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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 24th January 2024

S.R.O. No. 58/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd December 2023 passed in the ID Case No. 44 of 2016 by the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Narbheram Power & Steel Ltd., Plot Nos. 11 & 13, Gundichapda, Dhenkanal-759013 and Shri Rasmiranjan Patra, S/o Rabinarayan Patra, At/P.O. Maharakul, Via Govindpurkachery, Dist. Kendrapara was referred to for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 44 of 2016

Dated the 22nd December 2023

Present :

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

Between :

The Management of
M/s Narbheram Power & Steel Ltd.,
Plot Nos. 11 & 13, Gundichapda,
Dhenkanal-759013.

.. First Party—Management

And

Shri Rasmiranjan Patra,
S/o Rabinarayan Patra,
At/P.O. Maharakul,
Via. Govindpurkachery,
Dist. Kendrapara.

.. Second Party—Workman

Appearances :

Shri B. Panda, Advocate	.. For the First Party—Managements
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Shri S. Dash, Advocate	.. For the Second Party—Workman
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AWARD

The second party workman moved this forum under Section 2-A(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act of 'the Act') thereby challenging the legality of his termination from service by the first party management with effect from the 14th May 2016 so also praying for an Award with relief for his reinstatement in service with continuity of service, and full back wages coupled with all other consequential service benefits.

2. Bereft of unnecessary details, the case of the second party workman as emerges from his claim statement is that he was appointed as a Kiln Operator initially for three months on probation starting from the 7th March 2007 by the erstwhile management i.e., M/s. SCAW Industries Pvt. Ltd. of the present management and on completion of such probation period his service was confirmed in the said post (Kiln Operator). Subsequently, he was promoted to the post of Operator-IV (Process) with effect from the 1st April 2011 vide office letter dated the 28th June 2011. While the matter stood thus, the present management purchased the industrial establishment of the erstwhile management on the 2nd July 2007, but the services of all the employees of the erstwhile management were not interrupted as per the mutual understanding with the Union/Employees, so also as per the provisions enumerated under Section 25-FF of the ID Act, 1947. It is contended in the claim statement that on the 15th November 2014 i.e., on a weekly off day, while the second party was travelling by his Motor Cycle, at about 2 P.M. he faced with an accident on the National Highway near Tangi and thereby he was injured seriously as his left hand had got fractured, for which he was shifted to SCB Medical College and Hospital, Cuttack by Ambulance of NHI Authority. But, thereafter, he was admitted in the KIMS Hospital (being one of the approval referred Hospitals by the Employees State Insurance Corporation) for his better treatment due to non-availability of bed at SCB Medical College, where he was operated on the 17th November 2014 and discharged on the 1st December 2014 with an advice to take rest for 3 to 4 months, so also to take medicines. He being an insured employee under Employees State Insurance, the Insurance Medical Officer In-charge, ESI Dispensary, Dhenkanal used to issue Special Intermediate Certificates in favour of the second party from time to time which certify that on being examined he (second party) was found to be incapable to work. But, to his utter surprise, on the 23rd March 2016 he was issued with a show cause notice owing to his alleged unauthorised absence since the 18th January 2016 thereby causing dislocation of work so also hampering targeted output in view of clause 17(b)(c) of the Works Standing Order even after producing the above Special Intermittent Certificates as well as the proof regarding his injury. Vide such letter, the second party was asked to submit his explanation within 48 hours of receipt of the same unless it will be presumed that he has no justification and will liable for disciplinary action. The management, thereafter terminated him from service with effect from the 14th May 2016 on account of non-filing of explanation as stated above, for which the management was under impression that the second party had no interest in his job

