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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 27th December 2023

S.R.O. No. 8/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th November 2023 passed in the ID Case No. 9 of 2023 by the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the M/s. Jay Bharat Spices (P) Ltd., (Bharat Masala), New Industrial Estate, Jagatpur, Cuttack, At/P.O. Ramadaspur, P.S. Baranga, Cuttack and Shri Ajay Padhi, S/o Dhaneswar Padhi, At Jarada, P.O. Chotapada, P.S. Rasol, Dist. Dhenkanal was referred to for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 9 of 2023

Dated the 18th November 2023

Present :

Smt. Aparna Mohapatra,
Presiding Officer,
Labour Court, Bhubaneswar.
(JO CODE-OD-0408).

Between :

M/s. Jay Bharat Spices (P) Ltd., (Bharat Masala), . . . First Party—Management
New Industrial Estate,
Jagatpur, Cuttack,
At/P.O. Ramadaspur,
P.S. Baranga, Cuttack.

And

Shri Ajay Padhi, . . . Second Party—Workman
S/o Dhaneswar Padhi,
At Jarada, P.O. Chotapada,
P.S. Rasol, Dist. Dhenkanal.

Appearances :

Shri Ch. Suryanarayan Das, . . . For the First Party—Management
 HR. Manager,
 Authorised Representative

Shri N.N. Mekap, . . . For the Second Party—Workman
 Authorised Representative

AWARD

The Government of Odisha in the Labour & E.S.I. Department in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the ID Act' or 'the Act') have referred the following dispute for adjudication by this Court vide their Memo No. 1536/LE, dated the 8th February 2023:—

“Whether the termination of the services of Shri Ajaya Padhi, Grinding Operator with effect from the 1st December 2020 by the Management of M/s. Jay Bharat Spices (P) Ltd., (Bharat Masala) is legal and/or justified ? If not, what relief Shri Ajaya Padhi is entitled to ?”

2. Shorn of unnecessary details, the case of the second party is that with effect from the 28th July 2008 he was engaged by the management under it as 'Grinding Operator' and he performed his duty as such till the 30th November 2020. He was covered under EPF and ESI Schemes. It is averred in the statement of claim that while working under the management some production sections were shifted from Jagatpur, Cuttack to Ramadaspur and for that reason some staffs were also transferred to Ramadaspur, for which he demanded transfer facility like his counterpart employees to join at Ramadaspur. Consequent upon such demand, the management bore grudge on him and accordingly, on the 1st December 2020 when he had been to perform his duty, the management did not allow him for the said purpose in his previous station which amounts to termination of his service under the management. According to the second party, the termination of his service is in gross violation of the provisions of Section 25-F, 25-G and 25-H of the Act, inasmuch as, without following the principles of natural justice. Hence, the second party claimed that when he has completed more than 240 days continuous service under the management in twelve calendar months, his termination as has been effected, without due compliance of the provisions of the ID Act, the same is neither legal nor justified. So, in the premises, prayer is made on behalf of the second party for his reinstatement in service with full back wages and other service benefits like his counterpart employees.

3. Pursuant to the notice of this Court, the management entered its appearance and filed its written statement thereby admitting the engagement of the second party in its Grinding Section, Jagatpur, Cuttack since long. However, at the same time, the management alleged that in November, 2020 the Grinding Section was transferred to their Cryogenic Spice Grinding unit set up at Ramadaspur, Baranga, Cuttack and accordingly, all the workers working in the Grinding Section were asked to report for duty at Ramadaspur. But when all workers joined at Ramadaspur, only the second party did not turn up for duty despite providing communication facility from Jagatpur to Baranga, so also mess facility to all the workers. Rather, the second party insisted to work at their Pasta Factory at Jagatpur, but as there was no vacancy at that time, he was suggested to join at Ramadaspur to which he refused and submitted his resignation letter on the 6th March 2021 to the company. However, the second party is free to join in his duty as and when he desires. In the above circumstances, prayer has been made for the rejection of the claim of the second party.

4. In the rejoinder to the WS of the management, the second party categorically stated that neither any letter was issued to him to join at new establishment nor any transfer facility was given to him for the said purpose or any wages paid to him, for which it was not possible on his part to attend duty. He further stated that he is ready to join in his former station.

5. In view of the pleadings of the parties, the following issues are framed:-

ISSUES

- “(i) Whether the termination of the services of Shri Ajaya Padhi, Grinding Operator with effect from the 1st December 2020 by the Management of M/s. Jay Bharat Spices (P) Ltd., (Bharat Masala) is legal and/or justified ?
- (ii) If not, what relief Shri Ajaya Padhi is entitled to?”

6. During the hearing of the case, the second party examined himself as WW No.1 and to substantiate his case he relied on documents which have been marked as Exts.1 and 2. Similarly, the management has also examined three number of witnesses on its behalf and placed reliance on the resignation letter dated the 6th March 2021 tendered by the second party which has been marked as Ext.A.

FINDINGS.

7. *Issue Nos. (i) & (ii)*—Both the issues being inter-linked with each other are taken-up together for consideration.

At the outset, it is pertinent to mention here the admitted facts of the parties that there exists employee-employer relationship between the parties, the second party has worked under the management for the period from the 28th July 2008 to the 30th November 2020, the second party was getting Rs.10,600 per month, the second party is a workman and the organisation of the OP is an ‘industry’ as per the provisions of the ID Act and as per the order of reference this Court has to adjudicate the question as to whether the termination of the services of Shri Ajaya Padhi, Grinding Operator with effect from the 1st December 2020 by the Management of M/s. Jay Bharat Spices (P) Ltd., (Bharat Masala) is legal and/or justified. On this aspect, when the argument is well advanced on behalf of the second party that he was terminated from service illegally by the management, the specific averment of the first party management to that effect is that at no point of time the second party was terminated from service, rather on his own volition he did not turn up for his duty after transfer of their Grinding Section where he was working from Jagatpur to Ramdaspur and in this way the second party left his service under the management voluntarily. So, the controversy which centres round the dispute is as to whether the second party is terminated from service by the management as claimed by him or he left his job voluntarily as alleged by the management.

