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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 30th June 2022

S.R.O. No. 462/2022—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 30th April 2022 in the ID Case No. 02 of 2020 [u/s 2-A(2)] of the Presiding Officer, Labour Court, Jeypore, Koraput on the industrial dispute between the Managing Director, Aska Co-Operative Sugar Industries Ltd., At/P.O. Nuagam, P. S. Aska, Dist. Ganjam, Odisha and Shri Subash Chandra Panigrahy, S/o Late Haribandhu Panigrahy, At/P.O. Jayapur, P. S. Aska, Dist. Ganjam, Odisha is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, JEYPORE

INDUSRIAL DISPUTE CASE No.02 of 2020 [U/s 2-A(2)]

Dated the 30th April 2022

Present :

Mrs. Monalisha Mohanty, O.J.S.,
Presiding Officer,
Labour Court,
Jeypore, Dist. Koraput.

Between :

The Managing Director, . . . 1st Party—Management .
Aska Co-Operative Sugar Industries Ltd.,
At/P.O. Nuagam, P.S. Aska,
Dist. Ganjam, Odisha.

Versus.

Shri Subash Chandra Panigrahy, . . . 2nd Party—Workman
S/o Late. Haribandhu Panigrahy,
At/P.O. Jayapur, P.S. Aska,
Dist. Ganjam, Odisha

Appearances :

Shri K.N.Samantaray,.Advocate	. . For the Management
Shri Lalit Mohan Das,.Advocate	. . For the Workman
Date of argument	. . 22nd April 2022
Date of Award	. . 30th April 2022

AWARD

1. The matter arises out of a petition filed under Section 2(A)(2) of the I. D. Act, 1947 by the 2nd party workman.

2. Briefly stated, the Case of the 2nd party workman is that, he was initially appointed as N.M.R since 1988 and after 21 years of N.M.R, he was appointed as seasonal cook-*cum*-Attendant in the year 2009. Thereafter in the year 2011 he was absorbed in the regular establishment of the Industry. While he was in the seasonal assignment, he was asked to submit his School Leaving Certificate and accordingly he had submitted the attested copy of SLC showing his date of birth as 15th April 1964 obtained from Nodal Upper Primary School, Babanpur alongwith the Original duly countersigned by the District Inspector of School, Aska. Then the 1st party verified the same and accepted the same in his service Register. After 9 years 1st party management again asked the 2nd party workman to submit the SLC and accordingly 2nd party workman submitted another copy of Original SLC to 1st party. In the year 2020 1st party management issued show cause notice to 2nd party workman and alleged that the RCS, Odisha, Bhubaneswar with reference to the investigation report of S.P., CID., CB. Odisha, Cuttack verified the SLC of 2nd party and found the same to be a forged document. Thereafter without conducting any departmental enquiry 1st party management arbitrarily issued order of dismissal to the 2nd party workman and also lodged F.I.R against the workman in Aska P.S. Then the workman raised a dispute before 1st party management, when the 1st party refused to hear his claim, then the 2nd party approached the District Labour Machinery for Intervention. But as DLO-*cum*-Conciliation Officer did not take any action on the petition after more than 45 days the 2nd party filed this petition 2nd party workman has prayed to set-aside the dismissal order of 1st party and direct the 1st party to reinstate the workman with full back wages.

The management appeared and filed the written statement denying the averments made in the application filed by the workman and also challenged the maintainability of the proceeding. Management has stated that the workman was appointed as cook-*cum*-attendant in the year 2009 and at the time of joining he had submitted a declaration form alongwith his educational certificate which declared his date of birth was on the 21st July 1963. Subsequently for confirmation of his service, on being asked by management, 2nd party again furnished his transfer certificate which showed his date of birth was on the 15th April 1964. Thereafter management informed the fact to the Register of Co-Operative Societies, Odisha, Bhubaneswar to conduct an enquiry and then the petition was referred to S.P., C.I.D., C.B., Odisha, Cuttack to conduct an enquiry. After enquiry it was revealed that the Education Transfer Certificate of the workman was found to be fake. Basing up on the report as per the direction of Registrar, Co-Operative Societies, Odisha, Bhubaneswar, management lodged F.I.R. against the workman and issued show cause notice to the workman. Thereafter, after receiving the show cause notice of 2nd party in the year, 2020 management dismissed the workman from his service. Therefore the 2nd party is not entitled to any benefit as asked for. Hence the same may be dismissed.

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

- (i) Whether dismissal order of 2nd party by the 1st party management vide order dated the 6th March 2020 is legal or justified ?
- (ii) It not to what relief 2nd party is entitled to ?

