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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 10th August 2023

S.R.O. No. 546/2023—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 21st July 2023 in the ID Case No. 43 of 2021 [u/s 2-A(2)] passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between the Managements of 1. The General Manager, Greater Ganjam Gajapati Co-op. Milk Producers' Union Ltd., R. N. Temple Road, Gate Bazar, Berhampur, Dist. Ganjam-760001, 2. The Managing Director, OMFED, D-2, Saheednagar, Bhubaneswar, Dist. Khurda-751007 and Smt. Apanti Pradhan, age 38 years, W/o. Shri Pramod Chandra Pradhan, At/P.O. Tiangia Budedipada, Via G. Udayagiri, P. S. Raikia, Dist. Kandhamal-762100 is hereby published as in the schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 43 of 2021 [u/s 2-A(2)]

Dated the 21st July 2023

Present :

Shri Benudhar Patra, B. Sc.LL.M.,
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of—

1. The General Manager, . . . First Party—Managements
Greater Ganjam Gajapati Co-op.
Milk Producers' Union Ltd.,
R. N. Temple Road, Gate Bazar,
Berhampur, Dist. Ganjam-760 001.
2. The Managing Director, OMFED,
D-2, Saheednagar, Bhubaneswar,
Dist. Khurda-751 007.

And

Smt. Apanti Pradhan, aged about 38 years, . . . Second Party—Workman
 W/o. Shri Pramod Chandra Pradhan,
 At/P.O. Tiangia Budedipada, Via G. Udayagiri,
 P.S. Raikia, Dist. Kandhamal-762 100.

Appearances :

Shri H. Routray & Associates, Advocate . . . For the First Party—Managements

 Shri Kirti Chandra Nayak, Advocate . . . For the Second Party—Workman

AWARD

The second party workman, namely Smt. Apanti Pradhan resorting to the provisions of Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act') has filed the present application challenging termination of her service with effect from the 1st April 2019 as illegal and unjustified with a prayer for her reinstatement in service with back wages.

2. Narrating details of employment of the second party workman, it is stated in the statement of claim that she was appointed to work as a contractual Extension Worker under the first party No.1 and was posted in the Headquarters at Rambha vide Letter No.043, dated the 25th April 2011. The management used to issue pay slips in her favour and had covered her under the EPF Scheme. Specifically stated, while continuing as such without any break till the 31st March 2019 she was served with Letter No.534, dated the 30th March 2019 on the 2nd April 2019 indicating non-extension of her contractual service from the 1st April 2019. According to her, she was appointed in the post after being approved by the first party No. 2, but while terminating her service no such approval was ever sought for by the first party management No.1. Further assertion of the second party is that she having rendered continuous service for more than eight years under the first party management No.1 and there being no show-cause ever issued against her, nor enquiry for any misconduct, the arbitrary action of the first party managements is not sustainable in the eye of law, as because the managements have neither complied with the provisions of the Act, nor adhered to the principles of natural justice while doing away with her job. In the aforesaid background, the second party has claimed for her reinstatement in service with back wages thereby treating the action of the first party No.1 as neither legal nor justified.

3. Pursuant to the claim advanced by the second party, both the managements entered appearance and filed their respective written statement. On scrutiny of the written statements of both the managements, it is found that though separate written statements have been filed, yet both the first party managements have taken a common stand as against the claim of the second party. The sum and substance of both the written statements are as follows :

The second party workman was offered contractual engagement as "Extension Worker" for a period of one year from the date of her of joining considering her application dated the 14th March 2011 coupled with recommendation of the General Manager, GGGMU Ltd. (first party No.1) and due approval of the CMD, OMFED-cum-MIC, GGGMU Ltd. (first party No.2). The contractual

engagement of the second party was renewed every year basing on successful performance report on Confidential Character Roll. But the contractual engagement of the second party could not be extended due to poor performance recorded in her Confidential Character Roll for the period from the 1st April 2018 to the 31st March 2019 coupled with alleged gross negligence in duty; reporting false information in her tour diary to the management; availing leave without prior permission of the authority. In reply to the warning letters issued by the management several times, though the second party had assured the management to work properly but she repeated the same practice and instead of improving her performance she blamed the management regarding day to day activities of Milk Union and Technical input provided by the Milk Union. Consequently, after getting approval from the President on the 30th March 2019 further extension of service of the second party was stopped and the same was informed to her vide Letter No.534, dated the 30th March 2019. In view of the above, the second party is not entitled to any relief and the industrial dispute application is liable to be dismissed.

