

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1575 CUTTACK, SATURDAY, OCTOBER 18, 2014/ASWINA 26, 1936

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 29th September 2014

No. 7821—IR(ID)-174/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th August 2014 in Industrial Dispute Case No. 30/2013 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Sarpancha, Chhakormal, .P.O. Matiapali, Via Nachhipur, Dist. Subarnapur and its workman Shri Sriram Mahakud 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. 30 OF 2013

Dated the 25th August 2014

Present :

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

Between :

The Management of Sarpancha, First Party—Management
Chhakormal Gram Panchayat,
At Chhakormal, P.O. Matiapali,
Via Nachhipur, Dist. Subarnapur.

And

Their workman Shri Sriram Mahakud,
Ex-Peon, s/o Rupadhar Mahakud,
Vill Biseswarpalli, P.O. Matiapalli,
Via Nachhipur, Dist. Subarnapur. Second Party—Workman

Appearances :

Shri G. A. Guru & Others, Advocate	. .	For the First Party—Management
Shri R. K. Mohanty, Advocate	. .	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 powers 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 Order under Memo No. 4185 (5)/LESI., dated the 30th April 2013. The dispute involved under the schedule of reference is as follows :—

"Whether the action of the Sarpancha, Chhakormal Gram Panchayat in dismissing Shri Sriram Mahakud, Peon from services with effect from the 17th June 2004 is legal and/or justified ? If not, what relief Shri Mahakud is entitled to?"

2. The case of the workman (second party) as per his statement of claim is that the first party (management) employed him in service in the year 1984 and he continued to serve to the satisfaction of his superiors without any complaint against him. He performed the duties as assigned by the management and was getting wages on monthly basis. His service was continuous within the meaning of Section 25-F of the I. D. Act, 1947. It is alleged by the workman that the management all of a sudden, refused his service with effect from the 17th June 2014 without assigning any reason and such act amounts to retrenchment/dismissal and illegal as per Section 25-F of the I. D. Act. According to the workman, the management did not pay him retrenchment compensation and did not observe the procedure under the Act before refusing employment. The workman submits that he is remained unemployed from the date of refusal of service and he is entitled to reinstatement in service with full back wages so also other incidental benefits.

3. The management filed written statement wherein they challenged the applicability of the I. D. Act, on the ground that their establishment is guided by the Odisha Gram Panchayat Act. As regards the averments in the claim statement, it is the stand of the management that the same are not correct, the work, conduct and behaviour of the workman was never satisfactory and that he is not entitled to any benefit. The management pray for rejection of the claim petition.

4. The workman filed a rejoinder stating therein that his averments are correct and based on true facts and the averments in the written statement are misleading. According to him, the Odisha Gram Panchayat Act cannot over-ride the provisions of the I. D. Act.

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

ISSUES

- (i) "Whether the action of the Sarpanch, Chhakormal Gram Panchayat in dismissing Shri Sriram Mahakud, Peon from service with effect from the 17th June 2014 is legal and/or justified ?

(ii) If not, what relief Shri Mahakud is entitled to ?"

6. The workman examined himself as the sole witness and proved several documents which are marked Ext. 1 to Ext. 6. On the contrary the management examined one Shankar Prasad Sa, the Sarapanch of Chhakormal Gram Panchayat as M. W. 1 and one Kapil Bag a Member of Panchayat as M. W. 2. The documents filed by the management were marked as Ext. A to Ext. M.

