# The Odisha Gazette

**EXTRAORDINARY**

**PUBLISHED BY AUTHORITY**

**No. 500 CUTTACK, WEDNESDAY, MARCH 12, 2014 / FALGUNA 21, 1935**

**LABOUR & EMPLOYMENT DEPARTMENT**

NOTIFICATION

The 26th February 2014

No. 1899—li-1-(SS)-19/2004-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th November 2013 in I. D. Case No. 8 of 2004 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the Management of M/s Sarada Enterprises, Rajgangpur, Contractor of M/s OCL India Ltd., Rajgangpur and its workman Miss Jonni Tirkey was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
INDUSTRIAL TRIBUNAL, ROURKEAL

INDUSTRIAL DISPUTE CASE NO. 8 OF 2004

Dated the 6th November 2013

*Present* :

Shri S. K. Mohanty,
Presiding Officer, Industrial Tribunal,
Rourkeal.

*Between* :

Mr. Sital Kumar Sarada, .. First Party—Management
M/s Sarada Enterprises,
Contractor, At Gopabandhu Colony,
P.S. Rajgangpur, Dist. Sundargarh.

And

Miss. Jonni Tirkey, .. Second Party—Workman
At Lamloi, P.O. Garvana,
P.S. Rajgangpur, Sundargarh.

*Appearances* :

Shri G. Pujhari, Advocate .. For the First Party—Management

Shri K. P. Barik, Advocate .. For the Second Party—Workman

AWARD

The Government of Odisha in Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the I.D. Act, 1947 have referred the following disputes for adjudication vide their Order No. 3995—Ii/1 (SS)-19/2004-L.E., dated the 10th May 2004.

> "Whether the punishment of dismissal from service imposed on Smt. Jonni Tirkey with effect from the 29th April 2003 by M/s Sarada Enterprises, Contractor, Rajgangpur is legal and/or justified ? If not, what relief the workman is entitled to ?"

2. The case of the second party (hereinafter referred as the workman) is that she was working in M/s O.C.L. India Ltd., being employed through a Contractor and was working since 1962 and M/s O.C.L. India Ltd., was her principal employer. The further case of the workman is that on 9-11-2002 she was in her general shift duty from 7 A.M. to 4-30 P.M. and at about 3 P.M. she had gone to drink water to the nearest tap point as there was no provision for drinking water at the work site near the Fire Clay Plant after informing other co-workers due to the absence of the supervisor at the spot. But on her return to the work site, the co-worker Smt. Fulki Minz passed certain comments at her for which there was an alternation between them and the supervisor brought this matter to the notice of the contractor employer. Then the contractor issued a charge sheet to her on 10-11-2002. Though she had submitted her explanation to the charge sheet, the same was found unsatisfactory and an enquiry committee was constituted. The enquiry committee enquired into the charge sheet. But she was not given fair opportunity to participate in the enquiry nor she was paid any subsistence allowance and ultimately bassing on the findings of the enquiry committee, the disciplinary authority terminated her from service with effect from the 29th April 2003. According to the workman, such order of her removal from service is illegal one. So she raised the dispute and after failure of conciliation, the matter was referred to this Tribunal for adjudication.

3. The case of the first party (hereinafter referred as management) is that the workman was working under the contractor M/s Sarada Enterprises and on 9-11-2002 at about 3-30 P.M. she had left the work place without permission and on her return she had assaulted Fulki Minz and had also abused her in filthy language. So a charge sheet was issued against her and an enquiry committee was constituted to enquire into the charges. In the enquiry proceeding the workman had participated and after completion of the enquiry, the enquiry officer had submitted his findings holding that the charge was established against the workman. So the copy of the enquiry proceedings and findings were served on the workman and after paying one month salary, her service was terminated with effect from the 29th April 2003. Though initially the workman had refused to accept the subsistence allowance sent to her by post, after receiving the letter from the Labour Officer she had received the same. According to the management the domestic enquiry was fairly conducted and the order of dismissal of the workman is justified one.

4. On the aforesaid pleadings of the parties, following issues have been framed :—

ISSUES

*(i)* "Whether the reference is maintainable ?

*(ii)* Whether the domestic enquiry conducted by the management was fair and proper ?

