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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 10th August 2023

S.R.O. No. 543/2023.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 6th July 2023 passed in the ID Case No. 63 of 2018 [u/s 2-A(2)] by the Presiding Officer, Labour Court, Bhubaneswar on the industrial dispute between the Managing Director, Diversifed Energy Solutions Pvt. Ltd., PlotNo.GA-62,Gayatri Bihar, Patia, Bhubaneswar, Khurda, Odisha-751024, and Deepak Kumar Routray Plot No.32, Ashok Nagar, Bhubaneswar, Khurda, Odisha-751009 is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 63 of 2018 [u/s 2-A (2)]

Dated the 6th July 2023

Present :

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

Between :

The Managing Director, . . For First Party—Managements
Diversified Energy Solutions Pvt. Ltd.,
Plot No. GA-62, Gayatri Bihar,
Patia, Bhubaneswar, Khurda, Odisha-751 024.

And

Shri Deepak Kumnar Routray . . For Second Party—Workman
Plot No. 32, Ashok Nagar, Bhubaneswar,
Khurda, Odisha - 751 009.
Dist. Kendrapada.

Appearances :

Shri Subrat Mishara & Associate, Advocates . . For First Party—Managements

Shri Satyananda Behera,Authorised Representative . . The Second Party—Workman

AWARD

The second party workman moved this forum under Section 2-A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' or 'the ID Act.) challenging the termination of his service by the first party management by way of verbal refusal of employment with effect from the 17th March 2018 as illegal and unjustified so also sought for an Award for his reinstatement in service with full back wages and continuity in service.

2. The claim of the second party workman as reflected in his claim statement in brief is that :- On being appointed as a 'Driver', he joined as such under the management with effect from March, 2013 and worked there till the 17th March 2018 when he was refused employment. During his service period there was no stigma attached to his conduct. But, it is alleged that he was refused employment without any reason, so also in gross violation of the provisions of the Act, in as much as, he was neither offered any notice nor paid compensation or any legal dues. After refusal of his employment, the second party requested the MD and HR In-charge for his reinstatement in service on several occasions, but they turned down his requests. Hence, he being a member of the Union, namely Contract and Construction Labour Union, raised an industrial dispute before the DLO, Khurda challenging the illegal action of the management through his Union. To that effect, he also approached the DLO, Khurda by filing a separate complaint petition. But, despite lapse of 45 days of filing of complaint as the dispute could not be resolved, so the second party constrained to prefer the present case before this Court directly by resorting to the provisions of Section 2- A(2) of the ID Act. According to the second party, his services having been terminated by way of refusal of employment without following the provisions of the Act so also in complete disregard to the principles of natural justice, he is entitled to be reinstated in service with full back wages and continuity of service.

3. The first party management on being noticed entered its appearance and filed written statement thereby challenging the maintainability of the present case both in the eye of law and facts. That apart, it also contended that the statement of claim of the second party is also imposture; vague, baseless, false and vexatious, hence the same deserves no consideration. While disputing the identity of the signatory of the statement of claim, the management stated that one Deepak Kumar Routray of Chhatrapada, Botalama, Begunia, Khurda has been appointed as a Driver by the Director of the management on the 1st December 2013 and to that effect he was also issued with an appointment letter. The second party has also accepted the same by putting his Signature. But, the signatures apears in his appointment letter is totally different from the signatures available in the statement of claim which has been filed with the purported signature of one Deepak Kumar Routray as Driver. The present case is also bad for mis-joinder and non-joinder of necesalry party. The main contention of the management is thai at no point of time the second party was terminated from service, rather he left the service under the management by remaining absent unauthorisedly with effect form the 17th March 2018. Hence, there exists no industrial dispute between the parties as per the provisions of the ID Act. It is asserted by the management that

Shri Deepak Kumar Routray was appointed on the 1st December 2013 with a consolidated salary of Rs.6,000/- per month. The management is also unaware about the membership of Shri Deepak Kumar Routray in the Union named as above. Assuming if any industrial dispute was raised by the said Union over the issue of his alleged termination before the labour machinery on the 8th July 2018, Shri Deepak Kumar Routray has no *locus standie* to file a second complaint over the same issue before the labour machinery in his individual capacity against the same management since it is bar under the principle of *res-judicata.* In the above circumstances, the first party has prayed to reject the claim of the second party.

