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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 5th April 2014

No. 3201—li-(BH)-17/2008-(pt)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th January 2014 in Industrial Dispute Case No. 06 of 2009 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Bharatpur Colliery Employees Co-operative Stores Ltd., Nehru Satabdhinagar, South Balanda (Talcher), Dist. Angul and its Workmen (1) Shri Deepak Kumar Pradhan (2) Shri Bamadev Behera (3) Shri Saroj Kumar Biswal 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. 06 OF 2009
Dated the 29th January 2014

Present :

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

Between :

The Management of
M/s Bharatpur Colliery Employees
Co-operative Stores Ltd.,
Nehru Satabdhinagar,
South Balanda (Talcher),
Dist. Angul.

.. First Party—Management

And

Its Workmen
(1) Shri Deepak Ku. Pradhan,
At Bada Singda,
Nehru Satabdhinagar,
Bharatpur,
P.O. South Balanda,
Talcher, Dist. Angul.

.. Second Party—Workmen

- (2) Shri Bamadev Behera,
Vill. Pathar Khunta,
P.O. Muktaposti,
Kamakshyanagar,
Dist. Dhenkanal.
- (3) Shri Saroj Kumar Biswal,
Vill./P.O. Dasara,
P.S. Colliery, Dist. Angul.

Appearances :

Shri L. K. Biswal, Secretary	.. For the First Party—Management
Self	.. For the Second Party—Workmen

AWARD

This award arises out of a reference made by the Government of Odisha Labour & Employment 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. 3592 (5), dated the 15th April 2009. The disputes involved under the Schedule of reference is as follows :—

“Whether the termination of Shri Deepak Kumar Pradhan, Shri Bamadev Behera, Shri Saroj Kumar Biswal with effect from the 3rd August 2007 by management of M/s Bharatpur Colliery Employees Consumer Co-operative Stores Ltd., Nehru Satabdhinagar, Bharatpur, P.O. South Balanda, Dist. Angul is legal and/or justified ? If not, what relief the workmen are entitled to ?”

2. The fact of the case in brief is as follows:—

The second party Nos. 1, 2 and 3 were engaged as Clerks under the first party management in their Co-operative Stores at N.S. Nagar, Bharatpur, Angul with effect from 1st July 2000, 27th May 1998 and 31st March 2011 respectively. As per the instruction, each of the deposited security amount of Rs. 10,000 in favour of the Co-operative Society. They were initially paid Rs. 1,000 per month which was subsequently enhanced to Rs. 1,200 per month. The said salary was less than the minimum wage as declared by the Government of Odisha from time to time and these workmen requested the management to pay the minimum wage but the same was not listened by the management. The workmen allege that they approached the District Labour Officer, Talcher to an force the payment of minimum wage and in retaliation the management arbitrarily terminated their service with effect from 3rd August 2009. The workmen then approached the Assistant Registrar of Co-operative Societies, Talcher who made the thorough enquiry of the matter but could not give any relief to them and therefore, they raised an industrial dispute regarding their illegal termination from service before the D.L.O., Talcher. The D.L.O. called upon both the parties on different dates but his effort for conciliation failed. According to the workmen, the termination of their service by the management is illegal on the grounds :—

- (i) No notice pay was paid to them
- (ii) No termination benefit was paid to them
- (iii) No Seniority list of the workmen is maintained before effecting termination
- (iv) No permission was obtained from the Government and lastly (v) there was no compliance of the Section 25-F of the I.D. Act.

With such averments the workmen pray to pass an order declaring that their termination from service is illegal and also to pass a direction for reinstatement in service with full back wages.

3. The first party management filed written show cause wherein they challenged the maintainability of the case. While admitting the fact of engagement of the workmen, the management alleged that due to their unauthorised absence, obstruction in opening office, misbehaviour to office bearers and assault to the Secretary, they were dismissed from services. It is specifically mentioned in the written show cause that the second parties were working on daily wage basis under them with an agreed consolidated amount of Rs. 1,000 for 26 days at different times by different Boards. They were not obeying the order of the resolution of the society and created disturbances including corruption in the accounting system. In the meeting of the Executive Body of the management Dt. 19th August 2007, the second party members refrained from attending their daily work. It was however, held that they were entitled to their outstanding dues. On 24th August 2007 the President of the Society sent letters to the workmen about their disengagement. It is the further case of the management that their establishment was running in loss they had no capacity to engage the paid staffs and therefore the Grossery counter was closed. According to the management the dispute between the parties can only be settled under the provisions of Co-operative Act and therefore, this Court has no jurisdiction to sit over the matters.

4. The second party workmen filed a rejoinder wherein they contended that the management deliberately did not pay them minimum wages and when they complained, the Secretary attacked the workmen Deepak Kumar Pradhan on 30th July 2007 for which he filed a report at Bikrampur P.S. Therefore, the Secretary lodged a counter report in the said Police Station to dilue the case. Ultimately, the matter was compromised by the intervention of the O.I.C. of the Police Station.