*(iii)* Whether the punishment of dismissal from service imposed on the workman with effect from the 29th April 2003 by the contractor is legal and/or justified ?

*(iv)* If not, to what relief the workman is entitled to ?"

5. The workman has examined three witnesses including herself in support of her case as against one witness for the management.

FINDINGS

6. *Issue No. (ii)*—This issue is framed to decide "whether the domestic enquiry conducted by the management against the workman was fair and proper ?". This issue has already been heard as preliminary issue as per the direction of the Hon'ble High Court vide its Order Dt. 20-11-2009 passed in W.P.C. Nos. 7551 and 8223 of 2008 by this Tribunal and the same has been disposed of vide this Tribunals Order, Dt. 24-9-2013 with a finding that the domestic enquiry conducted by the management is fair and proper. So this issue does not require any further discussion in this Judgment.

7. *Issue No. (iii)*—This issue is framed to decide "Whether the punishment of dismissal from service imposed on the workman with effect from the 29th April 2003 by the contractor is legal and justified or not.

8. It is needless to say that after introduction of Section 11-A in the I.D. Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management, where the workman concerned is found guilty of misconduct. But the discretion which can be exercised under Section 11-A is available only on the existence or certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In absence or any such factor existing the Labour Court by way of sympathy alonge cannot exercise the power under Section 11-A of the Act and reduce the punishment. This has also been reiterated by the Hon'ble Apex Court in the case of Mahindra & Mahindra Ltd. *Vrs*. N. B. Narawade etc., reported in A. I. R.-05-S.C.-1993. So by approving the provisions of Section 11-A of the I. D. Act, now this Tribunal may examine the case of the second party workman to find out whether the punishment of removal of the workman is disproportionate to the gravity of her misconduct so as to disturb the conscience of the Court or there is existence of any mitigating circumstances which requires the reduction of the sentence, so as to reduce the punishment. In course of argument in the case the learned counsel for the first party management has argued that the charges which are proved against the workman during domestic enquiry are serious in nature and call for strong disciplinary action like dismissal from service because in view of the change in economic policy of the country it may not be proper to allow the employee to break the discipline with impunity. He has further submitted that now-a-days in the industries discipline by the workman is necessary and peace and harmony are necessary elements for creation of industrial atmosphere for production and if this is disturbed the relationship between the master and servant would be restrained and production will suffer. According to him assaulting and abusing co-workman is a serious misconduct and such misconduct committed by

a workman and proved dismissal from service is not disproportionate to the misconduct. Likewise leaving the place of duty without permission of the authority affects production and also amounts to serious misconduct. As such the punishment for dismissal from service under no circumstances can be said to be disproportionate to the misconduct nor there is any mitigating circumstances to take a different view other than the order of dismissal. In support of his above contention the learned counsel for the management has relied on the decisions reported in A.I.R.-06-S.C.-975 (L. K. Verma *Vrs*. H.M.T. Ltd., in 2002-L.L.R.-255). Gowaliar Potteries & others *Vrs*. Bhagwan Das and others, reported in 2002-LLR-1016 (R.Kannabiran *Vrs*. D.L.C. and another, in 2004-LLR-17) Ramprasad Tripathy *Vrs*. Labour Court, in 2000-LLR-1246 (Jagrao Singh *Vrs*. Anglo America Marine Co. Ltd.).

