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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 4th January 2014

No. 102—IR(ID)-98/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd November 2013 in Industrial Dispute Case No. 17 of 2011 of the Presiding Officer, Labour Court, Sambalpur, wherein the industrial dispute between the Management of M/s Bhusan Power and Steel Ltd. and their Workman Shri Jyoti Prakash Nath 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. 17 OF 2011

Dated the 22nd November 2013

Present :

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

Between :

The Management of . . . First Party—Management
M/s Bhusan Power and Steel Ltd.,
At Thelkoli, P.O. Lapanga,
Via Rengali,
Dist. Sambalpur.

And

Their Workman . . . Second Party—Workman
Shri Jyoti Prakash Nath,
S/o Shri Aditya Prasad Nath,
At Thelkoli, P.O. Lapanga,
Via Rengali,
Dist. Sambalpur.

Appearances :

Shri K. K. Garnayak, Sr. Officer (Legal & Welfare).	. . . For the First Party—Management
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Self	. . . For the Second Party—Workman

AWARD

This award arises out of a reference made by the Government of Odisha, Labour & Employment Department under the power conferred by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the "Act") vide Order under Memo. No. 11124(5), dated the 9th December 2011. The dispute involved under the Schedule of reference is as follows :

"Whether the action of the management of M/s Bhusan Power and Steel Ltd., in terminating the services of Shri Jyoti Prakash Nath (ex workman) with effect from the 11th August 2007 is legal and/or justified ? If not, what relief the workman is entitled to ?"

2. The case of the second party workman in brief is that he was employed by the first party management as an unskilled worker and joined his duty on Dt. 1-8-2006. He was also covered under the Provident Fund Act and performed his duties to the satisfaction of the management. On Dt. 30-7-2007, the management issued a letter directing him to resume his duty within 3 days and to give an explanation in writing as to why the disciplinary action should not be taken against him on the allegation that he was absent on duty unauthorisedly on 17th June and 23rd to 29th June 2007. It is the specific case of the workman that he was suffering from fever from Dt. 23-7-2007 to Dt. 5-8-2007 and accordingly, applied for medical leave so also requested the management to allow him to rejoin on duty. On Dt. 6-8-2007, he went to the office of the General Manager of the Company and filed a show cause but the management through their Security Personnel disallowed him to enter into the factory premises. On Dt. 11-8-2007, the management issued another show cause notice directing the workman to resume his duty within 48 hours from the time of receipt of the notice and to show cause for unauthorised absence from Dt. 23-7-2007 to Dt. 11-8-2007. On receipt of the second notice the workman again went to the office of the management company but he was not allowed to enter into the factory premises for which, he could not be able to join in duty. On Dt. 12-2-2008 the workman sent a letter through Regd. Post with A.D. requesting the management allow him to resume his duty but the management did not respond. According to the second party, the act of the management in disallowing to join his duty is illegal and unjustified. With such averment, he prays for a direction to the management to allow him to resume his duty with all service benefits.

3. The first party management submitted written statement wherein it admitted the fact that the second party was appointed as unskilled workman and joined his duty on dated the 1st August 2006. It is the specific case of the management that on Dt. 26-6-2007 at about 10-45 A.M. the second party workman with others formed an unlawful assembly and in order to commit wrongful loss to the management damaged huge amount of property of the Company to the extent of crores of rupees. They also assaulted the General Manager (Security) and abused him in filthy language. The matter was reported to the Police who registered Katarbaga P.S. Case No. 104, dated the 26th June 2007. According to the management, the conduct of the second party workman from the time of his entry was not satisfactory and his behaviour amounted to indiscipline and misconduct under

the Standing Order of the management. The management further alleged that the second party remained absent from duty on the 17th June and the 23rd June to 29th June for which he was called for an explanation on the 30th July 2007 but he continued to remain absent. He was called for another explanation on the 11th August 2007 but the workman neither submitted any explanation nor joined his duty. According to the management, the second party abandoned his service of his own accord as per the provisions of the Certified Standing Order and therefore, he was removed from the rolls of the management and in his place, another person was engaged. The management refutes the allegation of the workman that he was disallowed to enter into the factory premises and resume his duty. With such averments, the management prays to answer the reference in its favour.

4. The second party submitted a counter/rejoinder stating therein that the management has made false allegations against him and he reiterated the facts narrated in his statement of claim.

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

ISSUES

- (i) "Whether the action of the management of M/s Bhusan Power and Steel Ltd. in terminating the services of Shri Jyoti Prakash Nath (ex-workman) with effect from the 11th August 2007 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?"

