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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 24th September 2014

No. 7575—li-1(SS)-4/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th August, 2014 in Industrial Dispute Case No. 09 of 2006 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the Management of The Executive Director (P&A), Steel Authority of India Ltd., Rourkela Steel Plant, Rourkela and its Workman Shri B. K. Dora represented through General Secretary, North Odisha Workers Union, Rourkela was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE No. 9 OF 2006

Dated the 14th August 2014

Present :

Smt. V. Jayashree, o.s.j.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal, Rourkela.

Between :

The Executive Director (P&A),
SAIL, Rourkela Steel Plant, Rourkela. . . First Party—Management

And

Shri B. K. Dora, represented . . Second Party—Workman
Through General Secretary,
North Odisha Workers Union, Rourkela.

Appearances :

Shri L. K. Nayak, L. O. . . For the First Party—Management

Shri N. C. Mohanty, Vice-President . . For the Second Party—Workman

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of their powers conferred under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide Order No. 2430—li-1(SS)-4/2006-LE., dated the 17th March 2006 for adjudication :—

“Whether the action of the Management of Rourkela Steel Plant, SAIL, Rourkela in placing Shri B. K. Dora, Sr. Technician, Coke Oven Department, Rourkela Steel Plant Pl. No. 40274 under suspension with effect from the 19th August 2004 and vacating the suspension with effect from the 19th February 2005 treating his period of suspension as such is legal and/or justified ? If not, what relief he is entitled to ?”.

2. The 1st party management is the Executive Director (P&A), SAIL, Rourkela Steel Plant, Rourkela. The 2nd party workman Shri B. K. Dora joined the 1st party management on the 24th May 1978 as a Store Issuer-*cum*-Recorder and subsequently he was promoted 8 times by the 1st party management and on the relevant time he was serving in S-10 grade and working as Sr. Technician. However the Management of Rourkela Steel Plant has suspended Shri Dora without any chargesheet and enquiry followed by it violating the standing orders of the company. The management also did not pay the subsistence allowance. He was suspended illegally without any misconduct on his part.

3. On the complaint of Shri Dora both the parties were called upon for a joint enquiry on different dates. However the Management of Rourkela Steel Plant did not attend any joint enquiry on different dates. It was gathered during enquiry that Shri Dora was arrested by the local police being accused of a criminal case. However after the trial of the criminal case he was acquitted from the charges leveled against him. Shri Dora was called upon by the management to join his service by mentioning that the period of suspension be treated as such. Shri Dora, the workman joined his job & resumed his work. After vacating the suspension order he was not paid with different wages and since the enquiry committee hold that there exists an industrial dispute between the management and the workman through the union the matter was admitted in to conciliation.

4. During course of conciliation the Management of Rourkela Steel Plant submitted that it has reinstated Shri Dora in his job, but has not paid the differential wages for which the management has kept the period of suspension as such. Shri Dora, the workman apprehended that since the management has ordered treating the period of suspension as such, it will appear as punishment when no chargesheet was issued neither any enquiry has been conducted by the management following suspension and since the conciliation has failed, the reference was accordingly made by the appropriate Government.

5. The 2nd party workman filed a statement of claim averring that the 1st party management is a business establishment manufacturing Steel and is an Industry as defined in Section 2(j) of the I. D. Act, 1947. The 2nd party workman is working as Sr. Technician joined in service of the 1st party

on the 24th May 1978. On the 19th August 2004 he was issued with a letter No. 4980-CO(M), against the 2nd party workman wherein he was placed under suspension with immediate effect with reference to the Tangarpali P. S. Case No. 90 where in the 2nd party workman was an accused. Such action of the management against the 2nd party was neither related to any indiscipline in the work place nor related to any affairs of the management. There was also no misconduct committed by him in violation of the provision of the certified standing order of the 1st party management. There was no enquiry nor any chargesheet was issued after a lapse of months of suspension. In the mean time, on his acquittal, by the learned S. D. J. M., Panposh, Rourkela, in the criminal case the 2nd party workman informed to the management to vacate the order of suspension in lieu of his acquittal from the charges in the criminal case. The 1st party management vide its letter No. 1583-CO(M), dated the 19th February 2005 directed the 2nd party workman to join immediately by deciding to treat the period of suspension as such. The 2nd party workman joined in his duties on the 21st February 2005 and protested against the order of the management and treating the period of suspension as such. The 2nd party has further alleged that during the period of suspension he had not been paid with his subsistence allowance at the rate prescribed in the certified standing orders of the company without rhyme or reason the 1st party inflicted punishment treating the period of suspension as such. Hence he prayed to withdraw the order of suspension and to issue an order to treat the period of suspension as duty, to pay all the wages and consequential benefits for the period of suspension after deduction of the subsistence allowance paid to the workman, to grant annual leave with wages for the year 2004 completing the eligibility period of 240 working days in the year 2004, to pay an interest @ 15% on the delayed wages and others benefits and to pay an amount of Rs. 50,000 as compensation for the harassment caused without any reason.