It is forthcoming from the pleadings advanced by the parties that while the second party was working in the Grinding Section, the said Section was shifted to Ramdaspur, Baranga, Cuttack from Jagatpur. In this connection, the management on its part has submitted to the effect that on shifting of Grinding Section from Jagatpur to Ramdaspur, Baranga, Cuttack, all the workers working there, were asked to join Ramadaspur and for that purpose the management also provided travel facility, so also mess facility for the said purpose to its employees. But, except the second party, all the employees joined at Ramadaspur. It is also contended by the management that the second party was given ample opportunities to join at Ramadaspur, but he did not turn up for duty from

November, 2020 and left his job voluntarily. Rather, he insisted to join at Jagatpur where he had no work for him. During the course of argument, it is argued on behalf of the management that as the management at any point of time has not terminated the services of the second party, no departmental enquiry was liable to be held in the facts of this case as alleged by the second in his statement of claim.

The second party, on the other hand stated that he had been to join the company's new place, but he was not provided with travel facility and when he demanded for such facility he was terminated from service.

It is the settled position of law that the principles of natural justice in labour jurisprudence are applied to ensure transparency and fairness in the employer and employee dealings which in turn promote industrial peace. Admittedly, no document is placed on behalf of the management to show that any written communication was sent by it to the second party to join in his duty. That apart, the witnesses of the management also during their cross-examination admitted not to have given any written notice to the second party to resume his duty. However, the witnesses of the management during their cross-examination stated that the fact of transfer of company of the management from Jagatpur to Ramadashpur, Baranga was notified in the Notice Board for all the employees to work there. The MW No.1 during his cross-examination stated that the second party was called to resume his duty through telephonic calls & messages and such piece of evidence remained unchallenged. Similarly, the MW No. 3 (against whom the second party during his cross-examination volunteers that although he had been to join the company's new place, but he was denied by the Supervisor, namely Prazeet Kumar Patro to go by bus), by tendering his evidence affidavit in the capacity of HR Manager of the management, stated during his cross-examination that he enquired into the absence of the second party from his duty by meeting him personally and that he was although offered with an option to avail the fuel expenses in order to travel from Jagatpur to Ramadashpur, but he denied and that as the second party did not resume his duty so he was not given fuel allowance. But, surprisingly, not a single question is put to MW No. 3 by the second party regarding the above denial by MW No. 3 to him. Rather, MW No.3 during his cross-examination denied to the suggestion put to him that the second party was not accommodated by the company bus to travel from Jagatpur to Ramadaspur. Although the second party WW No.1 during his cross- examination volunteers that he had intimated regarding denial by MW No.3 to him to go by bus, to the management in writing, but no corroborative piece of documentary evidence is adduced on his behalf to sustain such stand. Besides that, as the second party alleged to have interested to join at new place, but he was not accommodated with bus to travel from Jagatpur to Ramadaspur and when he demanded for the same the management terminated his service, but the pleadings and evidences tendered by him do not support his case as he himself in his statement of claim stated that when he had been to resume duty in his previous station i.e., Jagatpur, the management did not allow him to perform his duty there. Further, the second party in his rejoinder stated to have interested to join in his previous station. So, such contention of the second party fully corroborates the assertion advanced by the management in its WS to the effect that the second party instead of joining at Ramadaspur insisted to work at Jagatpur, Cuttack. As per the management, there was no work for him at Jagatpur at that time and no contrary evidence is brought on record on behalf of the second party to negate the same. Be that as it may, it cannot be over sighted that throughout the case record, it is the contention of the management that the applicant at any point of time can join under the management if he is interested. Further, there is nothing on record from the side of the applicant evidencing that any of the employees who were

working in Grinding Section, are now working at Jagatpur, so also they were not accommodated with bus to work at Ramadaspur. While matter stood thus, the materials available on the case record reveal that the second party has already tendered his resignation on the 6th March 2021 vide Ext. A and thereby he has prayed for making payment towards gratuity, EL and EPF. However, the second party formally objected to the same on the ground of non-acceptance of the same by the management.

On a close scrutiny of the above oral as well as documentary evidence adduced by the parties, it is found that at no point of time the management has terminated the services of the second party as the management throughout the case record stated that it has no objection if the second party wants to join under it at any point of time, rather the second party declined himself to join at Ramadashpur, Baranga knowing about the transfer of the Grinding Section from Jagatpur to Ramadaspur by insisting to work at Jagatpur and when he could not able to get any work at Jagatpur compelled to tender his resignation vide Ext. A. So, this Court is of the humble view that this is not a case of termination of service, rather the second party voluntarily left his service under the management. Hence, there was no requirement to conduct any enquiry, to comply with any provisions of the ID Act and to issue notice to the second party to join in his duty by the management.

In view of the discussions made in the preceding paragraphs, the second party is not entitled to any relief in the present proceeding.

The reference is disposed of accordingly.

Dictated and corrected by me.

APARNA MOHAPATRA
18-11-2023
Presiding Officer
Labour Court, Bhubaneswar

APARNA MOHAPATRA
18-11-2023
Presiding Officer
Labour Court, Bhubaneswar

[No. 12590—LESI-IR-IRW-0044/2023-LESI.]

By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government