and voluntarily abandoned his service under it. But, it is true that on the 24th March 2016 he through one of his co-employee submitted his all the medical details, so also the certificates issued by the ESI Authority expressing his inability to work. However, once (i.e, on the 7th June 2016) of receipt of his termination letter, he intimated to the DGM (HR & Admn.) through company' E-mail ID in writing regarding his serious accident and requested to consider his problem as he was not declared fit by his treating physician till that date. He also assured therein to join in his duty as soon as possible. But, the management did not considersuch representation. According to the second party, the above action of the management amounts to retrenchment as stipulated under Section 2(oo) of the Act, so also in contravention of Section 25-F and N of the said Act. Hence, the said action of the management deserves to be declared as illegal and unjustified. With regard to his termination, he also raised a dispute before the DLO-*cum*-Conciliation Officer, Dhenkanal vide his complaint petition dated the 3rd August 2016. But, as the said dispute could not be resolved despite lapse of more than 45 days of filing of complaint before the DLO, the second party preferred the present case before this Court resorting to the provisions of Section 2-A(2) of the Act.

3. Pursuant to the notice of this Court, so also the claim advanced by the second party, the management not only entered its appearance, but also filed its written statement. In the WS, the management while admitting about the appointment of the second party as 'Kiln Operator' in Process Department vide appointment letter dated the 7th March 2007, so also his promotion and his continuation till the 14th November 2014 emphatically stated that after the 14th November 2014 without any intimation the second party remained absent and did not turn up for is duty. It is averred in the WS that the second partywas allotted with the duties of taking QRT, cleaning of injection pipe, taking drop test taking air from shell air fan, taking shell temperature from kiln etc., in DRI Department and accordingly, after reopening of the industry of the management in the month of January, 2016, his service was highly essential as he was assigned the above responsible duties. It is specifically contended in the WS that as the second party did not discharge his duties for years together the management in view of the clause 17-b & c of its Certified Standing Order (under which the terms and conditions of the employees of the 1st party) presumed that the second party on his own volition left his service under it and as such his name was struck off from the Muster Roll. However, to follow the principle of natural justice, so also with an intention to give a reasonable opportunity to the second party, a show cause notice dated the 23rd March 2016 was duly served upon him for his unauthorised absence for a long period starting from the 18th January 2016 i.e., the date of restart of plant wherein and whereupon he was advised to submit his explanation within 48 hours of receipt of the same as to why his name shall not be removed from Company's Roll. Despite that when the second party did not submit his explanation there was no other option than to presume that the second party had no interest in his job and voluntarily abandoned his service. Accordingly, the management on the above scenario was compelled to terminate the services of the second party by advising him to collect his full and final settlement dues, if any, from the account section. However, the second party at no point of time raised any grievance to that effect before the management after receipt of such termination letter. In this way, the management's plea is that the second party was given ample opportunities prior to termination of his, service. The concerned DLO before whom the second party has filed his complaint petition

was not the Conciliation Officer, rather as per the notification of the appropriate Govt., the ALC was the Conciliation Officer at the relevant time and on that count, the present case is not maintainable. That apart, the second party also did not raise any dispute before the management prior to raising the present dispute in question although the same was badly required as per the settled position of law and the same was rejected by it. Hence, it cannot be stated that there exists any industrial dispute between the parties on the above ground. In the above circumstances, the management has prayed for the dismissal of the case.

4. A rejoinder to the written statement has been filed by the second party wherein reiterating his stand taken in the claim statement he has pleaded that as per the amendment of Section 2-A of the Act, he approached this Court directly by resorting to such section when no conciliation could be made within the prescribed period of 45 days upon his complaint petition. Further, he had also sent his complaint petition dated the 1st/3rd August 2016 to the management through post. He also asserted that the DLO, Dhenkanal is the Conciliation Officer as per the Notification SRO No. 91/94 of the Labour and Employment Department, Govt. of Odisha. He also claimed that he has never abandoned his service, rather the first party management was fully aware about his forced absence from duty.

5. On the basis of the pleadings of the parties, the following issues have been framed for determination:—

ISSUES

- (i) Whether the application filed by the 2nd party workman U/s.2-A(2) of ID Act, 1947 is maintainable?
- (ii) Whether the action of the 1st party management in terminating the services of the 2nd party, workman with effect from the 14th May 2016 is legal and/or justified ?
- (iii) If not, to what relief the 2nd party is entitled to?