4. The second party filed a rejoinder to the written statements reiterating her stand taken in the claim statement and further asserting that in the contractual engagement Letter No.043, dated the 25th April 2011 there was a clear stipulation that the engagement is terminable with one month's notice from either side which has not been complied by the first party managements while terminating her service with effect from the 1st April 2019. Stating the action of the managements to be colourable exercise of powers, the second party asserts that her performance report was recorded by someone showing the period from the 1st April 2018 to the 31st March 2019 but the office note has been signed on the 30th March 2019 and the President has passed the order "i.e. to keep in abeyance". Apart, the poor performance report, if any has not been communicated to her to submit reply. According to the second party, she having rendered continuous service from the 25th April 2011 till the 1st April 2019 is a workman and protected under the provisions of Industrial Disputes Act, 1947 and the present one is not a case of non-extension of contractual service but refusal of employment and she is entitled to the relief(s) claimed.

5. Basing on the pleadings of the parties, the following issues emerge for consideration : -

ISSUES

- “(i) Whether the case is maintainable?
- (ii) Whether there exists employer-employee relationship between the first party management No.2 and the second party?
- (iii) Whether the action of the Management of General Manager, Greater Ganjam Gajapati Co-operative Milk Producers' Union in terminating the services of second party with effect from the 1st April 2019 is legal and/or justified?
- (iv) If not, what relief Smt. Apanti Pradhan is entitled to ?”

6. In order to substantiate their respective stand, parties have adduced oral as well as documentary evidence. While the second party examined herself as W.W.No.1 and relied on documents marked under Ext. 1 to 6, Mr. Prakash Chandra Mishra, the Accounts In-charge is examined on behalf of the first party managements as M.W.No.1 who proved documents marked under Ext.A to Z.

FINDINGS

7. *Issue No (i)*—There is no dispute over the fact that the establishment of the first party managements is an ‘industry’ and the second party is a ‘workman’ within the meaning of the Act. Hence, the dispute as tabled before this Tribunal is found to be maintainable. Besides, W.W.No.1 in her evidence has stated that she made a complaint before the DLO, Berhampur, Ganjam on the 18th November 2020 for conciliation of her dispute but as the same could not be resolved within the stipulated period of 45 days, she approached this Tribunal on the 24th September 2021 by filing the present application under Section 2-A(2) of the Act. The aforesaid testimony of the second party is not disputed by the first party managements in any manner. As such, the application is found to be maintainable.

8. *Issue No. (ii)*—In her claim statement as well as in evidence the second party has categorically admitted with reference to Ext.1 that she was appointed as a contractual Extension Worker by the first party management No.1, i.e. The General Manager, Greater Ganjam Gajapati Co-operative Milk Producer’s Union Ltd., Berhampur. Further, it reveals from the EPF slip (Ext.3) and the pay slips (Ext.4 & Ext.4/a to Ext.4/c) that while working under the first party management No.1 she was covered under the EPF Scheme and payment of her salary was being made by the said management No.1. On the face of such evidence, it can safely be held that there existed employer-employee relationship between the first party management No.1 and the second party. There being no evidence to the effect that the first party management No.2 had any control over the second party or was paying her monthly wages, it cannot be said that there existed employer-employee relationship between the first party management No.2 and the second party.

The issue is answered accordingly.