FINDINGS

7. Before going to the discussion on the issues it would be pertinent to note that the management in their written statement challenged the jurisdiction of this Court in deciding the dispute. According to it, the Chhakormal Gram Panchayat is a State Government establishment guided by the Odisha Gram Panchayat Act and therefore, it is not an industry within the definition of the I. D. Act and the second party is not workman within the meaning of the said Act. On the contrary it is the stand of the second party that Gram Panchayat Act cannot over-ride the provisions of the Industrial Disputes Act. The word "industry" is defined in Section 2(j) of the I. D. Act as "any business, Trade, Undertaking, Manufacture or calling of employers and includes any calling service employment, handicraft or industrial occupation or avocation of workman". The Section 2(s) defines workman as "Any person employed in any Industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purpose of any proceeding under this Act in relation to an Industrial Dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led that dispute". In the Section 2(s) there are certain categories which do not include certain employees as workman but the present parties are in no way connected with such exceptions. During course of evidence it came to the light that the Chhakormal Gram Panchayat has income from different sources such as Auction of Ponds, Ferry Ghat, collection of several types of tax. Therefore, the finance of the management of the second party is not made only on the basis of grant provided by the Government. The persons employed by the Gram Panchayat to perform different acts are paid out of the income from different sources. On a broad interpretation of the work 'industry' and "workman" as made by the Hon'ble Apex Court and several High Courts, it can safely be said that the function of first party satisfy the requirement of being termed as an industry and accordingly, the second party who was working as a Peon in the establishment is a workman within the meaning of the definition provided under the I. D. Act. It may not be out of place to mention here that the question of jurisdiction was raised by the first party in the written statement but the said question was not raised during argument and the written statement filed by them is silent in that regard. There is no specific provision in the Gram Panchayat Act debarring the jurisdiction of this Court and besides it is not the case of either party that the dispute raised by the workman was taken note of under any provision of the Odisha Gram Panchayat Act by the concerned authorities. In such view of the matter, I am inclined to hold that this Court has jurisdiction to decide the dispute and answer the questions under the reference made by the Government.

8. *Issue No. (i):*— The second party claims that he was employed by the first party as a Peon in the year 1984 and he continued in the said post for 20 years, i. e. the year 2004. Such fact is not

disputed by the first party. The continuous service of the second party under the first party for a period of about 20 years having not been disputed, the second party is entitled to all protections in the matter of his service as provided under the I. D. Act. Admittedly the second party was terminated from service with effect from the 17th June 2004. The second party during course of his evidence deposed that the management, all of a sudden refused his service with effect from the 17th June 2004 without assigning any reason and such act amounts to retrenchment/ dismissal. He further deposed that the said action of the management is illegal due to non-observance the procedure laid down in Section-25-F of the I. D. Act. The Section 25-F prescribed that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one months notice in writing indicating the reasons for retrenchment and besides that the workman has been paid retrenchment compensation which shall be equivalent to 15 days average pay for every completed years of continuous service. In the present case neither the second party issued any retrenchment notice U/s. 25-F of the I. D. Act. nor the second party was paid retrenchment compensation. It is the plea of the first party that the work conduct and behaviour of the second party was never satisfactory and the matter of which termination of service there was no violation of any law. The workman, during cross examination has clearly stated that he was removed from service as there was no cordial terms between him and the Secretary, Panchanan Mahakur. He further deposed that he (Secretary) did not pay his monthly salary and since he insisted for the same he (Secretary) kept grudge. The management has not examined the said person as witness to counter the evidence of the workman. The Sarapanch of Chhakormal Gram Panchayat examined as Management witness No. 1 deposed that the second party was terminated from service due to negligence in duty and regular absence. Such fact is however, not mentioned in the written statement. The law is well settled that parties to a case shall not be permitted to lead evidence on facts beyond the pleadings and even if such fact finds place on record, the Court is not inclined to act upon such evidence. It is true that the rules of pleadings are not strictly applied while deciding an industrial dispute but since the management comes up with a new case while adducing evidence the workman must be put to difficult situation. It reveals from the evidence on record that the second party was dismissed from service on the basis of some resolution passed by the Chhakarmal Gram Panchayat member. A copy of the termination letter dated the 19th June 2004 filed by the management has been marked as Ext. K. In this documents, there is no mention as to the reason of dismissal of the second party from service. The letter however, refers to the resolution of the meeting of the Panchayat dated the 12th June 2004 with reference to question No. 6. A copy of the said resolution has been marked as Ext. H. As per the said resolution the second party was given a notice to reply regarding his absence from duty but he did not respond and therefore, decision was taken to terminate him from service. The management has also filed copy of other resolutions of the meeting of Gram Panchayat relating to absence of the second party from duty. The copy of first such resolution has been marked as Ext. C. On perusal of this document I find the members of Panchayat under Question No. 7 discussed about the absence of the second party from duty and negligence in his duty for which he was called upon to submit a reply within 7 days. The management has filed a copy of several notices issued to the workman to submit show cause but in none of the notices the specific date of absence from duty is mentioned. There is absolutely no material to show that the workman was