6. In order to substantiate their respective stand both the parties have adduced oral as well as documentary evidence. While the second party examined himself (WW No.1) and filed documents marked vide Exts-1 to 10/a, the first party management examined one witness namely Ranjit Kumar Pradhan, Sr. Manager (HR & Admn.) on its behalf and filed documents which have been marked as EXts-A to S.

FINDINGS

7. *Issue No. (i)*—In the case in hand, as the first party management consistently challenged the maintainability of the instant dispute, the above issue has been framed and it is forthcoming from the pleadings laid by the management that the management has challenged the maintainability of the present case in question mainly on two grounds which are as follows :

- (i) The DLO, Dhenkanal before whom the second party filed his complaint petition (arising out of the present case) was not declared as a Conciliation Officer as per the notification of the appropriate Govt., for which the mandatory pre-condition of raising the dispute before the Conciliation Officer as envisaged under Section 2-A is not fulfilled ; and

- (ii) The second party has never made any grievance before the management relating to his termination as required under Rule-3 of the Orissa Industrial Disputes Rules, 1959 and as such, there existed no industrial dispute between the parties as defined in the Act. [The management relied upon the Judgment passed in Special Leave Petition (Civil) No. 27080 of 2015 by the Hon'ble Apex Court.]

So, on the face of above, it is incumbent upon the Court to examine the grounds taken by the management relating to the maintainability of the present lis. With regard to the ground No. 1, the positive assertion of the management is that the Asst. Labour Commissioner, Dhenkanal is the Conciliation Officer as per the notice issued by the appropriate Govt., but not the DLO, Dhenkanal before whom the second party has preferred his complaint petition. At this stage, it is felt apposite to mention here that the second party being aggrieved and dissatisfied with the action of the first party in terminating his service with effect from the 14th May 2016 raised an industrial dispute before the District Labour Officer (DLO), Dhenkanal vide Ext-9, but as the dispute could not be resolved during the stipulated period of 45 days, he approached this Court directly by filing the present application under Sec.2-A(2) of the Act. To fortify its stand, the management drew attention of this Court on Ext-H (Xerox copy of notification dated the 14th May 2013 of the Govt. of Odisha in L & ESI Department) and the same reveals that vide such document the Asst. Lab. Commissioner; Cuttack-II was assigned the jurisdiction of Revenue District of Dhenkanal. But, the management has failed to submit that after Ext-H the appropriate Govt. has not issued any notification to that effect. However, it cannot be over sighted that as per the Notification of SRO No. 91/94 of Govt. of Odisha in Labour and Employment Department, the DLO, Dhenkanal and ALC, Angul are appointed as Conciliation Officers for the purpose of mediating in and promoting the settlement of industrial disputes in respect of all industries carried in the revenue district of Dhenkanal and the said notification has not been superseded and is still in force. Rather by virtue of notification dated the 14th May 2013, the Labour & E.S.I. Department of Govt. of Odisha has declared the Asst. Labour Commissioner as the Conciliation Officer to exercise such power concurrently in addition to the DLO/ALO, but not in exclusion to them. The MW No.1, who is none-other than the Sr. Manager (HR & Admn.) of the management during his cross-examination lucidly admitted at Para. 29 that the DLO, Dhenkanal was the conciliation authority for the district of Dhenkanal during the relevant time.

