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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 6th June 2023

S.R.O. No. 287/2023—In pursuance of Section 17 of the Industrial Disputes Act. 1947 (14 of 1947), the Award dated the 12th May 2023 passed in the I.D. Case No.-09 of 2021 by the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Greater Ganjam Gajapati Co-operative Milk Producer's Union Ltd., represented through its General Manager, R.N. Temple Road, Gate Bazar, Berhampur-760001, Dist. Ganjam, 2. Managing Director. The Odisha Milk Federation Ltd., (OMFED, D/2, At/P.O. Sahidnagar, Bhubaneswar, 3, Administrator, Greater Ganjam Gajapati, Co-operative Milk Producer's Union Ltd. -*cum*-Collector & District Magistrate, Ganjam, At/P.O. Chhatrapur, Dist. Ganjam and Kumuda Ranajn Patra, S/o Late Banchhanidhi Patra, At/P.O./P.S. Aska, Dist. Ganjam was referred to for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 09 of 2021

Dated the 12th May 2023

Present :

Smt. Aparna Mohapatra,
Presiding Officer, Labour Court,
Bhubaneswar.
[JO CODE- OD- 0408]

Between :

1. Greater Ganjam Gajapati Co-operative Milk Producers' Union Ltd., represented through its General Manager, R.N. Temple Road, Gate Bazar, Berhampur-760001, Dist. Ganjam.
2. Managing Director,
The Odisha Milk Federation Ltd.,
(OMFED, D/2, At/P.O. Sahidnagar,
Bhubaneswar.

3. Administrator,
Greater Ganjam Gajapati,
Co-operative Milk Producer's Union Ltd.-cum-
Collector & District Magistrate,
Ganjam, At/P.O. Chhatrapur,
Dist. Ganjam.

. . First Party—Managements

And

Kumuda Ranajn Patra, aged about 55 yrs.,
S/o Late Banchhanidhi Patra,
At/P.O./P.S. Aska, Dist. Ganjam.

. . 2nd Party—Workman

Appearances :

Shri H. Routray & . . For the First Party Management Nos. 1 & 2
Associates, Advocate

None . . For the First Party Management Nos. 3

Shri K. C. Nayak, Advocate . . For the Second Party Workman

AWARD

The second party by challenging his dismissal from service with effect from the 26th May 2020 by the first party management No. 1 as illegal and unjustified, has approached this Court resorting to the provisions of Sec. 2-A(2) of the Industrial Disputes Act, 1947 (in short 'the I.D. Act' or 'the Act') with a prayer for his reinstatement service with full back wages along with other consequential service benefits.

2. The story as narrated in the claim statement in short is that although the second party had joined under the management in the year, 1997, but his service was regularised in the year, 2015 in the post of 'Jr. Assistant'. During his service tenure he was directed to take over charge of the Central Stores at Head Office, Berhampur vide Order No. 24, dated the 22nd September 2007 by the management, but in pursuance to the Notice No. 4, dated the 6th April 2018, the management No. 1 directed the second party along with four others for filing of explanation regarding shortage of stock as found during the Audit Check period 2006-07, 2007-08 and 2008-09. Accordingly, the second party submitted his explanation before the management No. 1 on the 10th April 2018. Thereafter, Rs. 5,000 was deducted from his salary by the management No. 1, for which on the 8th July 2018 the second party compelled to file an application before it with a prayer not to deduct the said amount. While the matter stood thus, the second party was transferred and posted at Paralakhemundi Milk Chilling Plant as Unit in-charge vide Order No. 190, dated the 23rd August 2018 of the management No. 1 and subsequently, to Aska Milk Chilling Plant as Unit in-charge by virtue of Order No. 8, dated the 2nd November 2018. While objecting to the illegal work of the management No. 1, the second party issued a letter dated the 8th August 2019 to refund the deducted

