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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 22nd October 2014

No. 8290—IR(ID)-21/2013-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th September 2014 in Industrial Dispute Case No. 35 of 2013 of the Presiding Officer, Labour Court, Sambalpur, to whom the industrial dispute between the Management of M/s Action Ispat and Power (P) Ltd., At Pandripathar, P.O. Marakuta, Dist. Jharsuguda and its Workman Shri Rajan Chhachhan 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. 35 OF 2013

Dated the 16th September 2014

Present :

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

Between :

The Management of . . . First Party—Management
M/s Action Ispat & Power (P) Ltd.,
At Pandripathar, P.O. Marakuta,
Dist. Jharsuguda.

And

Their Workman . . . Second Party—Workman
Shri Rajan Chhachhan,
S/o Mr. Late Dayalal Chhachhan,
At/P.O. Marakuta
P.S./Dist. Jharsuguda.

Appearances :

Shri B. K. Purohit, 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 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 Order under memo. No. 5522(8), dated the 18th June 2013. The dispute involved under the Schedule of reference is as follows :

"Whether the action of the management of M/s Action Ispat & Power Pvt. Ltd., At Pandripathar, P.O. Marakuta, Dist. Jharsuguda in dismissing the services of Shri Rajan Chhachhan, Khalasi Mechanical with effect from the 13th March 2012 is legal and/or justified ? If not, what relief, Shri Chhachhan is entitled to ?"

2. The case of the second party workman as per his statement of claim is that he was employed by the first party since the year 2006 and due to his sincere and devoted service, he was regularised in service with effect from the 1st April 2008. It is the specific case of the workman that on the 13th March 2012 an F.I.R. was lodged by the first party against several persons including the second party alleging false facts and though the second party was not at all involved in any such incident, he was suddenly refused service with effect from 13th March 2012. According to the second party, such refusal of service amounts to retrenchment/dismissal which is illegal because of the fact that the first party did not observe the procedure laid down in Section 25-F and 25-N of the I. D. Act. The workman averred that he lodged a complaint before the local labour machinery who admitted the dispute into conciliation but due to adamant attitude of the first party, no amicable settlement could be arrived. With such averments, the workman prays for declaration that his termination of service with effect from the 13th March 2012 as illegal and void, he be reinstated in service with such other reliefs as this Court deem fit.

3. The first party filed written statement in which it alleged that on the 12th March 2012 at 10-00 A.M. the second party with 9 others formed a group to commit mischief in the factory premises. They entered into the office of one Shri Bikash Dash, General Manager (HR) and manhandled him, took Shri Dash out of his office holding his shirt collar, assaulted him, abused him in filthy language demanding employment of their people in service. The matter was reported to the police and after investigation charge-sheet under Sections 143, 452, 323, 294, 506 and 149 of the I.P.C. have been submitted. According to the first party, the unruly behaviour of the second party and the commission of various offences are acts of subversive of discipline which was highly detrimental to the establishment of the first party. It is further narrated in the written statement that the termination of the service of the second party was legally made by means of a speaking letter, dated the 13th March 2012. The first party prays for answering the reference in its favour holding that the termination of service of the second party was legal and he is not entitled to re-employment.

4. The second party filed a rejoinder wherein he submitted that the first party wants to mislead the Court by concealing true facts.

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 M/s Action Ispat & Power Pvt. Ltd., At Pandripathar, P.O. Marakuta, Dist. Jharsuguda in dismissing the services of Shri Rajan

Chhachhan, Khalasi Mechanical with effect from the 13th March 2012 is legal and/or justified ?

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

6. The workman examined himself as the sole witness and he proved five documents which are marked Ext. 1 to Ext. 5. The management examined its Security Guard, Security Supervisor and an Administrative Officer as witnesses. The management also relied upon several documents which are marked Exts. A to D.

FINDINGS

7. *Issue No. (i)*—There is no dispute that the second party was an employee under the first party. The second party claims that he was employed since the year 2006 and was regularised in service with effect from the 1st April 2008. In paragraph 4 of the written statement, the first party asserted that the second party workman was working under the first party management as Helper since the 1st April 2008. The workman during course of evidence, has proved a certificate issued by the General Manager (HR) of the first party management, dated the 19th November 2012 marked Ext. 4. In this document, the concerned officer of the first party has certified that the second party was working in the first party organisation as Helper (EMP) from the 1st April 2008 to the 12th March 2012. The officer has further certified that during the above period the workman was found to be very sincere, hard working, punctual and obedient. It is submitted by the learned Advocate for the first party that the certificate has been obtained by force and it is not a genuine document. Such submission of the learned Advocate is not based upon any admissible evidence and therefore the Ext. 4 is a good document to show that the second party was in service under the first party from the 1st April 2008 to the 12th March 2012 and besides that during the said period he was a sincere and obedient employee.

