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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 22nd October 2014

No. 8295—IR(ID)-131/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th September 2014 in Industrial Dispute Case No. 02 of 2012 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of District Transport Manager (A), O.S.R.T.C., Berhampur and its Workman Shri Gadadhar Moharana, Ex-Driver was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE NO. 2 OF 2012

Dated the 25th September 2014

Present :

Shri Debasis Rout, O.S.J.S. (Jr. Branch),
Presiding Officer,
Labour Court, Jeypore,
Dist. Koraput.

Between :

The District Transport Manager (A), . . . First Party—Management
O.S.R.T.C., Berhampur,
At/P.O. Netaji Subash Road,
Berhampur,
Dist. Ganjam.

Vrs.

Its Workman . . . Second Party—Workman
Shri Gadadhar Moharana,
Vill./P.O. Dhalapur, Via Sheragada,
P.S. Sheragada, Dist. Ganjam.

Under Sections—10 and 12 of the Industrial Disputes Act, 1947

Appearances :

Shri B. K. Panda, Jr. Clerk of O.S.R.T.C. . . . For the First Party—Management
Headquarter, Bhubaneswar.

Shri K. C. Mishra, Advocate, Berhampur . . . For the Second Party—Workman

Date of Argument . . . 19-9-2014

Date of Award . . . 25-9-2014

AWARD

1. The matter arises out of a reference made by the State Government in the Labour & ESI Department, Odisha, Bhubaneswar under Section 12(5) read with Section 10(1) of the Industrial Disputes Act, 1947 vide Memo. No. 3079(5)-LE., dated the 18th April 2012 for adjudication of the following dispute.

SCHEDULE

"Whether the action of the District Transport Manager (Admn.), Odisha State Road Transport Corporation, Berhampur in terminating the services of Shri Gadadhar Moharana, Ex-Driver with effect from the 26th August 2006 by way of compulsory retirement is legal and/or justified ? If not, to what relief the workman is entitled ?"

2. The case of the second party workman as would appear from the statement of claim filed by him is that, he was appointed as a Driver on the 17th June 1981 at O.S.R.T.C., Jeypore Zone and continued to work till 12th March 2001 and was transferred to O.S.R.T.C., Berhampur and he joined on the 14th March 2001. In course of his employment, the first party stated Departmental Proceedings against him in Letter No. 2605, dated the 2nd July 2005 and the second party submitted an explanation to the charges on the 17th July 2005. Though the explanation was quite satisfactory to the charges, but the first party instead of dropping the charge started enquiry through the Senior Station Master, O.S.R.T.C., Berhampur, Ganjam who without observing the rules of natural justice conducted the enquiry and submitted the report to the first party. The management without communicating the copy of the enquiry report to the second party workman for further explanation took the decision of compulsory retirement from the service and did not allow personal hearing in the matter before awarding the punishment. The first party management with an ill intention has brought to the record of other incidents for which the second party has already been punished and the first party has never asked to the second party to explain for previous conduct. Therefore, second party prayed to pass an Award in his favour.

3. The case of the first party management as per the written statement filed by him is that, the second party was working as Driver at Jeypore till the 12th March 2001 and he joined at Berhampur with effect from the 14th March 2001. While he was on duty at Berhampur in bus No. OR-06B-0691 on 12th March 2005 in Berhampur, Balimela Route and left the bus at Digapahandi without informing anybody and it was delayed for 45 minutes there. After returning to duty he drove the vehicle in very wrong manner and turned to left side in between Rabiti and Mukundpur Ghat and the passenger requested the Conductor to left the Driver namely, G. P. Bisoi to drive and Shri S. Bhaskar Rao a spare Driver drove the vehicle to Balimela alongwith G. P. Bisoi. Accordingly the Departmental Proceeding was initiated against the second party workman and it was proved that, he was in habit of taking liquor in duty and in the present charge he was under influence of liquor at Ramanaguda, prior to it he was also represented from taking such liquor while in duty in several occasions. Without finding any alternative and going through the connected records the Disciplinary Authority

imposed the punishment of compulsory retirement protecting the pension and other benefits. Therefore the first party management prayed to pass order against the second party workman.

4. On the aforesaid pleading of the parties the following issues are framed for determination :—

ISSUES

- (i) "Whether the action of the District Transport Manager (Admn.), Odisha State Road Transport Corporation, Berhampur in terminating the services of Shri Gadadhar Moharana, Ex-Driver with effect from the 26th August 2006 by way of compulsory retirement is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?"

