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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th July 2014

No. 5949—li-1-121/1988(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 30th June 2014 in Industrial Dispute Case No. 77 of 1988 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Urban Co-operative Bank Ltd., Tinikonia Bagicha, Cuttack Town and its Workman Shri Dharmananda Dalai was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 77 OF 1988  
Dated the 30th June 2014

*Present :*

Shri Saroj Kumar Sahoo, LL. B.,  
Presiding Officer, Labour Court, Bhubaneswar.

*Between :*

The Management of .. First Party—Management  
Urban Co-operative Bank Ltd.,  
Tinikonia Bagicha, Cuttack Town,  
At/P.O. Cuttack, Dist. Cuttack.

*And*

Its Workman .. Second Party—Workman  
Shri Dharmananda Dalai  
C/o Das & Associates, High Court Road,  
Cuttack Town, At/P.O. Cuttack, Dist. Cuttack.

*Appearances :*

For the First Party—Management .. Shri P. K. Patnaik, Advocate

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For the Second Party—Workman .. Shri S. Mallik, Advocate

## AWARD

This is a case instituted on the reference made by the Government of Odisha vide its Order communicated under Memo. No. 12282(3)—li-1-121-888, dated the 5th November 1988, in exercise of the powers conferred under 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) and the reference is as follows :

“Whether the termination of services of Shri Dharmananda Dalai, ex-Sub staff with effect from the 11th March 1987 by the management of Urban Co-operative Bank Ltd., Cuttack is legal and/or justified ? If not, what relief Shri Dalai is entitled ?”.

2. The case of the second party workman as reflected in the claim statement dated the 28th February 1989 and rejoinder filed on the 4th June 1990, in short, is that the second party workman Shri Dharmananda Dalai was appointed as a Peon under the first party management through Memo. No. 26-EC(2), dated the 16th March 1981. During his service career Dalai performed his duty to the best of his abilities and also to the satisfaction of his authorities. No adverse remark has ever been communicated to him by his authorities at any point of time. While so continuing in service on the 29th April 1985 an explanation was called for from the second party workman by the Secretary of the first party management for alleged removal of a bundle of five rupees note amounting to Rs. 500 at the time of transit from counter to safe. It is humbly submitted that Shri Dalai was entrusted with the duty of stitching notes in the Cash Section. On the 3rd March 1985, i. e. on a Sunday the second party workman was directed by his authority to look after the masonry work. After completion of his duty which was assigned to him the second party workman was going to close the Bank at about 5 P.M. At that time he found a bundle of five rupees note lying in the Receipt Counter. As it was a Sunday and officer of the Bank was not available Shri Dalai the second party workman kept the same in the Almirah and locked the Bank premises. On the next day, i. e. on the 4th March 1985 Shri Dalai handed over the said bundle of five rupees note to the Cashier G. K. Patnaik in the first hour i. e. at 10 A.M. The Cashier Shri G. K. Patnaik had some personal differences with the workman Shri Dalai for which he was always trying to put him in trouble. Getting a chance of the aforesaid incident Shri Patnaik made an allegation to the Secretary twisting the facts with an intention to put Shri Dalai in trouble. The Secretary of the first party management called for an explanation from Shri Dalai relying upon the said false and fabricated allegation of Cashier Shri G. K. Patnaik. On the 29th April 1985 Shri Dalai submitted his explanation describing all the aforesaid facts. Without considering the said explanation of Shri Dalai properly the Secretary of the first party management had drawn a departmental proceeding against him in which charge was framed. Shri Dalai was not provided with any statement of allegation for which in his explanation he had asked for a detail statement of allegation made against him. No such statement of allegation was supplied to Shri Dalai by the first party management. The second party workman was not aware as to whether the Accountant and the Secretary were present at Cuttack or not on the date of the

occurrence. Shri Dalai acted in the interest of the Bank. One Akula Swain, Field Supervisor of the first party management issued a notice to Shri Dalai to appear before him on the 18th March 1986 to defend him from the charges framed against him. The workman Shri Dalai had not received any notice from the first party management regarding the appointment of Shri Akula Swain as Enquiring Officer. Shri Swain conducted his enquiry without giving proper opportunity to the second party workman to defend his case. Shri Dalai was not allowed to cross-examine the Cashier Shri G. K. Patnaik during enquiry. The Enquiring Officer Shri Swain has not considered the explanation of Shri Dalai and the statements made by him. On the 11th March 1987 the Secretary of the first party management issued an order of dismissal of the second party workman from his service. Such order of dismissal was passed solely on the basis of the report of the Enquiring Officer. Shri Swain, the Enquiring Officer has conducted the enquiry in an illegal and arbitrary manner. He has not followed the principle of natural justice and did not allow the workman to defend his case properly. The report of the Enquiring Officer was not supplied to Shri Dalai, for which he was unable to explain about the illegality committed by the Enquiring Officer during enquiry. The second party workman Shri Dalai has submitted his representation to reinstate him in service but the first party management did not take any action. In view of the aforesaid facts the second party workman has prayed for his reinstatement in service with full back wages along with interest at the rate of 12% per annum thereon.