amount of Rs. 50,000 but the management No. 1 instead of refunding the same, rather put him under suspension in order to harass him which occasioned him to approach the President, Greater Ganjam Gajapati Co-operative Milk Producers' Union Ltd. to enquire the matter. Add to it, the management No. 1 while initiating disciplinary proceeding against the second party has also issued Memorandum No. 293, dated the 16th October 2019 to him to which he submitted his reply by denying the charges framed against him. However, the second party vide his application dated the 7th December 2019 challenged the appointment of Enquiry Officer (EO) and Marshalling Officer (MO) on account of the fact that the EO was a retired employee of OMFED and the MO, who was suspended for misappropriation of money in the Milk Union, but to no avail. Rather, the second party was directed to Co-operate the enquiry process instead of changing EO as well as MO. When his application dated the 7th December 2019 did not yield any result, he moved the management No. 2 through his application dated the 11th December 2019 praying therein to issue instruction to the management No. 1 to appoint an EO who is working in the OMFED Office. It is pleaded that despite such application, the EO had proceeded the enquiry and directed the second party to attend the enquiry fixing to the 20th December 2019, 6th February 2020 and 26th February 2020. Accordingly, the second party attended the enquiry on the 26th February 2020 and requested not only to the EO, but also to the MO to supply the copy of Service Rules and bye-laws of Milk Union by filing applications dated the 26th February 2020 before them. Not only that, prior to his application dated the 26th February 2020, he had also requested the management No. 1 for supply of service Rules of Greater Granajm Gajapati Co-operative Milk Producers' Union Ltd. which has been mentioned in the Memorandum of Charges. However, he was neither supplied with the copy of Service Rules nor the bye-laws. But, at the same time, the EO had conducted the enquiry *ex parte* by not giving reasonable opportunity to the second party. As per the second party the EO has conducted the enquiry without following the Staff Service Rules, bye-laws, principle of natural justice inasmuch as without any authority. Although the Enquiry Report was submitted by the EO before the Disciplinary Authority, but surprisingly neither such report nor the show cause notice was served on the second party by the Disciplinary Authority before awarding punishment order against him. That apart, the management No. 1 without his jurisdiction and by violating the Conduct Discipline and Appeal Rule of Union, so also without following the principle of natural justice, dismissed the second party by issuing dismissal Order No. 84, dated the 26th May 2020 against him. But, the second party has challenged his suspension order and dismissal order on the above grounds, so also on the ground of non-payment of his subsistence allowance to him from November, 2019 till passing of the dismissal order, the management No. 1 has not obtained any approval from the Registrar Co-operative Societies, Odisha before imposing punishment on him; the charges against the second party has not been established as the enquiry was being conducted *ex parte* etc., with the above backgrounds the second party has submitted that his dismissal from service by the management No. 1 is not only illegal, unjustified and *mala fide*, but also against the principle of natural justice. Being aggrieved with his dismissal from service the second party raised a dispute before the labour machinery, but the same could not be resolved within the stipulated time for which he has approached the present forum resorting to the provisions of Section 2-A(2) of the Act with the aforementioned prayers.

3. In response to the claim of the second party, all the managements have filed their respective written statements. But, as the management No. 3 did not appear during hearing of the case, it was *set ex parte* vide Order No. 14 dated the 1st November 2022. Hence, the written statement filed by the management No. 3 needs no consideration. The contents of the written statement filed by the management Nos. 1 and 2 are almost the same, hence the written statements filed by the them are taken up conjointly & simultaneously.