As far as the ground No.ii is concerned, the contention is advanced on behalf of the management that it is a settled position of law that prior to raising of any dispute or making of any complaint before the Labour Authorities, the workman concerned is required to press his demand before the management and only after such demand is made and the same has been rejected by the employer, it can be said that an Industrial Dispute exists. Hence, in the context, it is the plea of the management that as the second party having not done so, the present case is not maintainable. The second party, on the other hand, with reference to Ext-9 (Xerox copy of his complaint petition) vehemently contended that a copy thereof was sent to the management. So, to reach a right conclusion on this aspect, it is worthwhile to verify the documents marked vide Exts-9 to 9/d. On a conjoint perusal of Exts-9 to 9/d, it denotes that a copy of Ext-9 was sent to the management as revealed from Exts-9/a (Xerox copy of postal receipt) and it transpires from Ext-9/d (postal tracking report) that the item as sent vide Ext-9/a was delivered to the management. In order to strengthen

such ground, the management laid much emphasis on the provisions stipulated under Rule-3 of the Orissa Industrial Disputes Rules, 1959. For better clarification, the provisions as enumerated under Rule-3 of the Orissa Industrial Disputes Rules, 1959 are reproduced hereunder :—

3. Application—An application under sub-section (2) of Section 10 for the reference of an industrial dispute to a Board, Court, Labour Court or Tribunal shall be made in Form 'A,' and shall be delivered personally or forwarded by registered post with acknowledgment due in triplicate to the Secretary to the Government of Orissa in the Labour Department. The Application shall be accompanied by a statement setting forth—

- (a) the parties to the dispute:
- (b) the specific matters in dispute:
- (c) the total number of workmen employed in the undertaking affected:
- (e) the efforts made by the parties themselves to adjust the dispute.

But, at the cost of repetition, it would not be out of place to mention here that the second has filed the present case by resorting to the provisions of section 2-A(2) of the Act and this is not a case of reference made by the appropriate Govt. under sub-section (2) of Section 10 to this Court for adjudication. At this stage, it may be useful to refer the decision of the Hon'ble Apex Court in *Shambhu Nath Goyal Vrs. Bank of Baroda* [AIR 1978(2)SCC 353], wherein it has been held that “when parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour, there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.”

The relevant paragraphs in Para. 5 & 6 of the above judgment are reproduced as follows :—

“5. A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a *sine qua non*, unless of course in the case of public utility service because S. 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are ‘dispute’ or ‘difference’. What is the connotation of these two words. In *Beetham v. Trinidad Cement Ltd.*, (1960) 1 All ER 274 at P. 279, Lord Denning while examining the definition of expression ‘trade dispute’ in S. 2 (1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed: “by definition a ‘trade dispute’ exists whenever a ‘difference’ exists and a difference can exist long before the parties became locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening.”

6. Thus the term ‘industrial dispute’ connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties are at variance and the dispute or difference

is connected with the employment, or non-employment or the terms of employment or with the conditions of labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.”

Further, the Division Bench of Madras High Court in the case of Ramakrishna Mills Ltd. v. The Govt. of Tamil Nadu and others [1984-II L.L.J. 259] rejected the contention of management that “because there was no demand on the management for reinstatement and because there was no refusal by the management, there was no industrial dispute”.

The Hon’ble Court also held that there cannot be a doubt that for the existence of an industrial dispute, there ought to be a demand by the workman and a refusal to grant it by the management. How the demand should be raised, should not and could not be a legal notion of fixity and rigidity; the grievance of the workmen, and the demand for its redressal must be communicated to the management; the means and mechanism of communication adopted are not matters of much significance so long as the demand is that of the workman and it reaches the management; a written demand on the management is not in all cases a *sine-qua-non* and there must arise a dispute or difference within the meaning of Section 2(k) or Section 2(a) of the Industrial Disputes Act and the demand, as such need not in all cases be directly made by a representation to the management and the demand could be made through other sources also.

Needless to say that relating to his alleged retrenchment, the second party lodged a complaint petition before the concerned DLO for his intervention and the copy of such petition was admittedly sent to the management and received by the management as evident from the evidence of MW No.1. Further, Section 2-A(2) of the Act which was incorporated by the Industrial Disputes (Amendment) Act, 2010 provided for workman, a direct access to Labour Court or Tribunal in case of disputes arising due to discharge, dismissal, retrenchment or termination of service of workman. Therefore, the statute provides direct access to the party to the dispute to approach the Labour court or Tribunal after 45 days of submission of application to the concerned Conciliation Officer.