4. Disputing the averments made in the WS, so also reiterating the stand taken by him in his statement of claim, the second party has filed a rejoinder to such WS by stating therein *inter alia* that he himself put his signature on his statement of claim filed before this Court. He further stated that he has raised the dispute before the concerned DLO correctly and on such dispute the management was also issued with enquiry notice.

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

ISSUES

(i) Whether the action of the first party management in terminating the service of the second party workman by way of refusal of employment with effect from the 17th Mrch 2018 is legal and/or justified?

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

In order to substantiate his stand, the second party workman has examined himself as W W No.1 and relied upon certain documents which have been marked as Exts.1 to 5. The management, on the other hand examined its Development Manager, namely Abhisek Acharya as M W No.1 on its behalf and filed the Xerox copy of the appointment letter dated the 1st December 2013 of the second party which has been marked as Ext. A.

FINDINGS

7. *Issue No. (i)* Before coming to the controversy, it is felt necessary to mention here that the management has challenged : the maintainability of the present case on various formal grounds of which the management has stated that the signatures appear in the statement of claim are not of Deepak Kumar Routray, who was working under it as a Driver on account of fact that the signature available in his appointment letter is not tallied with the purported signatures appear in the statement of claim. In this context, the management has also put a question/suggestion to the second party-workman to which he denied. The M W No.1 during his cross- examination also submitted that he knows the second party since 2013.

The management has further alleged that relating to his alleged termination, two numbers of complaint petitions have been filed before the concerned DLO out of which one is filed by a Union and second is filed by the second party himself.

So, it is noteworthy to refer the provisions stipulated in Section 2-A(2) of the Act which clearly speaks as follows: -

"(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government or conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government".

On perusal of the materials available on the Case record, it reveals that upon his allleged termination from service by way of refusal of employment with efect form the 17th March 2018 by the management, the second party raised an industrial dispute before the DLO, Khurda on the 24th August 2018 and he has filed the present case on the 28th December 2018 U/s.2-A(2) of the ID Act after lapse of more than 45 days of filing of complaint. So, the second party full filled up the criteria as mentioned in Section 2-A(2) of the Act.

The management has also taken a stand that the present case is bad for mis-joinder and non-joinder of necessary party. But, it failed to mention the name (either orally or documentary) to whom the second party had to made as a necessary or proper party in the present case.

Further, when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred and technicalities will not come in the way while administrating substantial justice. It is also well settled proposition of law that non-compliance of the procedural provision cannot destroy the substantial right available to the party and procedural law must be interpreted in a manner so as to subserve and advance the cause of justice, rather than to defeat it and no proceeding in a Court of law should be allowed to defeat on mere technicalities.

So in view of the discussions made above, the present case is adequately maintainable.

The second party-W W No.1 with reference to Ext.5 (Xerox copy of his appointment letter) categorically testified that by virtue of such document he was appointed as a 'Driver' under the management with effect from the 1st December 2013. On perusal of Ext. 1 , it reveals that vide such document the second party was appointed as a Driver with a monthly basic salary of Rs. 6,000/- per month and his date of joining was fixed on the 1st December 2013. So, the document under Ext.1 reveals that the second party was an employee of the management since the 1st December 2013.

The contention, of second party as borne out from his pleading andevidence is that he was terminated from service with effect from the 17th March 2018 by way of verbal refusal of employment which was effected without compliance of the statutory provisions of law laid down under the

Industrial Disputes Act, 1947 andhence the same is illegal and unjustified. *On contra,* the case of the first party management as emerged from the pleadings and evidence is that the second party remained absent from duty unauthorisedly since the 17th March 2018 and it is pressumed that the second party has left his service on his own volition, for which the provisions of the ID Act are not attracted.

The second party during his evidence assiduously deposed that on the 17th March 2018 he was refused employment by the management. Admitted by the management cross-examined the second party thoroughly but failed to elicit anything from his mouth to discard the above piece of evidence of the second party. Rather, the second party WW No. 1 during his cross-examination denied to the suggestion that he voluntarily remained absent unauthorisedly with effect from the 17th March 2018.