The case of the management Nos. 1 and 2 is that the second party workman was put under suspension due to misappropriation, theft of funds of the GGGCMPU Ltd., committing gross negligence in discharging duties, wilful insubordination and maligning his higher authorities. Accordingly, charges were framed against him and a copy thereof was also served on him. To that effect, the second party submitted his written reply. Thereafter, enquiry was started against him. Although the second party attended the departmental proceeding on the 20th December 2019 and 26th February 2020, but thereafter he did not turn up. Accordingly, the EO submitted his report on the 28th April 2020. As the charges levelled against the second party have been proved, he was dismissed from service for his major misconduct. It is averred that while putting an end of service of the second party he was given affordable opportunities to defend the charge made against him. However, challenging the dismissal order, the second party had moved the Hon'ble Court vide WP(C) No. 14181 of 2020 wherein the Register of Co-operative Societies, Odisha was directed to take a decision on the representation of the second party in the same manner known to law. As such, the Registrar after hearing, disposed of the petition of the second party vide judgement dated the 26th March 2021 by giving opinion that the Administrator. GGGCMPU Ltd. *cum*-Collector, Ganjam is competent to heard the appeal of the workman regarding his dismissal from service and such fact has been communicated to all the corners vide his Letter No. 6312, dated the 27th March 2021. Following to the orders of the Registrar of Co-operative Societies, Odisha the second party, thereafter preferred an appeal vide petition dated the 10th May 2021 before the administrator, GGGCMPU Ltd. *cum*-Collector, Ganjam (management No. 3) and the same is yet to be disposed of, for which the workman has no merit on his claim. It is asserted by the managements that the second party was dismissed from service in view of the provisions stipulated in Staff Service Rules, 2008 and due to his negligence in duty he was faced disciplinary proceeding. Add to it, the managements further asserted that in view of the stock, shortage was found as per Audit Report of the GGGCMPU Ltd. for the period 2006-07, 2007-08 and 2008-09, the Milk Union started realisation of the audit recoveries from the salary of the workman. The workman was paid subsistence allowance till October, 2019, but thereafter he was not paid the same as he was remained absent for many days from the Headquarters, but managed to sign the attendance register during October, 2019 and December, 2019 for which he was warned by the General Manager. Moreover, there is no signature of the second party from January, 2020 onwards. In view of the above backdrop, the prayer has been made for the dismissal of the case.

4. A rejoinder has been filed to the WS of the management Nos. 1 and 2 by reiterating the averments made in the statement of claim, so also by refuting all the allegations made against him in the WS by the managements.

5. Basing on the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether this Court has jurisdiction to entertain the application filed under Section 2-A (2) of the I.D. Act by the second party ?
- (ii) Whether the disciplinary proceeding conducted against the second party is fair and proper ?
- (iii) Whether the action of the management No. 1 in dismissing the second party from service with effect from the 26th May 2020 is legal and/or justified ?
- (iv) To what relief the second party is entitled ?

6. During the course of hearing the second party has examined himself as WW No. 1 and placed relied upon a bunch of documents which have been marked as Exts. 1 to 28.

Similarly, one Prakash Chandra Mishra, Accounts-in-Charge, Greater Ganjam Gajapati Co-operative Milk Producers' Union Ltd. has been examined as MW No. 1 on behalf of the managements and exhibited certain documents which have been marked as Exts. A to FF.

FINDINGS

7. ISSUE No. (i) A cat's eye view of the entire case record reveals that the workman was dismissed from service after he was found guilty in the departmental proceeding initiated against him with the allegation of misconduct committed by him during his service tenure.

There is no serious dispute to the fact that as his dismissal has been effected without prior approval of Registrar Co-operative Societies (RCS), Odisha, the second party approached the Hon'ble High Court vide WP(C) No. 14181 of 2020 which was disposed of on the 2nd July 2020 with a direction to the Registrar to take a decision on the appeal/representation made before it on the 28th May 2020 by the second party in accordance with law within a specified period. Accordingly, the Registrar, Co-operative Societies, Odisha disposed of the appeal/representation (where the second party had prayed to *set aside* the dismissal order inflicted on him) vide Ext. B (Xerox copy of order dated the 26th March 2021 passed by the RCS, Odisha) with a view that under Rule 40 of the Conduct, Discipline and Appeal Rules, 2008, the disciplinary action taken by the General Manager is appealable before the Chairman/President and against the order of the appellate authority, review lies to General Body. Apart from that, in the event of an appeal filed by Shri Patra (the second party) before the Management/Administration, the said appeal be disposed of expeditiously preferably within a period of three months. The document under Ext. C lucidly denotes that the second party had filed an appeal before the Administrator. GGC Milk Union-cum-Collector & District Magistrate, Ganjam, Chhatrapur on the 10th May 2021 by appending the letter of RCS, Odisha, Bhubaneswar praying therein to reinstate him in his former post by vacating the order of dismissal passed against him. Admittedly, the appeal preferred by the second party is subjudice even after lapse of more than three months from the date of filing of the same. At the cost of repetition, it is apt to mention here that vide Ext. B the Registrar, Co-operative Societies, Odisha has stated that in the event of an