3. On the other hand the case of the first party management is that the second party workman Shri Dalai was appointed as a Sub-staff in the year 1981 by the first party management. On the 7th June 1985 a charge-sheet was issued against him for attempt to commit misappropriation and other misconduct. Shri Dalai submitted his explanation where he admitted the truth of the charges but justified his action. As the explanation submitted by Shri Dalai was found to be unsatisfactory, Shri Akula Swain, Field Supervisor was appointed as the Enquiring Officer to conduct a domestic enquiry into the charges. Shri Swain has conducted the enquiry in presence of Shri Dalai. He has also recorded the statement of Shri Dalai and the other witnesses who were examined on behalf of the management. Reasonable opportunities were also given to Shri Dalai to defend his case. The principle of natural justice was fully observed by the Enquiring Officer during such enquiry. After conclusion of enquiry the Enquiring Officer has submitted two reports, i. e. on the 10th May 1986 and the 21st October 1986. In those enquiry reports Shri Swain has found the second party workman to be guilty of charges. After receipt of such enquiry reports from Shri Swain the first party management considered those reports and called upon Shri Dalai for personal hearing on the 10th March 1987. Shri Dalai appeared before the President of the Board of Management on the 10th March 1987 and after personal hearing he was dismissed from service vide Letter No. 3102(4)-86/1987, dated the 11th March 1987. The domestic enquiry conducted by the first party management was just, proper and fair. The first party being a Banking Organisation handling of cash by the employees is considered to be very sensitive and vital and once the conduct of an employee raised reasonable

suspicion on his integrity the management loses its confidence on him. This is what exactly happened in the case of the second party workman. The punishment of dismissal is correct and it will make the other employees to be disciplined in their conduct. Hence the management has prayed to answer the reference in the negative.

4. After going through the pleadings of the parties the following issues have been framed :—

#### ISSUES

- (i) “Whether the domestic enquiry conducted against the workman preceding termination is fair and proper.
- (ii) Whether the termination of services of Shri Dharmananda Dalai, ex Sub-staff with effect from the 11th August 1987 by the management of Urban Co-operative Bank Ltd., Cuttack is legal and/or justified ?
- (iii) To what relief, the workman is entitled ?”.

5. *Issue No. (i)*—Out of the aforesaid issues, issue No. 1 was taken up as a preliminary issue by this Court. Akul Swain, the Enquiring Officer has been examined on behalf of the first party management and Dharmananda Dalai, the second party workman is examined for himself. Exts. 1 to 16 are marked on behalf of the first party management and Ext. A is marked on behalf of the second party workman. Under the said issue this Court by order dated the 30th May 1991 came to a conclusion that the enquiry held by Shri Akul Swain is not fair and proper. Thereafter, five witnesses are examined on behalf of the first party management whereas the second party workman examined himself as a witness on merit of the charges. After conclusion of hearing on other issues this Court has passed an Award on the 20th July 1993 to the effect that the termination of services of Shri Dharmananda Dalai, ex Sub staff with effect from the 11th March 1987 the management of Urban Co-operative Bank Ltd., Cuttack is legal and justified. The second party workman Shri Dalai is not entitled to any relief. Against such award the second party workman preferred O. J. C. No. 8562 of 1993 before the Hon’ble High Court of Orissa. By order dated the 28th January 2014 the Hon’ble Court set aside the award dated the 20th July 1993 and remanded this case to hear and dispose of afresh with reference to Issue Nos. 2 and 3 after hearing arguments. In view of such order of the Hon’ble Court the parties are allowed to argue afresh.

