 containing some allegations against him and called for an explanation and accordingly he submitted his explanation on 25-2-2002. On 11-3-2002 he was suspended being the explanation was not found satisfactory and lastly decided to hold an domestic enquiry against him and accordingly the enquiry was conducted by the Enquiry Officer on 19-3-2002. Further according to the workman, the Enquiry Officer has not recorded his statement properly during the enquiry and the allegations levelled against him is not proved and the termination of the workman on the ground of misconduct is arbitrary, illegal and misconceived. Thereafter, vide letter, Dt. 9-4-2002 the management informed the workman that the charges levelled against him were proved during the enquiry and he is dismissed from service with effect from 9-4-2002. The workman has contended that the management is an "Industrial Establishment" as defined in the Industrial Employment (Standing Orders) Act, 1946. Further the case of the workman is that more than 150 Employees are working under the management and since the management has no Certified Standing Orders, the provisions of the Model Standing Orders is applicable to the present management. Above all, the allegation of the workman is that the copy of the enquiry report was not supplied to him and no opportunity was given to him for making representation on the question of dismissal of services. The workman has finally stated that the dismissal order passed by the management on the ground of misconduct is not a fact but it is a clear case of termination without following the provisions of the Industrial Disputes Act, 1947. In these averments, the workman has prayed for his reinstatement in service with full back wages.

3. On the other hand, the management appeared and filed written statement stating that the present case is not maintainable and admitted that the workman was appointed as Cashier/Store Assistant in the month of January, 1998 and on 1-2-2000 he was entrusted to look after the accounts and audit of finance section under the supervision of departmental head. According to the management, the workman was not performed his duty sincerely for which he was instructed verbally not commit such type of mistake in future. In spite of the oral direction, the workman turned deaf ear for which the Deputy Chief Finance Officer wrote a letter to the Managing Director on 17-7-2001 alleging against the workman for not preparing of the Annual Return of salaries under

Section 206 of the Income Tax Act. On the above score, show cause notice was called for from the workman and as the explanation was found unsatisfactory, the workman was transferred to cash and billing department. On 8-2-2002 another show cause notice was issued but the Deputy Chief Finance Officer to explain in writing as to why disciplinary action shall not be taken against the workman for not depositing T.D.S. amount in time. As the explanation received from the workman was not satisfactorily one, he was suspended pending disciplinary proceeding. On 11-3-2002 the Enquiry Officer was appointed and the enquiry date was fixed to 16-3-2002 but the same date was deferred to 19-3-2002. Further the case of the management is that on 19-3-2002 the enquiry was conducted by the Enquiry Officer and the charges were proved against the workman and accordingly he was dismissed from service on 9-4-2002 after payment of full and final dues of the workman. On these back grounds, the management has prayed to answer the reference in favour of the management.

4. In view of the above pleadings of both the parties, the following issues have been framed. :—

ISSUES

- (i) “Whether the termination of services of Shri Ratnakar Nayak, Accounts Incharge with effect from the 9th April 2002 by the Management of M/s Kalinga Hospital Ltd., Bhubaneswar is legal and/or justified ?
- (ii) If not, to what relief Shri Nayak is entitled ?

5. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved bunch of documents under the cover of Exts. 1 and 14. Similarly, that management has examined its Deputy Chief Finance Officer as M.W.1 and also proved bunch of documents under the cover of Exts. A. to Z.

FINDINGS

6. *Issue Nos. (i) & (ii)*—Both the issues are taken up together for the sake of convenience.

Before going to discuss the evidence of both the parties in detail, it is pertinent to mention here that both the parties have admitted regarding the engagement of the workman as Cashier/Store Assistant in the month of January, 1998. It is also an admitted fact of the both the parties that the workman was issued with a show cause notice and then transferred to cash and billing section/ department. Further admitted fact is that for the alleged negligence and dereliction of duty and failure to discharge his statutory responsibilities another show cause notice was issued by the Deputy Chief Finance Officer against the workman with a direction to explain by 12-2-2002 as to why disciplinary action shall not be taken against him. Thereafter, on 11-3-2002 an Enquiry Officer was appointed, enquiry was conducted on 19-3-2002 and basing on the report of the Enquiry Officer the workman was dismissed from service with effect from the 9th April 2002.

7. So in view of the above admission of the parties, it is an admitted fact that the workman was dismissed from service on the allegations of alleged misconduct. Though separate issue has not been framed on this point in this case, now it is to be determined as to whether the domestic enquiry conducted by the management against the workman was fair and proper and the same was not violated the principles of natural justice.