6. The workman examined himself as W.W. 1 and he proved several documents which are marked Exts. 1 to 7. He also examined a co-worker as W.W. 2. On the contrary, the management examined its Sr. Officer (Legal and Welfare) as the sole witness and through him, several documents were marked as Exts. A to H.

FINDINGS

7. *Issue No. (i)*—On perusal of the pleadings and evidence of the parties, I find there is no dispute that the second party was appointed as an unskilled worker under the first party under Project Displaced Families Rehabilitation Policy of the Government as his land was acquired for the purpose of establishment of the Company of the management. The second party joined his duty on dated the 1st August 2006 under administrative control of the first party and performed his duties regularly. On Dt. 30-7-2007, the management issued a warning letter to the workman. A copy of the said letter has been marked as Ext. 1. In the said letter it is alleged that the second party absented himself from duty without prior permission/application or even intimation. The dates of absence was specified to be 17th, 23rd, 24th, 25th, 26th, 27th, 28th and 29th June 2007. It is further specified in the letter that the absence of the workman from duty is a serious misconduct under Service Rule of Standing Order Nos. 24(a)-V, 24(b) (7) and (8). In the said letter the second party was called upon to join his duty within 3 days and before that to give explanation in writing as to why appropriate disciplinary action should not be taken against him. Therefore the management clearly directed the workman to submit explanation first and then to join his duty. In the letter, it was not specifically mentioned that the workman had to submit explanation within 3 days of receipt of the letter. There is no evidence as to when the workman received the warning letter under Ext. 1. Since as per the letter, the joining of the workman was to be subsequent to filing his explanation, the workman could not have joined in duty unless he could submit explanation by Dt. 2-8-2007. It is the

specific case of the workman that he was suffering from fever from the 23rd July 2007 to 5th August 2007 and accordingly applied for medical leave and requested the management to allow him to rejoin in his duty. Such fact is however, not proved by the workman by submitting any medical certificate regarding his illness during the above period. It is crystal clear from the materials on record that the workman continued to remain absent from duty and on Dt. 11-8-2007, the management Company issued a show cause notice to him. A copy of the said notice has been marked as Ext. 4. In Ext. 4 it is informed to the workman that from Dt. 23-7-2007, till the date of notice he was not attending his duty and was absent without any intimation and permission from concerned authority. Due to such absence, the work of the Company was severely hampered. In this notice, the management directed the workman to resume his duty with immediate effect and submit explanation within 48 hours showing reason of his unauthorised absence failing which disciplinary action might be taken against him. The evidence of the workman reveals that on receipt of show cause notice, he submitted his reply to the management by Regd. Post with A.D. A copy of the reply has been marked as Ext. 5. postal receipt marked as Ext. 6 and the Acknowledgement due is marked as Ext. 7. Though the management deny the fact of receipt of the reply, the acknowledgement and postal receipt support the evidence of the workman that he sent a reply to the show cause notice. On perusal of Ext. 5, I find the second party, in response to the show cause notice, dated the 11th August 2007, submitted that on Dt. 20-8-2007 he submitted a letter of reply but no decision had been taken for his rejoining in duty. He further, mentioned that on Dt. 21-9-2007 he appealed before his authority to take a decision on his show cause reply but no decision had taken. In this letter, he again requested the General Manager of the Company to intimate a date for rejoining in duty. The evidence of the workman that he submitted reply and requested the management to rejoin in duty, is not shaken in cross-examination. The specific allegation of the workman that he was not allowed to enter into the Company premises by the Security Personnel, is also not shaken in cross-examination. On a close scrutiny of materials on record I feel the workman was interested to resume his duties but the management through the Security did not allow him to join in duty, particularly because he did not submit explanation for his absence from duty from Dt. 23-6-2007.