appeal filed by Shri Patra before the Management/Administration, the said appeal be disposed of expeditiously preferably within a period of three months, So, the second party finding no other way out has approached the labour machinery vide Ext. 1 stating his illegal dismissal from service. On perusal of Ext. 1, it transpired that the same is a complaint petition of the second party addressed to the Managing Director, OMFED, Bhubaneswar, Khurda and the General Manager, Greater Ganjam Gajapati Co-op. Milk Producers' Union Ltd., Gate Bazar, Berhampur, Ganjam and a copy thereof also submitted before the DLO, Berhampur. Basing upon Ext. 1, the concerned DLO, Berhampur issued notice to the General Manager, Greater Ganjam Gajapati Co-opp. Milk Producers' Union Ltd., Gate Bazar, Berhampur, Ganjam and the second party, But, there is nothing on record evidencing that any notice was issued by the concerned DLO to the Managing Director, OMFED, Bhubaneswar, Khurda which is the Head Office of the Greater Ganjam Gajapati Co-opp. Milk Producers' Union Ltd., However, the second party has made the Managing Director, OMFED, Bhubaneswar, Khurda and the General Manager, Greater Ganjam Gajapati Co-opp. Milk Producers' Union Ltd., Gate Bazar, Berhampur as managements. But, no document is forthcoming from the side of the second party to show that he has ever worked at Bhubaneswar at any point of time during his service period, rather on close scrutiny of the oral as well as the documentary evidence adduced by both the parties, it is clearly established that the second party has appointed by the concerned authority of Greater Ganjam Gajapati Co-opp. Milk Producers' Union Ltd., Gate Bazar, Berhampur and he had worked throughout Ganjam and Gajapati District under the control & supervision of the authorities of Greater Ganjam Gajapati Co-opp. Milk Producers' Ltd., Gate Bazar, Berhampur. That apart, the second party was also an inhabitant of Ganjam District.

So, in the light of the above discussion, it is a clear case that the second party upon his dismissal from service had raised an Industrial dispute before the DLO, Ganjam at Berhampur and when the same is not resolved within the stipulated time he moved this Forum by resorting to the provisions of Section 2-A(2) of the Act. Needless to say that the Govt. of Odisha in L & E.S.I. Deptt. vide its Notification No. Li/13-12/83 (It)/8807/LE, dated 18th July 1995 have constituted three Labour Courts in the State for adjudication of the matters pertaining to I.D. Act, 1947. As per the above notification, Labour Court, Jeypore has been assigned with the territorial jurisdiction of the revenue District of Ganjam. Hence, the DLO, Ganjam at Berhampur is coming under the jurisdiction of this Court, It needs to reiterate here that the cause of action arose at Ganjam as discussed above. At this stage, it is benevolent to rely upon a recent decision of the Hon'ble Apex Court decided in V.G.Jagdishan Vrs. M/s. Indofos Industries Limited reported in 2022 LLR 827 wherein it has been held that "xxx xxx xxx Territorial jurisdiction of the Coure will be at the place where the workman had worked throughout, from the place where his retrenchment/termination as effected and not Court at the place of Head Office of the management xxx xxx xxx Cause of action would arose at the place where the workman worked throughout and not at the place of Head Office of the management at Delhi. xxx xxx xxx"

Keeping in view of the verdicts of the Hon'ble Apex Court in the case of V.G. Jagdishan stated *supra* so also the discussion made in the preceding paragraphs, it is held that this Court has no jurisdiction to entertain this case as the cause of action arose at Ganjam, so also the DLO, Ganjam at Berhampur is not coming under the jurisdiction of this Court. As a corollary to the above

conclusion, the application preferred by the second party is found to be not maintainable in this forum. So, when this Court has no jurisdiction to entertain the application of the second party, discussions on the other issues will become redundant. However, lastly, be it stated here that the second party should have raised this dispute before the Labour Court, Jeypore, Koraput.

The case is disposed off as above.

Dictated & corrected by me.

APARNA MOHAPATRA
12-05-2023
Presiding Officer
Labour Court
Bhubaneswar

APARNA MOHAPATRA
12-05-2023
Presiding Officer
Labour Court
Bhubaneswar

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By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government