8. It is the allegation of the first party that on the 12th March 2012 at about 10 A.M. the second party with 9 others entered into the plant gate and manhandled Shri Bikash Dash, the General Manager (HR) for which an F.I.R. was lodged and police submitted charge-sheet against the second party and others. The management has proved a copy of formal F.I.R. which has been marked as Ext. C. The management has, however, not filed the copy of charge-sheet. The workman, during cross-examination, has admitted that an F.I.R. was lodged against him and others and he was arrested in connection with said report. He has further admitted that he remained in judicial custody for one day. During the course of argument, it is submitted by the learned Advocate appearing for the parties that the criminal case is still pending in the Court of Judicial Magistrate at Jharsuguda. It is crystal clear from evidence on record that there was some unpleasant situation in the industrial premises of the first party on the 12th March 2012 and a report was lodged by the management against the second party and 9 others. The said report after investigation culminated in submission of charge-sheet by police and ultimately the case came up for trial before the learned Judicial Magistrate, Jharsuguda. In the criminal case, it is yet to be decided whether the second party actually committed any offence. However, on a simple perusal of the F.I.R. I find, one Binod Singh Chauhan, Deputy Security Officer of the management submitted a report before the police alleging that in a bizarre incident at 10-00 A.M., dated the 12th March 2012, 10 persons including the second party entered into the office of Bikash Dash and manhandled him so also abused him in filthy language holding his collar. In the said F.I.R. though there is name of 10 persons, it is specified that one Biranchi Meher, a habitual offender, is instrumental in instigating others in an unlawful manner.

There is no allegation of any specific conduct by the second party in the F.I.R. The workman denies about his involvement in the incident. In such circumstances, the evidences of the management need careful scrutiny. The M.W. 2 who was working as Security Guard in the establishment of the first party deposed during cross-examination that by the time he entered into the chamber, the culprits had already assaulted Shri Dash. He only saw some one out of 8 to 10 persons caught hold of the shirt collar and pushed him out. He admitted that he was not examined by the police but deposed evidence about the occurrence in the Court at Jharsuguda. The M.W. 1, a senior Security Supervisor of the first party deposed that there were 10 persons who committed the offence, out of whom he can remember the name of the second party and two others. This witness also has not stated about specific act committed by the second party during the alleged occurrence. The third witness for the management clearly deposed that he was not present at the spot when the occurrence took place and therefore, he has no personal knowledge about the incident. Admittedly, the termination of service of the second party was a follow-up action to the allegation of the management that one of its officer namely Bikash Dash was manhandled and abused by 10 persons under the leadership of one Biranchi Meher. But the victim Shri Dash has not been examined in the Court and no explanation is forthcoming in that regard. It is true that any unruly conduct of a workman in an industry is detrimental to the operation of the industry but in this particular case, the management has failed to examine the victim officer who could have best deposed about the facts leading to the case. The management has even not filed any document to show that the concerned Manager Shri Bikash Dash gave any written complaint or submitted a written note about the incident. In such view of the matter, I am constrained to hold that the management has failed to establish that the second party committed any offence or manhandled Shri Dash or abused him in filthy language.

9. Admittedly, the second party was a workman who rendered service continuously for more than one year before being refused service. The Section 25-F of the I. D. Act, mandates 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 (a) the workman has been given one months notice in writing indicating the reasons for retrenchment....., (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. In the present case the first party filed an F.I.R. against the second party and others regarding an incident dated the 12th March 2012 and removed him from service on the 13th March 2012. Without any disciplinary enquiry, the second party was removed from service and there was no compliance of the provisions under Section 25-F (a) and (b) of the I. D. Act. The management lodged a report before the police but it did not wait for result of investigation. Therefore, the act of dismissal of the second party from service by the first party has been made in a harsh manner which cannot be said to be a justified one.

10. In view of the discussions made above, I am constrained to hold that the first party management has terminated the services of the second party in an illegal and unjustified manner without giving him any opportunity to explain about the incident that occurred on the 12th March 2012. The action of the management in the above facts and circumstances is illegal and unjustified.

11. *Issue No. (ii)*—Since it has already been held that the first party terminated the services of the second party in an illegal and unjustified manner, the second party is entitled to reinstatement in service with full back wages from the date of his removal, i.e., the 13th March 2012.

12. In view of the determination of the issues in the manner aforesaid, the reference must be answered in favour of the second party workman.

Hence, the following award :

AWARD

The reference is answered on contest against the first party management without cost. The action of the management of M/s Action Ispat & Power Pvt. Ltd., At Pandripathar, P.O. Marakuta, Dist. Jharsuguda in dismissing the services of Shri Rajan Chhachhan, Khalasi Mechanical with effect from the 13th March 2012 is held illegal and unjustified. The first party management is directed to reinstate the workman in service with payment of full back wages within three months from the date of publication of Award.

Dictated and corrected by me.

SRIKANTA MISHRA
16-09-2014
Presiding Officer
Labour Court, Sambalpur.

SRIKANTA MISHRA
16-09-2014
Presiding Officer
Labour Court, Sambalpur.

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