6. The 1st party management counteracted the case of the 2nd party averring *inter alia* that the reference is misconceived, devoid of merit, not being an industrial dispute not maintainable. Further it is submitted that on receiving the case from Tangarpali Police Station, Rourkela that the 2nd party Mr. Dora, Sr. Technician, Coke Oven Department of the 1st party company was involving in P. S. case No. 90, dated the 5th June 2004 under Sections 341, 323, 354 IPC for which he was arrested and forwarded to Court. He was put under suspension with effect from the 19th August 2004 until disposal of the trial vide its order, dated the 19th August 2004 as per clause 30(ii)(h) of the standing order applicable to the 2nd party workman, the company reserves the right to suspend an employee accused in a Court of law for any criminal offence involving moral turpitude until disposal of the trial.

7. After his acquittal in the said criminal cases, the suspension order was vacated vide order, dated the 19th February 2005 in terms of the standing orders and the period of his suspension i. e. from the 19th August 2004 to 19th February 2005 was treated as such. It is further submitted that the 2nd party workman was paid with subsistence allowance in accordance with standing orders

and since he was involved in a Criminal Court of law in criminal case involving moral turpitude as per the standing order he was rightly put under suspension and the suspension period was treated as such after his reinstatement. The action of the management is just, legal and in conformity with the standing orders. Hence the 2nd party workman is not entitled to any benefits for the period he was under suspension excepting subsistence allowance.

8. On the statement of claim filed on behalf of the 2nd party workman and written statement filed on behalf of the management the following issues emerged for consideration :

(i) "Whether the reference is maintainable ?

(ii) Whether the action of the Management of Rourkela Steel Plant, SAIL, Rourkela in placing Shri B. K. Dora, Sr. Technician, Coke Oven Department, Rourkela Steel Plant Pl. No. 40274 under suspension with effect from the 19th August 2004 and vacating the suspension with effect from the 19th February 2005 treating his period of suspension as such is legal and/or justified ?

(iii) If not, what relief he is entitled to ?".

9. The 2nd party workman in support of his claim has been examined as W. W. 1 and has exhibited the documents like copy of suspension order, vide Ext. 1, copy of representation of 2nd party, vide Ext. 2, Copy of reminder of 2nd party, vide Ext. 3, Copy of reminder vide Ext. 4, copy of letter of union, vide Ext. 5, copy of judgement of S.D.J.M., Panposh, vide Ext. 6, Copy of Secretary of union, vide Ext. 7, copy of letter of 2nd party vide Ext. 8, copy of 1st party vacating the suspension order vide Ext. 9 and copy of letter of 2nd party i. e. joining report vide Ext. 10. In order to substantiate the action taken by the management one Pradipta Ku. Sahu, Sr. Manager, Personnel has been examined as M. W. 1 has also proved certain documents like copy of letter of Tangarpali P. S. vide Ext. A, copy of letter dated the 19th August 2004 vide Ext. B, copy of letter dated the 9th February 2005 vide Ext. C, copy of letter dated the 19th February 2005 vide Ext. D, copy of extract of standing order vide Ext. F and copy of statement showing payment of subsistence allowance vide Ext. G.

10. So far as Issue no 1 is concerned i. e. Whether the reference is maintainable or not. Even though the management while filing the written statement has raised the question regarding the maintainability of the reference. During argument the representative of the 1st party management has fairly conceded that the reference is maintainable and that they are not going to challenge the same. Accordingly this Issue is answered positively in favour of the 2nd party workman.

11. *Issue Nos. (ii) & (iii)*—Both the issues are taken up together since both the issues are interlinked with each other for which the reference has been made by the appropriate Government.

12. The uncontroverted fact is that the 2nd party workman Shri B. K. Dora while serving as Sr. Technician bearing PI. No. 40274 of Coke Ovens Department, Rourkela Steel Plant was put under suspension by the Management of Rourkela Steel Plant, Rourkela by order dated the 19th August 2001 vide Ext. 1. It is also an admitted fact that being informed by the A. S. I. Tangarpali P. S. Rourkela regarding involvement of Shri Dora in a criminal case with reference to P. S. case No. 90 of 2004 under Section 341, 323 & 354 IPC in which he was arrested and forwarded to the court vide Ext. A he was put under suspension. On the 9th February 2005 Shri Dora communicated to the management addressing to A. G. M., Coke Oven, R. S. P. that the trial of the case in which he was accused i. e. in G. R. case No. 1082 of 2004 was concluded. The court acquitted him holding him not guilty of the charges vide Ext. C and the management communicated to Shri Dora vide Ext. D intimating that the suspension order dated the 19th August 2004 was vacated and he was directed to join his duties immediately. It is vehemently argued by the management that during the period of suspension as per standing order No. 30(ii)(h) Shri Dora was paid with his subsistence allowance as per Ext. G and since the workman was involved in a criminal offence involving moral turpitude, it was misconduct on his part and the management has rightly ordered by treating the suspension period as such after reinstating him on the basis of no work no pay.

