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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th June 2014

No. 4960—IR(ID)-57/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd May 2014 in Industrial Dispute Case No. 13/2013 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Executive Engineer, Minor Irrigation Division, Sambalpur, At/P.O./Dist. Sambalpur and its workman Shri Gagan Guru 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. 13 OF 2013

Dated the 22nd May 2014

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The management of .. First Party—Management
Executive Engineer, Minor Irrigation Division,
Sambalpur, At/P.O./Dist. Sambalpur.

And

Their workman .. Second Party—Workman
Shri Gagan Guru, ex NMR
S/o Kartik Guru, At Bhatra,
P.O./P.S. Dhanupali, Dist. Sambalpur.

Appearances :

Shri S.K. Pattanaik, E.E., M.I. Division, Sambalpur.	. . . For the First Party—Management
<hr/>	
Self	. . . For the Second Party—Workman

AWARD

This award arises out of a reference made by the Government of Odisha, Labour & E.S.I. Department under the power conferred by sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the "Act") vide under Memo. No. 10661 (5), dated the 22nd December 2012. The disputes involved under the schedule of reference is as follows :

"Whether the action of the management of Minor Irrigation Division, Sambalpur in terminating the services of Shri Gagan Guru, NMR by way of refusal of employment with effect from the 7th December 2007 is legal and/or justified ? If not, what relief Shri Guru is entitled to ?"

2. The case of the second party workman as revealed from his statement of claim is that he was employed by the first party as a workman with effect from the 1st November 1989 in his establishment. He was paid wages by the first party on monthly basis and performed the duties as assigned to him in a continuous manner. It is his specific case that from the 3rd December 2007 he fell ill and remained under treatment of a Doctor but the management having notice of such fact refused him to serve with effect from the 7th December 2007. According to the second party such act of the first party is illegal as the procedure u/s 25-F and 25-N of the I.D. Act was not observed. The second party after termination of service remained unemployed and approached the Labour Machinery at Sambalpur. The Conciliation Officer-*cum*-Assistant Labour Officer after receipt of complaint from the workman called for views from the management and since there could not be any settlement of the dispute, he submitted a failure report u/s 12 (4) of the I.D. Act. The Government in its turn referred the dispute to this Court for adjudication.

3. The first party management filed written statement stating *inter alia* that the second party was engaged as NMR from the 1st November 1989 but since the 6th December 2007 he abandoned the service. According to the first party, the second party remained absent willfully without any information to his authority for which the department faced much difficulties. The second party was persuaded to resume his duty but the same was in vain. The management has specifically stated that on the 31st December 2007 the Junior Engineer, M.I. Section, Sambalpur wrote a letter to the second party asking him to resume his duty but he did not comply. On the 4th February 2008 the Executive Engineer, M.I. Subdivision, Sambalpur issued notice to the workman calling upon him to submit explanation for his unauthorized absence from duty and on the same day he intimated that due to mental problem of his wife he attended the medical treatment at Burla and requested to allow him to join duty with a prayer for excuse. He practically did not join in duty. The Junior Engineer, M.I. Section, Sambalpur on the 4th November 2008 called upon for explanation from the second party for his willful absence from duty and asked him to resume duty immediately. Then the Assistant Executive Engineer, M.I. Subdivision, issued a letter, dated the 1st January 2009 asking him to

resume duty with explanation for unauthorized absence but he did not respond. The workman on the 2nd March 2010 sent a letter stating that he was on medical treatment from the 3rd December 2007 and enclosed a copy of Medical Treatment Certificate, dated the 30th August 2009. According to the management it has not refused employment to the second party, who abandoned his service by remaining absence from duty unauthorisedly from the 7th December 2007 and therefore he is not entitled to any relief.

4. The workman submitted a rejoinder wherein he submitted that the management has tried to mislead the Court by concealing true facts. It is his case that after his illegal termination from service, he approached the management for redressal but the same went in vain. He denied the averments of the management and prayed for reinstatement in service with back wages.

5. On the basis of the pleadings of the parties, the following issues have been settled :

ISSUES

- (i) "Whether the action of the management of Minor Irrigation Division, Sambalpur in terminating the services of Shri Gagan Guru, NMR by way of refusal of employment with effect from the 7th December 2007 is legal and /or justified ?
- (ii) If not, what relief Shri Guru is entitled to ?"

6. In order to prove his case, the workman examined himself as the sole witness and proved several documents which are marked Exts. 1 to 4. The management on the contrary examined the Executive Engineer, M.I. Subdivision, Sambalpur as the only witness and through him several documents were proved and marked Ext. A to Ext. R.

FINDINGS

7. *Issue No. (i)* :—Neither party has filed the appointment letter/order regarding the engagement of the second party but it is not disputed by the management that the second party was employed in the establishment of the first party with effect from the 1st November 1989. The second party admitted during the cross-examination that he worked as N.M.R. under the management from the 1st November 1989 to the 6th December 2007. It is not disputed that from the 7th December 2007 the second party has not worked under the first party. He deposed that he fell ill from the 3rd December 2007 and remained under treatment of Doctor which fact he intimated to the first party. The management witness deposed that the second party abandoned his service by remaining in unauthorized absence from the 7th December 2007. In such circumstances the burden of proof of illness lies upon the second party. He relies upon a copy of medical certificate issued by Associate Professor, P.G. Department of Medicine, V.S.S. Medical College, Burla which has been marked as Ext. 2. In this document it is mentioned that the second party was suffering from psychiatric illness and was undergoing treatment from the 3rd December 2007. This document further states that with effect from the 30th August 2009 the workman was almost relieved of the symptoms and was fit to resume his duties from the said date but he was advised to continue medicines. The management does not seriously dispute the genuineness of the medical certificate. During cross-examination of the workman, it is not suggested to him that he has procured a false certificate. No question was put to him regarding his nature of his ailment and nature of treatment

undergone by him. Therefore, I am constrained to hold that the second party was a psychiatric patient and has undergone treatment for a long period, i.e. from the 3rd December 2007 to the 30th August 2009. Though the Medical Officer certified the workman to be fit to resume his duty from that date onwards, he further advised to continue medicines. In such peculiar fact, it was not expected from the second party to discharge his duties under the management till the 30th August 2009.