8. The management has specifically narrated in written statement that on Dt. 26-6-2007, the second party with some others formed an unlawful assembly and assaulted the General Manager (Security) and also abused him in obscene language for which Katarbaga P.S. Case No. 104, dated the 26th June 2007 was registered. Peculiarly enough such conduct of the second party was not narrated in the letter, dated the 30th July 2007 (Ext. 1) and the show cause notice, dated the 11th August 2007 vide Ext. 4. The management relies upon the copy of F.I.R., Charge-sheet and other documents relating to Katarbaga P.S. Case No. 104/2007 which was marked Ext. J with objection from the side of the workman. As per the F.I.R., the workman is one among the accused persons named in the F.I.R. The F.I.R. was lodged by the General Manager (Security) of the management Company. If at all the management was satisfied that the accused was one of the culprits of the incident, dated the 26th June 2007, the same would have been reflected in the letter and show cause issued to him on subsequent dates. It is submitted by the representative of the management that due to lodging of F.I.R. the workman might have absconded to evade police arrest. The same might be a true fact but the management cannot take advantage of such situation particularly because the workman was not called upon to submit any explanation for the alleged misconduct on Dt. 26-6-2007. Besides if it is believed that the second party absconded soon after

registration of the case then the warning letter, dated the 30th July 2007 and the show cause notice, dated the 11th August 2007 could not have been served upon him. The filing of F.I.R. against the workman by the Security Branch of the management and submission of charge-sheet against the workman and others is not ground for the management to disallow the workman from his joining in duty.

9. It reveals from the Ext. 4 that the management expressed their intention to take up disciplinary action against the workman for non-submission of explanation to the show cause but no disciplinary action was taken against him. Without any notice for termination of service of the second party the management proceeded to engage another person which is illegal and unjustified. The second party was a regular workman under the first party and that too, he was appointed on a rehabilitation policy of the Government as his land was acquired for the Company benefit. In such circumstances, the management should have taken sympathetic attitude rather than dismissing him from service without following procedure for taking disciplinary action. The management has not filed any document to show that the warning letter and the show cause notice vide Exts. 1 and 4 were actually served upon the workman within the short period stipulated in the said document. It appears that the management for the sake of only formalities prepared warning letter and show cause notice but it did not take any sincere effort for serving the notice in proper manner and enable to the workman to submit his show cause within stipulated period. It appears that in view of the registration of a Criminal Case against the second party and others, the Company wanted to remove the workman in some way or other and taking the plea of absence of the workman removed his name from Service Roll of the Company. The acts of the management in the facts and circumstances, amounts to unfair labour practice and victimisation of labourers. The refusal of employment to the second party by the first party without conducting disciplinary proceeding and without following the procedure under Section 25-F of the I. D. Act, is unjustified and illegal. In view of the discussion made above the issue No. (i) is answered in favour of the workman.

10. *Issue No. (ii)*—Since it is held that the termination of service of the second party by the first party is illegal and unjustified, he is entitled to reinstatement in service. So far as the claim of the workman that he is entitled to full back wages, I find the first party disallowed the workman to resume his duties with effect from the 11th August 2007. As a matter of fact, the workman has not performed any duty from the 23rd June 2007 till date. However, in the meantime, a case under Sections 448/147/148/341/323/427/506/120(B)/149 I.P.C., read with Section 7 of the Criminal Law Amendment Act was registered against the second party on the 26th June 2007 vide Katarbaga P.S. Case No. 104/2007. From the document filed by the management vide Ext. J, I find the investigation of the said case was completed and charge-sheet, dated the 5th February 2009 was submitted against the second party and others by the Police. As per the charge-sheet, the second party remained in judicial custody. The workman in his evidence has not specifically stated as to for which period he remained in judicial custody in connection with the said case. During cross-examination, he denies to have any knowledge regarding the F.I.R. registered against him. The workman during course of evidence relies upon a copy of medical certificate, dated the 18th September 2007 issued by Medical Officer, P.H.C.(N), Rengali, Sambalpur which has been marked as Ext. 3. As per this document, he was suffering from Malaria from Dt. 20-8-2007 to Dt. 18-9-2007. The said period is not connected to the period of his absence for which the explanation was called for by the Company. Taking into consideration the totality of facts and circumstances, I feel this is a

fit case where the workman should not be given the benefit of back wages though he is entitled for reinstatement in service.

In view of the determination of the issues in the manner aforesaid, the reference need 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 M/s Bhusan Power and Steel Ltd., in terminating the services of Shri Jyoti Prakash Nath (ex-workman) with effect from the 11th August 2007 is held to be illegal and unjustified. The workman Shri Nath is entitled to reinstatement in service. The first party management is directed to reinstate the second party workman in service within one month of publication of the Award.

Dictated and corrected by me.

SRIKANTA MISHRA
22-11-2013
Presiding Officer
Labour Court, Sambalpur.

SRIKANTA MISHRA
22-11-2013
Presiding Officer
Labour Court, Sambalpur.

By order of the Governor
N. BEHERA
Under-Secretary to Government