9. *Issue No. (iii)*—Insofar as the issue relating to the legality and justifiability of the order of termination, the second party as WW 1 adduced evidence to the effect that she rendered continuous service under the first party management No.1 from the date of her joining, i.e. the 26th April 2011 as a contractual Extension Worker till the 31st March 2019 and by virtue of Ext. 2 the management did not extend her contractual job with effect from the 1st April 2019, which amounts to termination of her service. Referring to Ext.2 she deposed, the management did not even comply the stipulation as mentioned in the engagement letter to the effect that in the event of termination, one month’s notice is required from either side. It is also in her evidence that although the management has levelled some allegations against her, yet she was neither called upon to show cause for such conduct nor any enquiry was conducted for the same following the principles of natural justice. She claims to have not been paid retrenchment benefits by the first party management. During course of cross-examination the management emphasised much on the conduct of the second party but nothing could be elicited disputing her continuous engagement with the first party. WW1 admitted to have been issued explanations on her poor performance by the management twice, i.e. on the 1st May 2017 and the 22nd October 2018 to improve her performance to which she replied vide letter dated the 18th May 2017 and the 6th February 2019 respectively. She admitted further to have received a notice dated the 15th October 2019 from the management to face an enquiry into her grievance on the 23rd October 2019 where she submitted her written grievance for extension of her appointment and regularisation of service.

MW 1 (who deposed on behalf of both the first party managements) in his evidence in chief has admitted about engagement of the second party as a contractual "Extension Worker" under first party management No.1 and regarding renewal of such contractual engagement till the 22nd March 2017. He stated that basing on poor performance recorded in the confidential character roll of the second party for the period from the 1st April 2018 to the 31st March 2019, her further extension was stopped and she was intimated accordingly vide Ext.G. In his evidence MW1 alleged many things against the second party touching her conduct but the reason assigned for removal of the second party was on account of her poor performance. MW 1 has proved the CCR of the second party for the period from the 1st April 2018 to the 31st March 2019. During cross-examination MW 1 admitted, no target was assigned to the second party in her appointment letter. It was elicited from him that the second party was not issued with one month's notice at the time of termination though there is a clause to that effect in the appointment letter. He admitted, Ext.H the CCR is not in proper form and there is no supporting document over the average performance of the second party as reflected in Ext.H. While admitting that there is no comment of the Accepting Authority with regard to the entry made in Ext.H, MW 1 tried to explain that the comment of the Accepting Authority is given in a separate sheet, Ext.J which was put up by the Reviewing Authority on the 21st April 2019 and signed by the Accepting Authority on the 30th March 2019 with an endorsement that the extension of service of the second party be kept in abeyance. MW1 also admitted, the average performance CCR for the corresponding period contained in Ext.H was not communicated to the second party. It was also elicited from the mouth of MW1 that no domestic enquiry was held against the second party as per Ext.L.

10. On an analysis of the above evidence on record it reveals that the first party management No.1 is blowing hot and cold in the same breath, inasmuch as when in one hand it takes the plea that the termination of service of the second party was a result of non-renewal of the contract, at the same time it asserts that non-extension of contractual engagement of the second party is due to her poor performance during the period from the 1st April 2018 to the 31st March 2019. However, the management No.1 seems to have failed to substantiate its plea that the removal of the second party from job is as a result of non-renewal of contract which indirectly suggestive of the fact that the service of the second party was terminated considering her poor performance during the year 2018-19 coupled with some previous misconduct. In absence of any documentary proof that for the previous misconduct any enquiry was held against the second party, such a stand is not tenable. As regards the poor performance of the second party as reflected in Ext.H, it is found that the CCR is incomplete one as the same is found to have not been placed before the Accepting Authority for necessary endorsement. Explaining the situation, it is stated by the management that comments of the Accepting Authority was obtained in a separate sheet, Ext. J. On a careful scrutiny of Ext.J, it is found that after giving effect to the order dated the 30th March 2019 (Ext. 2) a note was placed before the Accepting Authority suggesting for non-extension of contractual employment basing on the endorsement made in her CCR for the year 2018-19. As it seems, the management with a view to patch up its lacuna, later on has created Ext.J to show that it has obtained comments of the

Accepting Authority. Be that as it may, as deposed to by MW 1 the adverse remarks as contained in Ext.H has not been communicated to the second party. It appears, that in a hot haste manner the second party was not allowed further extension of service on and from the 1st April 2019, which is not at all sustainable in the eye of law.