5. In order to prove its case 2nd party workman examined himself as W.W. No.1 and has exhibited 16 documents marked as Ext. 1 to Ext. 16. On the other hand the management examined one witness as M.W. No.1 and has exhibited 14 documents marked as Ext. A to Ext. P in support of its case.

6. Both issues are taken together for the sake of convenience. Before discussing on the issues it is to be discussed that whether the application is maintainable or not. Management in his written statement has stated that the present dispute is not maintainable before this forum as the 2nd party workman directly present this case before this forum without any conciliation. It is undisputed that the workman has filed this application before this forum under Section 2.A(2) of I.D. Act.

It is the case of 2nd party workman that after the dismissal order by the management, 2nd party has raised a dispute by making representation to the 1st party management on the 5th January 2020 and the same is revealed from Ext. 2. Thereafter when 1st party management refused to hear the 2nd party, then 2nd party sent his petition dated the 26th May 2020 to DLO, Berhampur and the same has been revealed from Ext. 3. DLO, Berhampur has received the petition of 2nd party on the 27th May 2020 which is revealed from Ext. 4., Ext. 2, Ext. 3 and Ext. 4 have been proved without any objection of 1st party. However after receiving the petition, DLO has not taken any action on the petition and then 2nd party has presented this application before this forum on the 12th August 2020 i.e after more than 45 days, which is mandatory as per Sec.2.A(2) of the I.D. Act. Thus it is found that the present application is maintainable.

7. Now it is to be considered whether the order dated the 6th March 2020 of 1st party is legal or justified. It is the case of 2nd party workman that he was appointed as seasonal *Cook-cum-Attendant* in the year 2009 and the said office letter vide GAD/4230(3) dated the 9th January 2009 is proved as Ext. 5. As per Ext. 5, 2nd party was asked to submit his SLC and accordingly he submitted the attested copy of SLC, showing his D.o.B as the 15th April 1964 at the time of joining. Again after a years 1st party asked 2nd party to submit his SLC through office letter dated the 20th December 2018 vide Ext. 11 and thereafter on being asked 2nd party again submitted his SLC to the 1st party. However M.W. No.1 on behalf of 1st party has stated in his affidavit evidence that at the time of joining 2nd party submitted a declaration form alongwith his Educational Certificate to proof the date of birth vide Ext. B and that certificate reveals the DoB of 2nd party was on the 21st July 1963. However 2nd party has objected Ext. B. On perusal of Ext. B it is found that where and to whom Ext. B was given and it does not bear any date and M.W. No.1 has also admitted the same in his cross examination management has failed to establish the source from where he obtained exts. In his cross examination M.W. No.1 has stated that 2nd party has been covered under E.P.F. and E.P.F. of 2nd party has been prepared as per the declaration vide Ext. B. 2nd party has submitted and proved his E.P.F. as Ext. 15 and it is revealed from Ext. 15 that the D.o.B of 2nd party was 15th April 1964 and the same has been admitted by M.W. No.1 in his cross examination. Besides Ext. B management has not submitted any document which will show the D.o.B of 2nd party was on the 21st July 1963 and M.W. No.1 has also admitted the same fact in his cross examination. Further 2nd party workman has submitted P.F. status report and the same has been marked as Ext. 16 without objection and it reveals the D.o.B of 2nd party was on the 15th April 1964.

In his affidavit evidence M.W. No.1 has stated that after knowing the fact of two different certificate of 2nd party management informed the fact to Registrar, Co-operative Societies, Orissa, Bhubaneswar to conduct enquiry and the Registrar Co-operative Societies referred the matter to SP, C.I.D, CB, Odisha, Cuttack and after enquiry SP, CID, CB has given his enquiry report vide Ext. F. He has further stated that after receiving Ext. F and as per the direction of Registrar, Co-operative Societies vide Ext. G, management has filed F.I.R. against 2nd party alongwith others before Aska Police station on the 12th March 2020 and issued show cause notice dated the 22nd February 2020 vide Ext. H to 2nd party. It reveals from enquiry report vide Ext. F that the D.o.B Certificate furnished by 2nd party in respect of his D.o.B was on the 16th April 1964 vide Ext. 10 is genuine. It is the case of 1st party that on the basis on Ext. F, management has issued show cause notice vide Ext. H to the 2nd party. However on perusal of Ext. H it is found that it does not enclose neither the enquiry report vide Ext. F, nor the letter of Register, Co-operative Society vide Ext. G. M.W. No.1 has also admitted the same in his cross examination. It is found that management has directed the 2nd party from his service on the basis of Ext. F and Ext. G. No domestic enquiry was made by the management before the dismissal of 2nd party. Therefore management has violated the Natural Justice. The Latin maxim 'Audi Alteran Partem' is the Principle of natural justice where everyone person gets a chance of being heard. The meaning of the maxim itself says no person shall be condemned unheard. Labour laws are based on the principle of Natural Justice. Therefore the dismissal order of workman is illegal and unjustified. Further on the basis of F.I.R Aska police has submitted charge sheet vide Ext. L against the 2nd party alongwith others. It is also admitted fact that the criminal case is now pending before JMFC. Aska. As a criminal case is pending against the 2nd party, full back wages is not a rule of thumbs. Therefore I am of the opinion that as management has violated the natural justice principle, management is liable to reinstate the workman.