5. To prove its case, second party workman examined himself as W.W. No. 1 and has relied no documents. On the other hand the first party management, examined Shri Brajakishore Panda, Jr. Clerk (Legal), O.S.R.T.C. as M.W. No. 1 and has relied on two documents marked as Exts. A and B.

FINDINGS

6. *Issue No. (i) and (ii)*—Both the issues are taken up together for the sake of convenience. The second party in his sworn deposition, corroborated the averment of his claim petition and has stated that, while he was working as Driver, O.S.R.T.C., Berhampur, the first party initiated a Departmental Proceedings against him vide Letter No. 2605, dated the 2nd July 2005. He further stated that, he submitted the explanation which was quite satisfactory but the management started enquiry against him. He further stated that, the management without communicating the copy of the enquiry report took the decision for compulsory retirement from the service. It is also his evidence that, the D.T.M., O.S.R.T.C. Berhampur did not allow him for personal hearing in the matter before awarding the punishment and has not followed the principle of natural justice. He without considering the age factor and long service passed the order of compulsory retirement from service of the second party in a wrongfully manner, which is neither legal or justified.

7. M.W. No. 1 has stated in his evidence that, the workman was driving the bus No. OR-06-B-0691 on the 2nd March 2005 in Berhampur-Balimela Service and went away from the bus at Digapahandi for which the bus was delayed for 45 minutes and he drove the vehicle in wrong direction from Ramanaguda in between Rabiti and Mukundpur Ghat. The workman was not in a position to drive the bus being intoxicated. He further stated that, Shri S. Bhaskar Rao, Driver drove the said vehicle to Balimela along with Shri G. P. Bisoi for which the second party was proceeded. The evidence of M.W. No. 1 discloses that, during enquiry it was proved that, the second party being intoxicated to drove the vehicle in the wrong side, and accordingly the enquiry report was submitted by the E.O.-cum-S.S.M., O.S.R.T.C. Bhubaneswar holding the second party guilty of the charges. Prior to the above incident the Charge Officer was punished as many as 5 to 6 times for different misconduct and second party also submitted undertaking not to consume liquor on the way. The first party also produced copy of undertaking, dated the 13th September 2005 and the 6th July 2005 of workman addressed to the D.T.M. (A), O.S.R.T.C. Berhampur marked as Exts. A and B respectively and the workman signed on the said undertaking marked as Exts. A/1 and B/1. In his cross-examination he has admitted that, he was not present in the said bus on the date of incident. During enquiry no record was produced to show that, the second party was intoxicated and the enquiry report was not submitted to the workman before compulsory retirement.

8. As it appears that, second party workman was working as Driver under the management. In course of his employment the management had initiated a Departmental Proceedings against him and accordingly the second party was found guilty of charges and he was compulsory retirement from his service. The first party contended that, the second party drove the vehicle in wrong direction while he was driving the vehicle from Ramanaguda, in between Rabiti and Mukundapur Ghat and he was not in position to drive the bus being intoxicated, as a result the Departmental Proceeding was initiated against him. The second party contended that, the Enquiry Officer without observing rules of the natural justice conducted the enquiry and submitted the report and did not allow him for personal hearing in the matter before awarding the punishment, and he is entitled for reinstatement with service benefits. Therefore the residual question arises for consideration is as to whether the termination of the service of the workman by way of compulsory retirement is legal and/or justified.

9. It is not in dispute that, the second party was working as a Driver of the first party management (O.S.R.T.C.), Berhampur. It is also not in dispute that, in course of his employment the management had initiated a Departmental Proceeding of his misconduct and accordingly the management terminated the workman from service by way of compulsory retirement. It has been alleged by the first party that, the workman was driving the bust on the 2nd March 2005 in Berhampur–Balimela Service and went away from the bus at Digapahandi and drove the vehicle in wrong direction and he was not in a position to drive the bus being intoxicated. Due to aforesaid circumstances the workman was proceeded. On the other hand the workman challenged the said proceeding and took the stands that he was ill on the way and due to sickness he could not drive the vehicle. At Ramanaguda he took some bread and milk as well as medicine, then he drove the vehicle, when the Ghat Road reached his head reeling increased and he could not drive the vehicle and left the vehicle after handing over the same to another Driver and he has no intention to drive the vehicle in wrong direction. From aforesaid discussion, it is clear that, the proceeding was initiated against the second party workman as he being intoxicated drove the vehicle in the wrong side, but the workman has denied the allegations levelled against him. Therefore the initial burden lies on the first party to prove the case by adducing cogent and reliable evidence. Law is well settled that, before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable and principles of natural justice.