#### FINDINGS

6. *Issue No. (ii)*—By order dated the 30th May 1991 this Court has already held that the enquiry held by Shri Akula Swain is not fair and proper. As many as four witnesses (M. W. Nos. 2, 3, 4 and 5) were examined on behalf of the first party management on the merits of the charge. M. W. No. 2 was the then Cashier of the Urban Co-operative Bank, Cuttack. In his evidence he deposed that in the year 1981 he joined as a Cashier at Urban Co-operative Bank, Cuttack. He further

deposed that in 1985 he was performing his duty in the Bank as Cashier and one J. N. Tripathy was at the payment counter. At Paragraph - 1 of his evidence he deposed that the second party workman was engaged to carry Ledger from one Section to another and also for stitching the notes and shutting. From his evidence it is also clear that the second party workman was carrying cash tray to the safe from the counter and from the counter to the safe. At Para. 2 of his evidence he deposed that on the 4th March 1985 there was counting of cash at 5 P.M. while Tripathy Babu was in payment section and there was shortage of cash of Rs. 500 in the section of Tripathy Babu. It is also clear from the evidence of M. W. No. 2 that he conducted recounting in presence of the second party workman and the second party workman enquired about the shortage of cash. He further deposed that the second party workman gave assurance to give such amount on the next day but on his advise he paid a sum of Rs. 500 to Shri J. N. Tripathy, with a request not to disclose before the authority. During his cross-examination M. W. No. 2 admitted that there was a shortage of cash of Rs. 4,000 from the cash of the Bank subsequently and the same amount was recovered from him. It is also clear from his evidence that his promotion was withheld and he was reverted. In clear terms he also admitted during his cross-examination that he used to bring cash from the safe and there was a round net around his seat and no one can enter into that net chamber. It transpires from the evidence of M. W. 2 that the account tallies with the cash before it is placed in the safe. In clear terms M. W. 2 also admitted that payment section tallies the amount and he has no business at the time of tallying at payment Section. According to him, he came to know about the shortage of cash at about 5 P.M. from the Cashier J. N. Tripathy who was in payment counter. It is the case of the first party management that the shortage of cash was from payment counter. Curiously the first party management has not examined the Cashier Shri J. N. Tripathy whose account was alleged to be short on the date of occurrence. After scrutinising the evidence of M. W. 2 it is clear that no where he has deposed that the second party workman had admitted before him that he had removed a cash of Rs. 500 from the Bank on the 3rd March 1985. The most material witness Shri J. N. Tripathy is kept away from the witness box by the first party management. The other witnesses examined on behalf of the management M. Ws. 3, 4 and 5 have no direct knowledge regarding the removal of cash by the second party workman on the 3rd March 1985. Admittedly, nobody has seen the removal of cash by the second party workman from the Bank on the 3rd March 1985. M. W. 1. Mr. Akula Swain, the Enquiring Officer has proved the letter issued by the first party management to the second party workman Shri Dalai dated the 29th April 1985. In the said letter Shri Dalai was asked to submit his explanation. On perusal of Ext. 1 it transpires that the management has not mentioned the date of removal of cash by Shri Dalai, the date of alleged confession by Shri Dalai and the name of the person before whom Dalai made his confession about removal of cash from the Bank. So, from Ext. 1 it is clear that till issue of that letter the management was also not sure about the date of removal of cash by Shri Dalai. From Ext. 3 it is

also clear that under charge No. 1 Shri Dalai was charged that he had confessed to receive a bundle of five rupees note from the Cash Counter on the 3rd March 1985, a Sunday at 5 P.M. Admittedly, M. W. No. 1 the Enquiring Officer has submitted two enquiry reports, i. e. one on the 18th March 1986 and another on the 21st October 1986. From the evidence of M. W. 1 it is clear that on the 18th March 1986 he had examined Shri Dalai. In his evidence he also deposed that when the second party workman alleged against the Cashier Girish Kumar Patnaik, he issued notice to him for his examination. Ext. 8 is the enquiry report submitted by M. W. 1. Although he termed Ext. 8 to be his preliminary report nowhere in the report he has mentioned that the report is a preliminary report. Ext. 8 is the first report. On perusal of Ext. 8 it transpires that he had fixed the enquiry to the 18th March 1986 and on that day he has examined Shri Girish Kumar Patnaik. It is also clear from - Ext. 8 that both Shri Dalai and Shri Girish Patnaik submitted their statements before him. Admittedly, nobody has asked M. W. 1 to conduct further enquiry. There is no reason why M. W. 1 has conducted further enquiry although he had already examined both Shri Dalai and Girish Kumar Patnaik on the 18th March 1986. From the beginning the second party workman had made allegation against M. W. 1. In his evidence the second party workman W. W. 1 testified that he was not informed about the appointment of M. W. 1 as Enquiring Officer. From the evidence of M. W. 1 and the documents proved by him it is clear that the enquiry conducted by Shri Swain is not in consonance with the principles established by law. Ext. 9/a is a notice issued by the Enquiring Officer, M. W. 1. On perusal of the same it transpires that the notice was typed on the 20th August 1986 and also signed by M. W. 1 on the same day. From one endorsement it appears that the workman received the same on the 20th August 1986. On perusal of the contents of Ext. 9/a it transpires that M. W. 1 had issued that notice to conduct the enquiry on the 22nd March 1986. When the notice was issued on the 20th August 1986 how the enquiry will be conducted prior to that, i. e. on the 22nd March 1986. It appears that the first party management has manipulated some documents to show that the enquiry conducted by M. W. 1 is fair and correct. It is also admitted by M. W. 1 that he has not maintained any case record for the enquiry nor he has mentioned that the workman refused to cross-examine M. W. 2 Shri Girish Kumar Patnaik during enquiry. The charge is itself defective as it suffers from lack of material particulars. Admittedly, M. W. 2 in his evidence admitted that only on the 22nd March 1985 he reported the conduct of Shri Dalai to the management after shortage of cash of Rs. 4,000. If the matter was reported to the first party management by Shri Girish Kumar Patnaik on the 22nd March 1985 why the first party management called for the explanation only on the 29th April 1985. The delay to call for explanation from the workman also cast serious doubt on the case of the management. Till the hearing of the case was over the management was not sure about the date of removal of cash by the second party workman. In the written statement filed by the first party management dated the 15th May 1989 at Paragraph 13 the first party management has clearly mentioned that due to reasonable suspicion on the integrity of the workman action was taken against him.