8. The management has relied upon several letters issued to the workman and some letters of reply and show-cause of the workman but since it is proved that the workman was a patient under treatment of Associate Professor during the period from the 3rd December 2007 to the 30th August 2009, all correspondences during the said period should be ignored and accordingly the plea of willful adandonment of service by the second party as alleged by the first party cannot be believed. Similarly the plea of the workman that he was refused employment with effect from the 7th December 2007 is also not believable in view of his own stand that he was under medical treatment till the 30th August 2009. Filtering out the documentary evidence relied upon by the management till the 30th August 2009 on the ground stated above, I find there are few documents to be considered for adjudication of the dispute.

9. The first document is the copy of letter, dated the 2nd March 2010 given by the workman to the S.D.O., M.I. Subdivision. In the said letter he mentioned that after getting medically fit he went to join in his duty with medical documents for regularization of his absent period and the S.D.O., one Mr. Pattanaik replied him that his duty is no longer required by the office and as and when the office needed, he will be called again. In this letter, he prayed the concerned officer to call him to join his duty immediately so that he could be relieved from mental pain and financial problems. The Ext. E/1 is the acknowledgement of the letter by the S.D.O., M.I. Subdivision, Sambalpur. Subsequent to the letter, the Assistant Executive Engineer, M.I. Subdivision, Sambalpur issued a notice to the workman vide his letter No. 412, dated the 9th April 2010. In this notice the Assistant Engineer informed the workman about the correspondences, dated the 1st January 2009 and the 26th August 2009 in which he was called upon to join as last chance and to submit some documents regarding his educational qualification and caste. As noted above such correspondences have no bearing in the matter of adjudication of the dispute due to continuous illness of the workman till the 30th August 2009. In the notice it was intimated to the workman that the medical certificate was not satisfactory and his application did not deserve consideration. When the management has not challenged the medical certificate and does not adduce independent evidence in counter to the certificate of illeness issued by one Assistant Professor of V.S.S. Medical College, Burla, I feel the rejection of the prayer of the workman was not based upon proper reasonings and without application of mind. The management lastly relied upon one letter dated the 20th July 2010 issued by the Assistant Executive Engineer, M.I. Subdivision, Sambalpur to the Assistant Labour Officer with reference to the letter No. 2981, dated the 25th June 2010. On perusal of this letter I find the concerned officer merely wanted to justify his action of refusal of employment to the workman. It is specifically mentioned by the management that the workman vide his letter dated the 4th February 2008 intimated the office that he remained absent from duty due to illness of his wife but subsequently he produced medical certificate of self illness. The fact of illness of the workman himself and the illness of his wife cannot be said to be contradictory as considered by the management. There is clear evidence that the workman was ill and undergoing treatment from the 3rd December 2007 to the 30th August 2009 and therefore even if during the said period he communicated some thing wrong to his authority, the same cannot be taken cognizance particularly when it is proved that he was a psychiatric patient.

10. After a careful consideration of the materials available in record and the discussion made above I am constrained to hold that the first party without proper consideration of the case of the workman refused him employment with effect from the 7th December 2007 and such act is illegal and unjustified in view of the proved illness of the workman from the 3rd December 2007 to the 30th August 2009. The issue is accordingly answered in favour of the workman.

11. *Issue No. (ii)*—Since it is proved that the second party workman was refused employment illegally by the first party management, he is entitled to reinstatement in service. However, on his own saying and in view of medical certificate relied upon by the workman (marked Ext. 2) he was under psychiatric treatment from the 3rd December 2007 to the 30th August 2009 and therefore unable to perform duty during the said period. After recovery from illness and being medically fit he approached the management for resumption in duty vide his letter, dated the 2nd March 2010 but his case was not considered properly by the management. It is an admitted fact that no disciplinary proceeding was conducted against the second party and it is positive stand of the management that he was not refused employment and there was no retrenchment in service. Therefore, in my considered opinion the workman should be reinstated in service forthwith and he should be entitled to 50% back wages with effect from the 2nd March 2010 till reinstatement. The issue is accordingly answered.

12. In view of the determination of issues in manner aforesaid the reference needs be answered in favour of the workman. Hence the following Award :—

AWARD

The reference is answered on contest without cost. The action of the management of Minor Irrigation Division, Sambalpur in terminating the service of Shri Gagan Guru, NMR by way of refusal of employment with effect from the 7th December 2007 is illegal and unjustified. The workman is entitled to reinstatement in service with 50% back wages with effect from the 2nd March 2010 till reinstated. The management is directed to reinstate the workman in service within two month hence and pay him his back wages within a period of 3 months failing which the same shall carry interest @ 12% per annum.

Dictated and corrected by me.

SRIKANTA MISHRA
22-5-2014
Presiding Officer
Labour Court, Sambalpur

SRIKANTA MISHRA
22-5-2014
Presiding Officer
Labour Court, Sambalpur

By order of the Governor

M. NAYAK

Under-Secretary to Government