10. In the present case, the management initiated proceeding against the workman due to his misconduct at the time of his duty and the workman submitted an explanation to the charges. Since the explanation has not satisfactory for which the management started enquiry against the workman to prove the charges. It is alleged that, the workman influence of liquor drove the vehicle in the wrong side on the alleged date and also submitted undertaking not to take liquor on duty prior to the said incident. During course of hearing, M.W. No. 1 has stated that, the statements of R. N. Panigrahi, Conductor, G. P. Bisoi, Driver and Balaram Choudhury were recorded and the charge employee did not cross-examination the witnesses. In his cross-examination M.W. No. 1 also admitted that, during enquiry no record was produced to show that, the workman was intoxicated and the enquiry report not supplied to the workman before his compulsory retirement. It is evident that, the witnesses examined by the management during course of enquiry has not been cross-examined by the workman as also before his compulsory retirement, the enquiry report was not supplied to the workman. On the other hand no document was placed to show that, the workman intoxicated on the alleged date. It is to be further noticed that there is no material on record to show

that, before awarding the punishment of compulsory retirement, the Enquiry Officer had conducted the personal hearing of the workman. The workman stated that, without observing the rules of natural justice the Enquiry Officer conducted the enquiry and submitted the report and without communicating the copy of the enquiry report imposed punishment on him. Even though the management stated to have conducted the enquiry as per rules and procedure of the O.S.R.T.C., Berhampur by giving sufficient opportunity to the workman. As already stated that, the workman was terminated from service without supplying copy of the enquiry report. Therefore, question arises for consideration is as to whether, the management has proved the misconduct of the workman. During course of enquiry the Enquiry Officer examined three (3) witnesses, i.e., the Conductor, Driver and another person to prove the alleged misconduct of the workman, and basing on their evidence the workman was terminated by way of compulsory retirement from service. But the management has not examined the said witnesses during course of hearing to support their contention and no documents was submitted to indicate that, the workman was intoxicated on the alleged date and time. Rather the management examined M.W. No. 1 being Jr. Clerk (Legal), O.S.R.T.C. to prove its case, even though he was not present in the said bus on the alleged date and time. It is the first and foremost duty of the management to conduct the enquiry of alleged misconduct of the workman before dismissal from service. In the case at hand, the management neither examined the material witnesses nor produce the relevant documents to prove the alleged misconduct. Therefore it is difficult to accept the evidence placed by the management before this Court.

11. In view of the aforesaid discussion of the material on record, it is very much clear that, the charges framed by the management against the workman could not be established by adducing cogent and reliable evidence, therefore, the order of the dismissal of service of the workman by way of compulsory retirement is not legal and justified. In the instant case the workman praying for reinstatement in former post with consequential service benefits. Therefore, the question arises for consideration whether the workman is entitled for relief as claimed for. It is to be further noticed that, prior to the above incident, the charge officer was punished the workman as many as 5 to 6 times for different misconducts causing damage and accident to the vehicle and for remaining on unauthorised absence and for taking liquor during driving hour. It would reveal from two undertakings, dated the 6th July 2005 and on the 13th September 2005 marked as Exts. A and B that, the workman submitted undertaking not to consume liquor on duty. The first party also proved the signature of the workman marked as Exts. A/1 and B/1, the aforesaid allegation has not disproved by the workman during course of hearing. Therefore it can be said that prior to the above incident the workman was punished for his misconduct. It is also now well settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11-A of the 1947 Act the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. As already stated, the first party management failed to prove the charges framed against the workman in this case but previous conduct of the workman was not satisfactory as he was punished many occasions before this incident. Therefore, he had lost confidence and trust on the management.

Taking into consideration the facts and circumstances of the case, granting of compensation instead of ordering for reinstatement cannot be said to be unreasonable or perverse in the instant case. Therefore, I am of the opinion that, it will meet the ends of justice if it is ordered for payment of compensation in lieu of reinstatement.

12. The reference is thus, answered on contest against the first party management without costs. Accordingly the action of the District Transport Manager (Admn.), Odisha State Road Transport Corporation, Berhampur in terminating the service of Shri Gadadhar Moharana, Ex-Driver with effect from the 26th August 2006 by way of compulsory retirement is illegal and unjustified. In view of the above, the workman to be paid monetary compensation in the sum of Rs. 50,000 (Rupees fifty thousand) only. The amount already paid as dues shall be deducted from the aforesaid amount.

Dictated and corrected by me.

DEBASIS ROUT
25-09-2014
Presiding Officer
Labour Court, Jeypore

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25-09-2014
Presiding Officer
Labour Court, Jeypore

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