In the context, it is profitable to refer to a judgment of the Hon'ble Apex Court in the case of Dr. Mrs. Sumati P. Shera Vrs. Union of India, reported in (1989) 3 SCC 311 wherein their Lordships in para-5 of the judgment have held that "We must emphasize that in the relationship of master and servant there is a moral obligation to act fairly. An informal, if not formal, give-and-take, on the assessment of work of the employee should be there. The employee should be made aware of the defect in his work and deficiency in his performance. Defects or deficiencies; indifference or indiscretion may be with the employee by inadvertence and not by incapacity to work. Timely communication of the assessment of work in such cases may put the employee on the right track. Without any such communication, in our opinion, it would be arbitrary to give a movement order to the employee on the ground of unsuitability".

11. It was next contended on behalf of the management that there are documentary evidence to the effect that the second party was issued with show-cause notices vide Ext.L, Ext.N and Ext. Q for committing lapses in course of her discharge of duty and ultimately when she did not amend herself, basing on the poor performance recorded in her CCR for the year 2018-19, she was not allowed extension of service beyond the 31st March 2019 and as such the action of management is legal as well as justified. True it is that previously the second party was called for show-causes vide Exts.L, N and Q to which she also submitted her reply vide Exts.M, P and R, respectively. But the fact remains, in none of the occasions the imputations were enquired into by the management. In view of the above, the submission made with regard to the previous antecedents of the second party is of no help to the first party management.

12. The scenario of the dispute as discussed above gives a clear picture that the management taking into consideration the previous antecedents of the second party read with the endorsement made in her CCR for the year 2018-19 did not allow her to continue in service with effect from the 1st April 2019, but failed to comply with the stipulations as contained in the contractual engagement letter to the effect that her engagement is terminable with one month's notice from either side. Though action of the management is not a 'retrenchment', yet it amounts to termination of service on the ground of poor performance. Pertinently, there appears no attempt from the side of the management to substantiate the ground of poor performance of the second party by way of adducing any documentary proof. On the other hand, it is found to have been admitted by MW1 during his cross-examination that no target was assigned in the appointment letter of the second party to achieve a particular score. Besides, for the alleged lapses reported against the second party, no enquiry seems to have been made strictly adhering to the principles of natural justice. That being so, it can be said, the course adopted by the first party management No.1 is found to be an arbitrary action/colourable exercise of powers on the part of the management only to keep the

second party away from employment, without considering her satisfactory continuous engagement for the period from the 26th April 2011 till the 31st March 2017. Accordingly, it is held that the non-extension of service of the second party with effect from the 1st April 2019, which amounts to termination, is neither legal nor justified for the above-mentioned reasons.

The Issue is answered accordingly in favour of the second party.

13. *Issue No. (iv)*—In view of the findings arrived at on Issue No. (iii), the next question that falls for determination is as to what relief the second party is entitled.

No evidence is forthcoming from either side regarding gainful employment of the second party elsewhere after her termination of service, However, taking into consideration the status of employment; length of service and the age of the second party, reinstatement of the second party is found to be the appropriate relief to meet the ends of justice. As regards back wages, since the second party is found to have contributed nothing for the first party management No.1 during the period she remained out of employment, a direction to the first party management No.1 to pay a compensation to the tune of Rs.10, 000 (Rupees ten thousand only) to the second party, in my considered view, would be suffice in lieu of back wages. Accordingly, while the first party management No.1 is directed to implement the Award within a period of two months of its publication in the Official Gazette, the first party management No.2 is directed to ensure that the Award passed be implemented within the stipulated time.

Dictated and corrected by me.

BENUDHAR PATRA
21-07-2023
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
21-07-2023
Presiding Officer
Industrial Tribunal, Bhubaneswar

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By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government