However, at no stretch of imagination his alleged absence even if it is accepted cannot be termed as 'abandonment of job'. In the context, reliance is placed on the decision of the *Hon'ble Apex Court in the case* of *L. Robert D'Souza Vrs. Executive Engineer, Southern Railway, reported in AIR* 1982 SC 854, wherein it has been held that "absence without leave constitutes misconduct and it is not open to the employer to terminate service without notice and inquiry or at any rate without complying with the minimum principle of natural justice'.

It may be useful to refer the case law in G. T. Lad and Others *Versus* Chemicals and Fibres India Ltd *[AIR* 1979 SC 582 = (1979) 1 *SCC 590* = 1979 (2) *SCR* 613 = *1979-1-LLJ-257 (SC)]* wherein the Hon'ble Apex Court have been pleased held as follows :-

"To constitute abandonment there must be total or complete giving up of duties so as to indicate an intention not to resume the same. Failure to perform duties pertaining to an office must be with actual or inpouted intention on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of a party and is a question of fact which could be determined in the light of surrounding circumstances in each case. Temporary absence is not ordinarily sufficient to constitute abandonment of office".

But, the materials available on the case record shows that the second party has submitted a complaint dated the 24th August 2018 (Ext.4) before the District Labour Officer, Khurda stating therein his refusal of employment by the management with effect from the 17th March 2018 to inquire into the complaint. During his evidence, the second party has also stated that many times he requested the concerned authorities of the management for his reinstatement, but they did not respond such request and such piece of evidence remained unchallenged. So, it is clearly established that the second party has raised an industrial dispute before the labour authority after refusal of his employment and therefore, the intention of abandonment of employment on the part of workman can by no stretch of imagination be inferred by the management.

In the case of Dal Chand Vs. K. B. Hydraulic Engineering WORJ-S-LLR-2014-1240 the Hon'ble Punjab & Haryana High Court have been pleased to observe that "the burden of

proof of abandonmet of service was on the management which it has failed to discharge on the Court file. Refusal to give employment to a workman by his employer amounts to termination of service and therefore retrenchment within the meaning of Section 2(00) of the Industrial Diuputes Act, 1947 (the 'Act')".

Furthermore, in the case of *M/s. Stood Industries Vs. P.O.-LLR-2015, the He n'ble High Court of Punjab & Heryana* have been pleased to held that "without conducting domestic inquiry and proving the absence, presumption of abandonment is not sustainable". Moreover, the Hon'ble Supreme Court in the Case of *SBI Vs. N. Sundra Money AIR-SC-1976-1111* have been pleased to held that "Termination Simplicitor/Discharge Simplicitor is not permissible in case of Workman completing continuous service of 240 days. Statutory construction of social welfare legislation-Guidelines.- (1) If the workman swims into the harbour of S.- 25F of the Industrial Disputes) Act, 1947, he cannot be retrenched without payment, at the time of retrenchment, compensation computed as prescribed therein read -with S 25-B(2). Statutory construction, when courts consider welfare legislation with an economic justice bias, cannot turn on cold prin:, glorified as grammatical construction, but on teleological purpose and protective intendment. Words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. Dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation. Section 2(00) is the master of the situation a nd the Court cannot truncate its amplitude. The words "for any reason whatsoever" in S 2(00) of the Industrial Disputes Act are very wide and almost admit of no exception.

Additionally, in the case of *M/s. Scooter India Ltd. vs M. Mohammad Yaqub 2001-LLR -54-SC, [AIR 2001 SC 227= (2001)* 1 *SCC* 61=JT 2000*(Supp3)* SC 126 = *(2000)* 7 *Scale 570 = 2000 AIR(SCW)* 4117 = *(2000)* 7 the Hon'ble Apex Court have been pleased to hold that "even when the Workman remained absent and failed to report for duty, it was imperative to follow the principles of natural justice by giving the opportunity as per the principle of natural justice. In the case of *Management* of *Modella Woollens Ltd Vs. P.O. Labour Court-LLR-1993-876,the* Punjab & Haryana High Court held that Termination on the ground of absence from duty constitutes termination for misconduct. No termination is permissible on the ground of misconduct unless proper inquiry is held according to principles of natural justice".