given any show cause notice to explain about his absence from duty for any particular period and therefore the resolutions and notices are all vague in nature. The workman submitted that he has not received any notice from the Panchayat. The management fails to file any acknowledgement from the workman regarding receipt of any of the notices for show cause. It is deposed by the management witness that the notices were sent under Certificate of Posting. It is not understood why the notices were not sent by Regd. Post with acknowledgement due so that there could have been a proper service of notice upon the workman. In absence of any direct evidence regarding service of notice of termination upon the workman, it can not be said that the management complied the requirement of Section 25-F(a) of the I. D. Act. Besides, it reveals from the record that on the 15th June 2004 the second party made a written submission to the Sarpancha, Chhakormal Gram Panchayat and the said document has been marked as Ext. 1. In this letter the workman stated that due to his illness and treatment under Doctor, he remained absent from duty from the 16th June 2004. The letter of the workman was received by the Sarpanch on the same day, i.e. the 15th June 2004. But it appears that the said letter was not considered by the members of the Gram Panchayat. Although the second party worked under the first party for a period of 20 years, there was non-compliance of the provision U/s. 25 of the I. D. Act. It appears from the evidence on record that the management for some reason or other was displeased with the second party and it created documents behind the back of the workman and ultimately terminated him from service in an illegal and unjustified manner. The action of the Sarpanch of Chhakormal Gram Panchayat in dismissing the second party from service with effect from the 17th June 2004 is accordingly held to be illegal and unjustified.

9. *Issue No. (ii)* :- Since it has been held that the second party has been terminated from service by the first party in an illegal and unjustified manner, he is entitled to reinstatement in service. The second party, shortly after his illegal termination from service approached the District Labour Officer, Sambalpur-cum-Conciliation Officer under the I. D. Act by filing a written complaint on the 16th July 2004 and the first party after appearing before the Conciliation Officer, submitted that they have appointed another person namely Shri Haribola Bag in place of the second party and in such circumstance he found no scope for conciliation. From the failure report under Rule 12(4) of the I. D. Act, it appears that there was inordinate delay in submission of conciliation failure report and there was also a delay referring the matter for adjudication before this Court. However, there is no contribution of the workman in the matter of such delay. In such circumstance, I am inclined to hold that the second party is entitled to full back wages with usual service benefits. However, he shall not be entitled to the salary/wage for the period from the 16th April 2004 to 14th June 2004, the admitted period of his absence from duty.

10. In view of the determination of the issues in the manner aforesaid, the reference needs be answered in favour of the workman.

Hence the Award.

AWARD

The reference is answered on contest against the first party management. The action of the Sarapanch, Chhakormal Gram Panchayat in dismissing Shri Sriram Mahakud, Peon from services with effect from the 17th June 2004 is held illegal and unjustified. The first party management is directed to reinstate the workman in service with full back wages within two months hence. The first party management is further directed to pay all the usual service benefits to the workman within two months hence excluding the period from the 16th April 2004 to 14th June 2004.

Dictated and corrected by me.

SRIKANTA MISHRA
25-8-2014
Presiding Officer,
Labour Court,
Sambalpur

SRIKANTA MISHRA
25-8-2014
Presiding Officer,
Labour Court,
Sambalpur

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