So, in view of the above discussion, this Court while discarding the argument advanced by the management towards maintainability of the case, holds that the instant case is very much maintainable

Accordingly, issue No.1 is answered in negative against the management.

8. *Issue No. (ii)*—Before proceeding further on the controversy, it is required to be noted at the outset the admitted facts as emerged from the pleadings, so also the evidence adduced by both the parties. There is no quarrel between the parties that there exists employee-employer relationship between the parties; the second party is coming within the definition of ‘workman’ as defined in the ID Act; the establishment of the management is an ‘industrial establishment’ within the meaning of Section 25-L of the Act; the same is registered under the Factories Act; initially the second party was engaged by the erstwhile management i.e., M/s SCAW Industries Pvt. Ltd. as a Kiln Operator with effect from the 7th March 2007 on probation for a period of three months vide Ext-1, vide Ext-2 his service was confirmed in the said post and by Ext-3 he was promoted to the post of Operator-IV (Process) by the present management and the present management has purchased the establishment of M/s SCAW Industries Pvt. Ltd.

Now coming to the merits of the dispute i.e., relating to the action of the management in terminating the service of the second party is legal and/or justified which has been framed under the present issue.

The management by placing reliance on the decision of the Hon'ble Apex Court in the case of Range Forest Officer and Ors. Vs. S. T. Hadimani, 2002 (1) SCR 1080, strenuously contended that in order to claim protection of section 2S-F, the second party has to prove that he has rendered continuous period of 240 days under it. It is the settled position of law that in order to claim protection of Section 2S-F/25-N of the 10 Act, the claimant has to prove that he had rendered continuous and uninterrupted service under his employer for a period for more than 240 days. True it is that in the case in hand no documentary evidence is adduced on behalf of the 2nd party to draw such an inference in his favour. But, at the same time, it cannot be over sighted that the production process of the management was closed since the 11th December 2014 to the 17th January 2016. That apart, the management not only in its WS, but also through its witness state a that the second party was appointed as a Kiln Operator on the 7th March 2007 and continued to work, till the 14th November 2014. Therefore, in the circumstances, it cannot be stated that the second party has not worked 240 days continuously under the management during his employment period.

It is the admitted fact of the parties that the second party was terminated from his service with effect from the 14th May 2016 vide Ext-5. In the context, the claim is advanced on behalf of the second party that as he has been retrenched from service in gross violation of the provisions stipulated under the Act, the action of the management to that effect cannot be stated to be either legal or justified. As discussed above, the second party has worked for the period from the 7th March 2007 to the 14th November 2014 and the production process of the plant of the management was not in operation since the 11th December 2014 to the 17th January 2016 due to non-availability of the raw materials. Although no contrary evidence relating to the compliance of provisions embodied in the ID Act while terminating the services of the second party is adduced on behalf of the management, but it is strenuously argued on its behalf that after restart of the plant on the 18th January 2016 as the second party did not resume his duty and remained unauthorised absence from duty for a long period, he was issued with show cause dated the 23rd March 2016 wherein he was asked to submit his explanation within 48 hours of receipt of such show cause as to why his name shall not be removed from Company's roll and if his explanation will not reach the undersigned in the stipulated time it will be presumed that he has no justification and he is liable to disciplinary actions. The management also in order to justify its action emphasises that despite receipt of the show cause when the second party failed to submit his explanation as asked for, he was terminated from service with effect from the 14th May 2016 vide Ext-5 on a presumption that he had no interest and voluntarily abandoned the service owing to non-filing of explanation.

