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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th April 2013

No. 4048—li/1(B)-87/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd Decemberr 2012 in Industrial Dispute Case No. 84 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Neelachal Hospital Pvt. Ltd. Kharavelnagar, Bhubaneswar and their workman Shri Arabinda Sethi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 84 OF 2006

Dated the 22nd December 2012

*Present :*

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

*Between :*

The Managing Director,  
Neelachal Hospital (P) Ltd.,  
Kharvelnagar, Unit-III,  
Bhubaneswar. . . . . First Party—Management

*And*

Shri Arabinda Sethi,  
S/o Shri Amareswar Sethi,  
At Kulapitapada,  
P.O. Kuranga, P.S. Niali,  
Dist Cuttack. . . . . Second Party—Workman

## Appearances :

For the First Party—Management . . . Shri Damodar Nanda, Manager, HR.  
 For the Second Party—Workman himself . . . Shri Arabinda Sethi.

## AWARD

The Government of Odisha in the Labour & E.S.I. 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. 11171—li/1(B)-87/2006-LE., dated the 16th December 2006.

“Whether the manner of termination of Shri Arabinda Sethi, by the management of neelachal Hospital Pvt. Ltd., Bhubaneswar with effect from the 14th September 2004 is legal or justified ? If not, to what relief the concerned workman is entitled to ?”

2. The case of the zsecond party workman, as narrated in his claim statement, may briefly stated thus :—

3. On the being appointed as a Ward Attendant the workman joined under the first party on 1-7-2002 and as per the terms of appointment he remained on probation for a period of one year. While continuing so, he applied for regular wages and Statutory leaves for which the first party discharged him from service on 31-7-2003 i.e. a month after his completion of period of probation. Thereafter on his reising a complaint before the D.L.O., Khurda, he was taken back into employment on signing a settlement dated 13-11-2003 and accordingly he resumed duty on 19-11-2003. Thereafter, vide letter Dt. 27-7-2004 the workman was charge sheeted on the allegation of misappropriation of Company’s property, which according to the workman is totally false. It is pleaded that on account of his sickness the workman could not perform his duty on 12-9-2004 for which he intimated the first party over telephone and on the next day i.e 13-9-2004 hen he reported for duty with a leave application for 12-9-2004 he was not allowed to join duty but served with a suspension order placing him under suspension with effect from the 14th September 2004. It is alleged that although he remained under suspension but no subsistence allowance was paid to him. Thereafter on 26-7-2005 the first party issued him a letter asking him to face an enquiry with regard fto his suspension. In reply to such letter the workman made a representation to the enquiry officer but the same was rejected. Again on 11-8-2005 the first party called the workman for a personal hearing but without considering his genuine difficulty handed him a letter terminating his service with effect from the 14th September 2004. It is alleged that the enquiry committee and so also the Disciplinary Authority without affording the workman a reasonable opportunity in his defence concluded the disciplinary proceeding by imposing on him the punishment of termination from service. It is further alleged that even a copy of the enquiry report was not supplied to him. The principle of natural justice having not been adhered to by the first party during conduct of the disciplinary proceeding, the workman has prayed for his reinstatement in service with back wages.

4. The first party management admitting about the engagement of the workman under it has stated in its written statement, *inter alia*, that during the period of probation the performance of the workman was not satisfactory, in as much as, he used to leave the work place very often leaving the patients unattended and remaining absent unauthorisedly for long periods. It is the specific stand of the first party that consequent framing of charge against the workman, he submitted his explanation in writing to the Enquiry Committee and after giving him a chance of personal hearing he was terminated from service. The suspension order being in consonance of the Rules and Regulations of the first party and the workman having not acted as per the direction of the suspension order and further the termination order having been given effect to retrospectively i.e from the date of suspension it is pleaded no allegation the first party has prayed to answer the reference in the negative.

5. In terms of the reference, the following two issues have been framed :

#### ISSUES

(i) "Whether the manner of termination of Shri Arabinda Sethi, by the management of neelachal Hospital Pvt. Ltd., Bhubaneswar with effect from the 14th September 2004 is legal or justified ? If not, to what relief the concerned workman is entitled to ?"

(ii) If not, to what relief the concerned workman is entitled to?