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

ISSUES

- (i) "Whether the reference is maintainable ?
- (ii) Whether the termination of Shri Deepak Kumar Pradhan, Shri Bamadev Behera, Shri Saroj Kumar Biswal with effect from the 3rd August 2007 by management of M/s Bharatpur Colliery Employees Consumer Co-operative Stores Ltd., Nehru Satabdhinagar, Bharatpur, P.O. South Balanda, Dist. Angul is legal and/or justified ?
- (iii) If not, what relief the workmen are entitled ?"

6. All the three workmen were examined as witnesses. From the side of the management the Secretary of the Co-operative Store was examined as the sole witness. The workmen in support of their case, proved several documents which were marked Ext.W.1 to Ext.W.6. The documents filed on behalf of the management were marked Ext.M.1 to Ext.M.6

FINDINGS

7. *Issue Nos. (i)*—As regards, the question of maintainability of the reference, it is submitted by the management that the dispute relates to a Society coming under the Co-operative Societies Act, 1962 and therefore, this Court has no jurisdiction to sit over the matter. Admittedly, the first party is a Co-operative Store and guided by the provisions of the Co-operative Societies Act but there is no materials to indicate that any authority under the Co-operative Societies considered the dispute between the parties and arrived at any conclusion. In view of the wide scope of the definition

of “workman”, “Industry” and “Industrial Dispute” as interpreted by the Hon’ble Apex Court and several High Courts, the Co-operative Societies also come under the definition of Industry and its employees specifically the peons and workman come under the definition of “workman”. The dispute between the present parties was taken cognizance by the Conciliation Officer-*cum*-D.L.O., Talcher, who tried to settle the dispute and ultimately submitted failure report Under Section 12(4) of the I.D. Act, 1947. On the basis of the said report the Government thought it proper to refer this dispute to this Court for adjudication. In absence of any proceeding under the authorities of the Co-operative Societies Act, it cannot be said that this Court lacks jurisdiction to decide the dispute under the reference of the Government. The issue No. 1 is accordingly answered in the affirmative.

8. *Issue No. (ii)*—There is no dispute that the second party members were workmen under the first party management. The W.W.1 deposed that he was working as Clerk in Bharatpur Colliery Employees Consumer Stores Limited since 23rd July 2000. The W.W.2 Bamadev Behera deposed that he was working as as a Clerk in the above establishment since 27th May 1998. The W.W.3 Saroj Kumar Biswal deposed that he was working as a Clerk in the said establishment since 31st March 2001. Such facts are not disputed by the management. All the three workmen witnesses deposed that each of them deposited Rs. 10,000 as Security Money as directed by the Society. Their such evidence is not challenged during cross-examination nor the management witness denied the fact of deposit of security amount by the three workmen. Although, neither party has filed the appointment order of the workmen, the same is of no consequences in view of the admission of the management. The management in their written statement pleaded that the three workmen were working on daily wage basis under the Employer Society with consolidated sum of Rs. 1,000 for 26 days. It is contended that the workmen were not regular employees. On the contrary the workmen pleaded that they were initially getting a sum of Rs. 1,000 per month and were later paid Rs. 1,200 per month which was less than minimum wages. The management has not filed any document indicating the fact that the workmen were employed on daily wage basis or that there was any break in service. The materials on record establish the fact that the second party members were working under regular basis under the first party and each of them completed 240 days of service in a calendar year preceding their termination from service. It is true that the first party is a Consumer Co-operative Society but in view of the nature of employment given to the second parties it can safely be said that they are workmen and the establishment of the management is an “industry” within the meaning of the Industrial Disputes Act, 1947. In view of the long continuous service rendered by the workmen, they are entitled to avail the benefit under the I.D. Act and their termination from service was required to be made by following due procedure under the I.D. Act.

9. It is the admitted case of the parties that the three workmen were terminated from their service with effect from the 3rd August 2007. The termination letters Dt. 24th August 2007 issued against the three workmen have been marked as Ext. W.1, W.3 and W.5 respectively. In these letters it is specified that on 19th August 2007 there was a meeting of the management society in which a decision was taken to terminate the services of the three workmen with effect from the 3rd August 2007 and it was further decided that each of them would be paid one month advance pay. The workman Bamadev Behera under another letter Dt. 28th August 2007 was directed to receive his pay of Rs. 3,000 for the month of July and August and he was further directed to vacate the quarters allotted in his favour within 7 days of receipt of the letter. A copy of the said letter has been marked as Ext.W. 4. The workmen Saroj Kumar Biswal vide letter Dt. 28th August 2007 was directed to receive a sum Rs. 15,038 (Salary of Rs. 3,000 for the month of July and August. Security deposit amount of Rs. Rs. 10,000 and interest to the tune of Rs. 2638. A copy of the said letter has