The representative of the management in support of his argument has relied on a decision reported in 2006-II-LLJ (Kantk) at page 171 Syndicate Bank, Bangalore *Vrs.* A. Raghupathy Bhat in which their Lordship have held that :

“The order of suspension was on account of the operation of law and not by the act of the management. Therefore, it cannot be said that the order of suspension is unjustifiable. Even otherwise, the respondent was acquitted of the criminal charges by a giving benefit of doubt. Therefore, it is not a case of full exoneration. Therefore the order of the appellant dated September 5, 1996 is strictly in conformity with Regulations 12 and 15 and denial of full salary and allowances during the period of suspension was fully justified.”

In support of his case the management has also relied another decision reported in 1997-I-LLJ-1190 (SC), Krishnakant Bibhavnekar *Vrs.* State of Maharashtra & Ors. in which their Lordship have held that :

“Therefore when the suspension period was treated to be a suspension pending the trial and even after acquittal, he was reinstated into service, he would not be entitled to the consequential benefits. As a consequence, he would not be entitled to the benefits of nine increments as stated in Para. 6 of the additional affidavit. He is also not entitled to be treated as on duty from the date of suspension till the date of the acquittal for purpose of computation of Pensionary benefits etc.”

13. The representative of the workman on the other hand has put forth his argument submitted that the 2nd party workman is serving under the management since the year 1978 till the date of suspension he was promoted 9 times by the management for the honesty and hard working. He had never faced with any disciplinary proceeding in his total career of service. The Police registered the case on the false allegation he was though arrested was not remanded in custody since was released on bail by the Court. Although he was on bail never flouted the Courts order trial commenced and concluded in acquittal. The Court found him not guilty of the charges against the acquittal order, no appeal was preferred he is innocent. Anybody may file a case on false allegation subsequently. He was found not guilty. The management although reinstated him, but ordered illegally, perversely treating the period of suspension as it is. It is also pointed out by learned representative of the workman that no chargesheet was communicated to him, no proceeding was initiated against him. For no fault of his, the management has decided arbitrarily treating the period of suspension as such denying the 2nd party's claim the differential wages and other consequential benefits which is violation of the statutory provision and also of the provision of the certified standing order. In this respect he has made a reference of a decision reported in 1993-II-LLJ-at page No. 547, *Lalji Vrs. Director, Bal Vikas Seva Avam Pustahar & Ors*, his Lordship of Allahabad High Court has decided in absence of any disciplinary enquiry and since no chargesheet has been served on the employee who can be suspended on the ground the order of suspension was passed in a casual manner without applying mind to the facts and circumstances of the case, the impugned order is as such arbitrary and liable to be quashed. In the order passed by the Calcutta High Court in *Om Prakash Kapoor Vrs. Union of India* reported in 1993-I-LLJ-page No. 844. In Para. 7 of its order that under Article 311 of the constitution of India where the Hon'ble Court has observed that where a criminal investigation is going on only the criminal proceeding holds that the accused is not guilty and is acquitted, then the suspension order against the incumbent shall automatically lose its force and the employee concerned shall be deemed to be in employment and the Hon'ble Court in such order had directed the authority to pay full salary including all arrears to the petitioner after deduction of the relevant subsistence allowance paid to the petitioner in the mean time.

14. This being the position of law in the case in hand in absence of any departmental enquiry no chargesheet is framed. Admittedly the workman was suspended on the ground that in a criminal proceeding started against him which was subsequently ended in acquittal and Court holding not guilty of the charges. No Appeal was preferred against the order of conviction. The suspension order passed against the workman Shri Dora are arbitrary, perverse and the employee concerned shall be deemed to be in employment the order passed by the management dated the 19th August 2004 treating the period of suspension as such is arbitrary and illegal on the fact of it and as such liable to be revoked and the workman is entitled for all arrears from the date of his suspension till the date of reinstatement. Accordingly both the issues are decided positively in favour of the 2nd party workman.

HENCE ORDERED

The action of the Management of Rourkela Steel Plant treating the period of suspension as such is found illegal not justified. Accordingly the order dated the 19th August 2004 of the management treating the suspension period as such is hereby vacated. The 1st party management is directed to pay full salary including all arrears to the workman after deducting the relevant subsistence allowance already paid to the workman in the mean time. Accordingly the reference is decided.

Dictated and corrected by me.

V. JAYASHREE
14-8-2014
Presiding Officer
Industrial Tribunal, Rourkela

V. JAYASHREE
14-8-2014
Presiding Officer
Industrial Tribunal, Rourkela

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