9. Admittedly as per the provision of Section 33-2 (b) of the I.D. Act, the jurisdiction of the Tribunal is limited to the enquiry as to whether a *prima facie* case has been made out by the employer against the employee or not. Once the Tribunal comes to the conclusion that the management has not acted *mala fide* and that there has been proper enquiry and that the conclusion arrived at by the Enquiry Officer is a possible one on the basis of evidence before it, the Tribunal cannot substitute its own judgement with that of the enquiry officer. In the present case, this Tribunal has tested whether a *prima facie* case has been made out by the employer against the employee by applying the touch stone of the aforesaid settled position of law and it is found that though there has been proper enquiry, the conclusion arrived at by the Enquiry Officer does not appear to be a possible one on the evidence before it because though during enquiry the supervisor Pradeep Kumar Naik being examined has stated that the incident had occurred in his presence and he had informed the fact to the contractor, the same does not appear to satisfactory because at the earlier point he has stated that at about 3-15 P.M. Jonni Tirkey left her work spot without informing him and taking his permission and proceeded towards mill house of SP/1 and she was in aggressive mode and as she did not return for some time he had gone to call her. Further the statement of the victim worker Fulki Minz reveals that after she was rescued by co-worker Indu, Muni & Kamala supervisor Shri Naik had arrived there. The statement of witness Indu Lakra also discloses that supervisor Shri Naik had arrived at the spot by the time the occurrence was almost over. So also the statement of witness Muni Lakra & Udisila Minz on the other hand the statement of the workman Jonni Tirkey and her co-worker namely Saraswati Barla, Bimala Minz discloses that at first Fulki Minz passed some comments at the workman Jonni Tirkey which resulted into quarrel and there was pull and push between them. But the E. O. has lost sight of these aspects and has not taken it into consideration while giving his finding. So this Tribunal is unable to accept the conclusion arrived at by the E.O. as a possible one on the basis of evidence before it.

10. Further the second party workman has been charge sheeted for misconduct for leaving the place of work without permission, visiting and assaulting the co-worker but materials available on record goes to show that neither the contractor concerned nor either of two supervisors were present at the workside where the second party workman was working, for taking permission to leave the place of work. Further the plea of the second party workman that at the time of the alleged incident she had gone to drink water as there was no provision for drinking water at the worksite near the fire clay plant informing other co-worker has not been controverted by the management. So when the contractor or the supervisor was not present at the worksite the charge against the second party that she had left the place of work without permission which had amounted to misconduct cannot be accepted by this Tribunal. Moreover leaving the place of work for a few minutes for drinking water cannot be considered as misconduct. So it cannot be said that a *prima facie* case has been made out by the management so far as the first part of charge is concerned. Therefore this Tribunal has no hesitation to come to a conclusion that though the enquiry was

conducted fairly and properly, the conclusion arrived at by the E.O. does not appear to be a possible one on the basis of evidence before it, as Ext. H, the proceedings of the enquiry and Ext. J, the documents filed in the enquiry do not disclose that the workman had remained absent unauthorisedly. Further though admittedly evidence goes to show that there was a quarrel between the workman and another co-worker at the worksite, no action appears to have been taken against the co-workman. Since the first part of the charge sheet against the workman is held to have not been proved, even if the second part of the charge sheet that the workman had abused and assaulted another co-workman is held to be proved, the imposition of punishment of termination of service on the workman for a such conduct appears to be too harsh and grossly disproportionate to the gravity of her misconduct so as to disturb the conscience of this Tribunal. This Tribunal has carefully gone through the citations relied on by the first party management to justify the order of dismissal passed against the workman and found that the facts and circumstances of those cases are completely different from the facts and circumstances of the present case. Therefore the ratio laid down in these cases cannot be applied to the case at hand to come to a conclusion that the dismissal order of the workman is legal and justified. Accordingly this issue is decided against the management.

11. *Issue No. (iv)*—No evidence has been led from the side of the workman to show that the workman was not gainfully employed during the period she suffered for her termination of service for which she is entitled to any back wages. Since the punishment of removal is found to be grossly disproportionate to the gravity of her misconduct the workman is entitled to reinstatement in her job forthwith without any back wages.

12. *Issue No. (i)*—In absence of any evidence on this issue, the reference is held to be maintainable.

13. To sum up, it is held that the action of the management in dismissing Shri Jonni Tirkey from service with effect from the 29th April 2003 by M/s Sarada Enterprises, contractor of M/s O.C.L. India Ltd., Rajgangpur is neither legal nor justified. Hence the workman is entitled to be reinstated in service forthwith without any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHANTY
6-11-2013
Presiding Officer
Industrial Tribunal
Rourkela.

S. K. MOHANTY
6-11-2013
Presiding Officer
Industrial Tribunal
Rourkela.

———

By order of the Governor

N. BEHERA
Under-Secretary to Government

———

Printed and published by the Director, Printing, Stationery and Publication, Odisha, Cuttack-10
Ex. Gaz. 2520–193+11