been marked as Ext. W.6. On a close persual of the documents marked Ext. W.1, W.3 and W.5. I find the management held a meeting on 19th August 2007 on the basis of letter sent by the workmen. The management however, did not file the said letter, if any, or the copy thereof in this Court for persual. It is not known on whether actually the workmen sent any letter to the management. The witness examined on behalf of the management has not disclosed anything regarding the letter allegedly sent by the workmen though he has stated about the holding of meeting on Dt. 19th August 2007. The management filed the copy of the Resolution of the Society Dt. 19th August 2007 but in this Resolution there was no mention about the contents of the letter. Therefore, the termination letter suffers from a material infirmity.

10. It is alleged by the management witness that the three workmen were dismissed from service on 4 grounds such as:

- (i) unauthorised absence;
- (ii) obstruction in opening office;
- (iii) misbehaviour to the office bearers; and
- (iv) assault to the Secretary.

(refers to Para. 3 of the deposition). He has, however, not stated anything in detail about the alleged acts by the workmen. Admittedly, no charge was framed against the workmen and no explanation was called for from them giving them an opportunity to say about the alleged misconduct. In absence of any direct evidence regarding the alleged acts of misconduct and in absence of any disciplinary enquiry conducted by the management, the termination of service of the three workmen on the basis of resolution in a meeting held at the behest of the management is *prima facie* illegal and unjustified. It reveals from the evidence on record that the workman Deepak Pradhan lodged FIR is Bikrampur Police Station and the M.W.1 also filed FIR against the three workmen in the said Police Station. The copy of the FIR filed by the M.W.1 has been produced and marked as Ext.M.2 but the copy of the FIR filed by Deepak Kumar Pradhan is not filed by the managent. The M.W.1 has further admitted in cross-examination that a police case has been registered against him on the basis of FIR lodged by Deepak Pradhan. He has also admitted that both parties were released on bail from the Court of SDM, Talcher and they have also filed a petition for compromise of the cases though the compromise petition has not yet been finalised by the Court. It is crystal clear that there was some misunderstanding between the Secretary of the management Society and the workmen which led to filing of cases and counter case but in the meantime, they wanted to settle the dispute by way of compromise. Under such circumstances, it cannot be said that one of the party was in fault and the other was innocent. The management appears to have terminated the services of the workmen giving weightage to the allegation made by their Secretary but before that it did not think it proper to hear the workman.

11. On a careful persual of the materials on record and the discussions made above I am of the considered opinion that the management has terminated the services of the three workmen with effect from the 3rd August 2007 without calling upon any show cause from them regarding alleged misconduct. The management has terminated the services of the workmen without hearing them in any manner. The termination letter is proved to have been issued in a biased and arbitrary manner without following the principles of natural justice. Without conducting any disciplinary enquiry the management in a meeting held by its members passed resolution against all the three workmen to terminate their service which was wrongful and cannot be sustained under law. The termination

of services of three workmen with effect from the 3rd August 2007 by the management is accordingly held to be illegal and unjustified. The issues is accordingly answerd in favour of the workmen.

12. *Issue No. (iii)*—Since it is already proved that the management illegally terminated the service of the three workmen,, they are entitled to reinstatement in service. It is proved that for some misunderstanding between the Secretary of the Society and the workmen, the dispute arose and the management one-sidel by and arbitrarily terminated the services of the workmen. In absence of any proved misconduct on the part of the workmen, the management kept them out of service for a long period. There is absolutely no evidence that the three workmen were gainfully employed somewhere else and therefore, they are entitled to full back wages from the date of termination of service. The issue is accordingly answered in favour of the workmen.

In view of the determination of the issues in the manner aforesaid, the following Award is passed.

AWARD

The reference is answered on contest against the management without cost. The termination of Shri Deepak Kumar Pradhan, Shri Bamadev Behera, Shri Saroj Kumar Biswal with effect from 3rd August 2007 by the management of M/s Bharatpur Colliery Employees Consumer Co-operative Stores Ltd., Nehru Satabdhinagar, Bharatpur, P.O. South Balanda, Via Talcher, Dist. Angul is held to be illegal and unjustified. The workmen are entitled to reinstatement in service and full back wages from the date of their termination. The management is directed to reinstate the three workmen in service within a period of one month from the date of publication of the Award. They are further directed to pay full back wages along with all other service benefits to them from the date of their termination till reinstatement within a period of three months from the date of publication of the Award, failing which the same shall carry interest @12% per annum.

Dictated and corrected by me.

SRIKANTAMISHRA
29-1-2014
Presiding Officer
Labour Court
Sambalpur

SRIKANTAMISHRA
29-1-2014
Presiding Officer
Labour Court
Sambalpur

By order of the Governor
R. K. NANDA
Under-Secretary to Government