6. To substantiate their respective stand, the workman has examined himself as W.W. No.1 and relied on documents which have been marked Exts.1 to 15. The management in its turn has examined its HR Manager as M.W. No.1 and relied on only one document. Which has been marked as Ext.A.

#### FINDINGS

7. *Issue Nos. (i)*—It emerges from the pleadings of the parties that it is not a case of termination simpliciter but removal of the workman from service as a result of misconduct committed by the workman. It further transpires that for such misconduct the first party had conducted an enquiry and basing on the findings of such enquiry punishment was inflicted on the workman.

Though it is the settled principle that where a domestic enquiry is held against a workman for any misconduct the same should be decided as a preliminary issue but as the management has neither filed any document nor examined any witness relating to such enquiry and further did never ask for an opportunity to prove the charges before this Court in the event the same is answered against it, it is difficult on the part of this Court to examine that aspect first. The witness examined on behalf of the first party is neither the Enquiry Officer nor a person who has any direct knowledge regarding the enquiry conducted against the workman.

8. In view of the above, it is to be examined on merit as to whether the management has been able to prove the imputation levelled against the workman so as to inflict on him the punishment of termination from service.

8. Before proceeding to analyse the as well as documentary evidence available on record, it is felt appropriate to put on record the settled principles of the Hon'ble Apex Court as to how a domestic enquiry is to be conducted by following the principles of natural justice. It has been observed by the Apex Court that it is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the berest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted.

Keeping in mind the above-stated observations of the Hon'ble Supreme Court, it is now to be examined as to whether the first party while conducting the enquiry against the workman has followed the principles of natural justice.

9. Not a single document relating to the domestic enquiry conducted against the workman is filed by the first party to show its bonafideness. M.W.No.1, who is the sole witness examined for the management, has orally stated that upon conclusion of the domestic enquiry the workman has been inflicted with the punishment. On the other hand, the workman has filed documents relating to his suspension marked Ext.6, his explanation to such suspension order marked Ext.7, the notice to attend the enquiry marked ext. 11, the notice to attend personal hearing marked Ext.12 and the letter of his termination marked Ext.13. In connection with the matter it is pertinent o mention that the management has pleaded in its written statement that the workman was charge sheeted for misappropriation of Company's property. But, the notice dated 26-7-2005 marked Ext.11 discloses that the workman was called upon to vface an enquiry with regard to his suspension. The suspension order, Ext.6 discloses that for his absentism on 12-9-2004 the workman was suspended. Hence, the charge about which there is a reference in the written statement seems to have not at all been enquired into by the management. Further, except intimating the workman to face an eenquiry and to attend personal hearing vide Exts.12 and 13, respectively the management seems to have straight-away removed the workman vide Ext.13. The enquiry based on the documents, discussed above, is noting but an eye wash to get rid of the workman.

10. Conceding for the sake of argument that the workman was negligent in his duty besides his overall performance was not all satisfactory but still then thee was no bar the management to get the disciplinary enquiry conducted against the workman in a fair and proper manner observing the principles of natural justice and thereafter to impose on him the punishment taking into account the gravity of the misconduct committed. The manner in which the domestic enquiry was conducted against the workman and the punishment imposed basing on such enquiry is found to be not in accordance with the principles of natural justice. hence, it is held that the first party has miserably failed to prove the imputations levelled against the workman and consequently its action in terminating the services of the workman with effect from the 4th September is not sustainable in the eye of law.

11. *Issue No.(ii)*—In view of the findings on issue No.1, the workman is held entitled to reinstatement in service forthwith. However, on reinstatement of the workman the management is at liberty to proceed against the workman departmentally for misconduct, if any—

As regards back, it is seen from Ext.A that for a short period i.e. from 1-10-2011 to 29-2-2012 the workman was employed as an Attendant under M/s Ayush Hospital, Bhubaneswar. Taking into consideration the fact that the workman is an able bodied person and might have been employed somewhere else after his removal from the Organisation of the first party, he is held not entitled to any back wages but in lieu thereof he be paid a compensation of Rs. 25,000 (Rupees twenty five thousand only). The first party to implement the Award within a period of two months of the date of its publication in the Official Gazette failing which the workman would be paid full back wages till his actual reinstate.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K.Z. AHAMED  
22-12-2012  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED  
22-12-2012  
Presiding Officer  
Labour Court, Bhubaneswar

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