In the case of *Buckingham and Carnatic Co. Ltd. V. Venkatiah, (AIR-1964-1272) and in D.K. Jadav V. JMA Industries, 1993-LLR-584-S.C.,* 1993-(67) *FLR-111, Uptron India Ltd. V.ShammiBhan & anr, 1998 LLR-385-S.C,* the settled position of law is that "Abandonment or Relinquishment of service is always a question of intention and normally such an intention cannot be attributed to the workman without adequate evidence under law and holding of an inquiry is imperatlve. Hon'ble Orissa High Court held in *Divisional Manager,OFDC Ltd. vs. Kanista Bisoi&anr, 2004 (Supp) OLR* 694) "To constitute 'abandonment of service' there must be total or complete giving up of duties and/or expression of the intention not to serve any further. This being a question of fact, 'onus' lies on the management which took such a plea to prove with cogent evidence that in fact, the workman had abandoned his service". Moreover, abandonment for unauthorised absence is unsustainable without notice for resumption of duty to employee".

M. W. No.1 during his cross-examination at para-24 lucidly stated that no written letter was issued to the second party to resume his service after the 17th March 2018 and he cannot say if any enquiry was made to ascertain the cause of his absence after the 17th March 2018 by the management. There is also nothing on record evidencing that any disciplinary proceeding was initiated or any action was taken against the second party for his alleged unauthorised absence.

So keeping in view the above principles of law and on careful consideration of the evidence led in the present case, this Court is of the humble view that it is a case of refusal of employment of the second party by the management which amounts to retrenchment and admittedly there was no compliance of the provision stipulated U/s. 25-F of the Industrial Disputes Act, 1947 by the management when there is no dispute to the fact that the seond party has worke d under the management from the 1st December 2013 to the 17th March 2018 continueously and in this way he has rendered continuous service for more than 240 days in each calendar year. On this aspect, the MW No.1 during his cross-examination at Para 24 admitted that the second party was regularly coming to the office of the management till the 17th March 2018. MW No.1 during his cross-examination stated that another driver has been appointed in the place of the second party, but there is nothing on record to show that any notice was issued to the second party to join in his duty to which he refused and after that it engaged a new driver in his place. On the face of the above evidence, it is held that the action of the management in refusing employment to the second party cannot be held to be either legal or justified.

This issue is answered accordingly in favour of the second party.

8. *Issue No. (ii)* In view of the findings on Issue No.1, the next question that falls for determination is as to what relief the workman is entitled to? At this stage, it is felt proper to rely upon the decision of Hon'ble Apex Court in the case of *Jagbir Singh Vrs. Haryana State Agriculture Marketing Board and another, in Civil Appeal No.4334* of *2009 (Arising out* of *SLP No.98712009), reported in 2009* (4) *LLJ* 336 [SC] wherein the Hon'ble Court have been pleased to held that "if the termination of an employee is found to be illegal, the relief of re instatement with full back wages would ordinarily follow. But, compensation instead of reinstatement has been held to meet the ends of justice in appropriate cases".

It is the case of the management that another driver has already been appointed in the place of the second party. Thus, in lieu of 'reinstatement with back wages', 'award of lump sum amount' towards compensation necessarily deem fit in the instant case. Thus, to settle the quantum of compensation, the length of service rendered by the workman, the length of litigation, the age of the second party, the social & financial status etc. are to be taken into consideration. Thus, in the prevailing circumstances, considering his tenure of service i.e., from 1st December 2013 to the 17th March 2018 (as admitted by the management), his age continuous service, unblemished

career and his last drawn salary as Rs.12,000 per month (as stated by the MW No.1 during his cross-examination), the first party management is directed to pay a lump sum compensation of Rs.2,00,000 (Rupees Two Lakh) only to the second party within a period of two months from the date of publication of the Award, failing which the amount of compensation awarded in favour of the second party would carry a simple interest of 6% per annum till it is paid to him.

The application is disposed of accordingly.

Dictated and corrected by me.

APARNA MOHAPATRA
06-07-2023
Presiding Officer
Labour Court, Bhubaneswar

APARNA MOHAPATRA
06-07-2023
Presiding Officer
Labour Court, Bhubaneswar

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By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government

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