8. On the above score, the management has not examined the Enquiry Officer in this case. But the Deputy Chief Finance Officer who was also the Presenting Officer in the enquiry has examined as M.W.1 who in his affidavit evidence has stated that on 11-3-2002 the Enquiry Officer was appointed and the date of enquiry was fixed to 16-3-2002, but the said date was deferred to 19-3-2002. On 19-3-2002 the enquiry was conducted and the workman was participated in the enquiry and all the persons concerned were present before the Enquiry Officer and participated in the said enquiry. The Enquiry Officer has also read over the charges levelled against the workman by the management. The M.W.1 has further deposed that the workman prayed to close the enquiry by hearing the charges and also denied to examine any witness from his side. Therefore, the management urged that the enquiry was conducted fairly and properly against the workman. On the other hand, the workman (W.W.1) in his affidavit evidence though admitted that the enquiry was fixed to 19-3-2002 but at the same has deposed that in the enquiry, the workman was not given any opportunity for participation. The workman has further deposed that he was not supplied with the documents relief upon by the management and also not given any opportunity to cross-examine the management's witnesses in the enquiry, so, also the Enquiry Officer has not given a chance to examine witnesses from his side including himself in his defence and the enquiry was concluded in one day. The workman further deposed that no enquiry report was also supplied to him before inflicting the punishment of dismissal from service.

9. In view of the above rival contentions of both the parties, it is seen that the management has not examined the Enquiry Officer in this case to prove the enquiry to be fair and proper and due opportunity was given to the workman to defend his case properly. On perusal of the document under the cover of Ext.S, the letter of the workman, dated 16-3-2002 addressed to the Chief Manager (Admn.) wherein the workman has stated that :

“With the reference to your letter cited above, I have come to attend the enquiry at 3 P.M. today. As the Enquiry Officer is not present to convey the said purpose, I may be allowed to leave your office at 4 P.M.”

So from the above letter, Ext.S, it is clear that on 16-3-2002 the Enquiry Officer was not present and the Chief Manager (Admn.) adjourned the date and refixed the enquiry to 19-3-2002. So, it cannot be said that the enquiry date was deferred due to fault of the workman. Further on perusal of Ext.T, the proceeding of the enquiry, it reveals that the Enquiry Officer had written some questions and answers without examining any witness separately from either side. So from Ext.T, it is crystal clear that the Enquiry Officer has not examined any witness from either side during the enquiry. Moreover, M.W.1 in his cross-examination has clearly admitted that one S.K. Ray, Accounts Assistant was examined in the enquiry but his statement is not filed in this case. Except the proceeding of enquiry under the cover of Ext.T and the enquiry report under the cover of Ext.U, the management has not filed any other relevant documents relating to the enquiry. So from the above documents, it is clear that the witnesses were not examined in presence of the workman and also the workman

has no opportunity to cross-examine the management's witnesses, so also, the workman was not given any opportunity to examine the witnesses from his side including himself in his defence in the said enquiry.

10. Law is well settled that :

“An enquiry cannot be said to have been properly held unless :

- (i) the employee proceeded against has been informed clearly of the charges levelled against him ;
- (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges ;
- (iii) the employee is given a fair opportunity to cross-examine witnesses;
- (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes or any relevant matter, and ;
- (v) the Enquiry Officer records his findings with reasons for the same in his report.”

With regard to the above settled principles of law and evidence on record so also on perusal of the documents filed and proved by the parties as discussed above, it is manifest that the enquiry was not conducted strictly in compliance to the provisions of the natural justice. So the management has failed to establish that the domestic enquiry conducted by the management against the workman was fair and proper and due opportunities were afforded to the workman while conducting the domestic enquiry. In the result, I am of the opinion that the enquiry conducted by the management against the workman was not fair and proper and was also violated the principles of natural justice.

11. Further on perusal of the reference, it is seen that 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 for adjudication such as :

“Whether the termination of services of Shri Ratnakar Nayak, Accounts In-charge with effect from the 9th April 2002 by the Management of M/s Kalinga Hospital Ltd., Bhubaneswar is legal and/or justified ? If not, what relief Shri Nayak is entitled to?”.

12. So from the above reference, it is clear that the workman has been terminated but not dismissed from service. On this point, the workman has urged that he has working continuously under the management with effect from the 14th January 1998 till the date of his termination/ dismissal from service, i.e on 9-4-2002. But at the time of termination of his service, the management has not followed the mandatory provisions of the Industrial Disputes Act, 1947. To rebut the above plea of the workman, the management has not uttered a single word to discard the above statement of the workman. So on this points also the management has miserably failed to establish its case.

13. So on careful consideration of all the materials available in the case record as discussed above, I am of the considered view that the termination of the workman from service with effect from the 9th April 2002 by the management is neither legal nor justified. Hence the workman is entitled for reinstatement in service.

14. Regarding back wages, admittedly the workman had not worked under the management for the period in question. Further law is well settled that :

“When the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified.”

So, in view of the above settled position of law, I am of the opinion that instead of granting back wages, a lump sum amount of Rs. 40,000 as compensation will meet the ends of justice in the instant case. Hence, both the issues are answered accordingly.

15. Hence, Ordered :

That the termination of service of Shri Ratnakar Nayak, Accounts in-charge with effect from the 9th April 2002 by the management of M/s Kalinga Hospital Ltd., Bhubaneswar is illegal and unjustified. The workman Shri Nayak is entitled to be reinstated in service with a lump sum amount of Rs. 40,000 as compensation in lieu of back wages. The management is directed to implement this award within a period of two months from the date of its publication failing the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K.Z. AHAMED
15-12-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED
15-12-2012
Presiding Officer
Labour Court, Bhubaneswar

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