AWARD

With the observation above, the petition under Section 2.A(2) of the I.D. Act is answered on contest against the 1st party management. Accordingly, the dismissal of the service of Shri subash Chandra Panigrahy by way of refusal of employment with effect from the 6th March 2020 is held illegal and unjustified. Considering the above facts and circumstances of the case, 1st party management is directed to reappoint the 2nd party workman within two months from the date of publication of the award. However workman can agitate the matter before the department authority on proper representation after the closure of criminal proceeding or departmental proceeding as the case may be.

Dictated and corrected by me.

MONALISHA MOHANTY
30-04-2022
Presiding Officer
Labour Court, Jeypore

MONALISHA MOHANTY
30-04-2022
Presiding Officer
Labour Court, Jeypore

No. 5203—LESI-IR-ID-0123/2022-LESI.

By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government

Witness examined on behalf of workman

W.W. No.1 Shri Subash Chandra Panigrahy

Witness examined on behalf of Management

M.W. No.1 Shri Prasanta Kumar Kar

Documents produced on behalf of workman

Ext. 1. Xerox copy of Letter No. 2483, dtd. 6-3-2020 of MD of Aska co-op. society Ltd.

Ext. 2. Xerox copy of representation, dtd. 5-5-2020

Ext. 3. Xerox copy of petition, dtd. 26-5-2020

Ext. 4. Xerox copy of postal receipt delivery report

Ext. 5. Xerox copy of Letter No. 4230(3), dtd. 9-1-09

Ext. 6. Xerox copy of Letter No. 3128, dtd. 31-10-09.

Ext. 7. Xerox copy of Letter No. 410(4), dtd. 6-5-2010

Ext. 8. Xerox copy of Letter No. 629, dtd. 5-5-2011

Ext. 9. Xerox copy of Letter No. 2420, dtd. 1-11-2011

Ext.10. Xerox copy of S.L.C.

Ext.11. Xerox copy of Letter No. 2102, dtd. 20-12-2018

Ext.12. Xerox copy of Letter No. 2381, dtd. 22-2-2020

Ext.13. Xerox copy of reply, dtd. 26-2-2000

Ext.14. Xerox copy of Letter No. 3481, dtd. 26-2-2019

Ext.15. Xerox copy of Original PF receipt.

Ext.16. Xerox copy of PF status report.

Documents produced on behalf of Management

Ext. A. Xerox copy of Office Order No. 4230, dtd. 9-1-2009

Ext. B. Xerox copy of declaration of DoB 21-7-1963 of Subash Ch. Panigrahy Submitting
SLC vide T. C. No. 12, dtd. 21- 9-1982.

Ext. C. Xerox copy of T.C. No. 34/75, dtd. 23-10-1975 of Govt. U. P. School

Ext. D. Xerox copy of verification report, dtd. 2-9-2005

Ext. E. Xerox copy of letter, dtd. 13-8-2019 of president to the Registrar co-op. Societies
Odisha, Bhubaneswar.

Ext. F. Xerox copy of Letter No. 4147, dtd. 4-2-2020 of S.P., C.I.D, C.B., (O), Cuttack

Ext. G. Xerox copy of Letter No. 4085, dtd. 7-2-2020 of Registrar, Co.-op. Society,(O)

Ext. H. Xerox copy of show cause vide Letter No. 2381, dtd. 22-2-2020

Ext. J. Xerox copy of explanation, dtd. 26-2-2020 submitted by 2nd party

Ext. K. Xerox copy of dismissal Order vide No. 2483, dtd. 6-3-2020

Ext. L. Xerox copy of certified copy of F.I.R., dtd. 11-3-2020

Ext. M. Xerox copy of certified copy of C.S. against 2nd party

Ext. N. Xerox copy of certified standing order of the management

Ext. P. Xerox copy of service and cadre rule of the employees

MONALISHA MOHANTY

30-04-2022

Presiding Officer

Labour Court, Jeypore