7. The specific case of the second party workman is that on the 3rd March 1985 he was asked by his authority to watch the mason work in the Bank and accordingly he had opened the Bank for mason work. It is also his case that at about 5 P.M. on the 3rd March 1985 on a Sunday while cleaning he got a bundle of five rupees note and on the next day, i. e. on the 4th March 1985 he handed over the cash to M. W. 2 Shri Girish Kumar Patnaik. Mr. T. Maity, M. W. 3 was admittedly the Accountant at the Head Office in the year 1985. In his evidence at Para. 1 he deposed that on the 3rd March 1985 the second party got the key of the Bank to attend masonry work of the Bank who returned the same at 5 P.M. to him. So from the evidence of the management witnesses it is clear that the second party workman had given the key of the Bank to attend the mason work and he was present in the Bank premises till 5 P.M. Admittedly, Girish Patnaik, M. W. 2 has been punished by the Bank for shortage of cash. He is the only witness who deposed against the second party workman. Even after scrutiny of the evidence of M. W. 2 it is found that no where he has stated that the second party workman has admitted before him that he had removed the cash of Rs. 500 from the Bank on the 3rd March 1985. On the other hand, it is clear from the evidence of M. W. 2 that on the 4th March 1985 when there was shortage of cash the second party workman enquired about the shortage and assured to pay the said amount and also paid the same to one J. N. Tripathy, Cashier of the Bank. The shortage of money was from the payment counter headed by Shri J. N. Tripathy. Neither in the departmental enquiry nor in the Court in the present proceeding Shri J. N. Tripathy is examined by the first party management who is a material witness. His non-examination is fatal and also it creates adverse inference towards the case of the first party management under Section 114 (g) of the Indian Evidence Act. So, after analysing the evidence on record it is clear that the evidence of the second party workman is more reliable than the evidence of the witnesses examined on behalf of the first party management.

8. In the result, the first party management has utterly failed to prove the charges levelled against the second party workman. Hence, the termination of Services of the second party workman with effect from the 11th March 1987 by the first party management is held to be not legal and justified.

Issue No. (ii) is answered accordingly.

9. *Issue No. (iii)*—From the conclusion under issue Nos. 1 and 2 I am constrained to hold that the action taken against the second party workman by the first party management is not legal. The present proceeding was started in the year 1988. At the time of recording of evidence by this Court in the year 1992 the second party workman was aged about 35 years. Admittedly, the second party workman was out of service since his termination and he has not performed his duty under the first party management. The first party management also failed to prove that the second party workman

was engaged gainfully during his period of unemployment. Now the second party workman must be aged about 57 years. So his reinstatement in service will be neither beneficial for himself not for the first party management who lost confidence on the second party workman. Taking into consideration the facts and circumstances of this case it will be just and proper to award some compensation to the second party workman. Accordingly, sum of Rs. 3,00,000 (Rupees three lakh only) as compensation in lieu of reinstatement and back wages is awarded to the second party workman. The first party management is directed to pay the said amount of compensation to the second party workman within a period of one month from the date of publication of this Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

SAROJ KUMAR SAHOO  
30-6-2014  
Presiding Officer  
Labour Court, Bhubaneswar

SAROJ KUMAR SAHOO  
30-6-2014  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor  
M. NAYAK  
Under-Secretary to Government