Admittedly, the second party has received the show cause issued against him vide Ext. 4. But, no evidence either oral or documentary is forthcoming from the side of the second party to show that he has submitted his explanation basing upon Ext. 4. However, the second party in his claim statement as well as evidence categorically submitted that with the help of one of his co-workman he had been to the office of the management on the 24th March 2016 and met Shri D. N. Mohanty, DGM (HR & Admn.), so also submitted all the medical details relating to his accident and the certificates issued by the ESI. Authority expressing his inability to work till the date of his recovery,

but yet the same fact has not been substantiated by the second party by examining his co-employee through whom he had been to meet Shri D. N. Mohanty. The management, on the other hand, also strenuously objected to such assertion of the second party-with regard to the date the 24th March 2016, which was Holi, Such contention of the management is also cannot be taken into consideration when the second party himself during his cross-examination at Para. 34 stated that on Diwali, Dusahara and Holi though the office of the management remained open, but the officers of the management remained absent.

Be that as it may, a cat's eye view of the whole case of the management is that the second party was terminated from his service as he did not turn up for his duty for a long period since the date of re-opening of the plant i.e., on the 18th January 2016 and thereby presumption drawn that he has voluntarily abandoned his service under the management when he failed to submit his explanation regarding his absence from duty unauthorisedly. So, the burden of proof of abandonment of services was on the management as per decision of the Hon'ble Punjab & Haryana High Court in the case of Dal Chand Vs. K. B. Hydraulic Engineering Works-LLR-2014-1240. At this stage, it is useful to refer the decision of the Hon'ble Apex Court in the case of M/s. Scooters 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] wherein the Hon'ble Apex Court have been pleased to held that "even when the Workman remaine 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.

Further, in the case of Management of Modella Woollens Ltd Vs. P. O. Labour Court-LLR-1993-876, Punjab & Haryana High Court held that "Termination on 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 G. T. Lad And Others Versus Chemicals And Fibres India Ltd [AIR 1979 SC 582 = (1979) 1 SCC 590 = 1979 (2) SCR 613 = 1979-I-LLJ-257 (SC)] wherein the Hon'ble Apex Court have been pleased to 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 imputed 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".

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. Shammi Bhan & 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 imperative."

At the cost of repetition, it needs to reiterate that the production process of the plant of the management was not operated since the 11th December 2014 to the 17th January 2016 due to non-availability of the raw materials as well as adverse situation of the market. It is worthwhile to

mention here that the second party from the outset stated that on the 15th November 2014 he faced a serious accident, for which he was under medical treatment and as per the special intermediate certificate issued in his favour by the Insurance Medical Officer In-charge, ESI Dispensary, Dhenkanal from time to time thereby restraining him to work by considering his health condition, he could not attend his duty. The documents relied upon by the second party in this case also amply established that he used to go the Hospital in connection with his health condition due to the accident dated the 15th November 2014, so there was issuance of the above certificates by the Insurance Medical Officer In-charge, ESI Dispensary, Dhenkanal. The MW No.1 during his cross-examination also admitted that the second party was in treatment under the ESI Schemes since the 15th November 2014 due to his accident and that the document relating to his treatment under ESI Scheme has been submitted before the management by the second party as marked as Ext-8 (date of admission and date of discharge). The second party with reference to Exts-10 and 10/a (downloaded E-mail communications made by the second party to the 'concerned (authority) emphatically stated that after getting his termination letter dated the 14th May 2016, he sent the above mails thereby intimating about his medical supervision due to the above accident.. The MW No.1 during his cross-examination testified that during the year, 2016 there was a DGM, HR Shri D. N. Mohanty and that he used to put his signature on the statutory form under ESI Scheme for availing sickness medical benefits by any of the employees and that the sickness medical benefits Form under ESI Scheme of the second party was also signed by the then OGM, HR Shri D. N. Mohanty. So, it is crystal clear that the management was fully aware about the treatment of the second party so also the accident dated the 15th November 2014 faced by him.

It may be stated here that if the second party was not interested to resume in duty, then as to why he had moved the concerned DLO in connection with his termination and requested for his reinstatement in service. So, it can safely be concluded that the second party has intention to work under the management. No evidence either oral or documentary is available from the side of the management evidencing that the workman was given ample opportunities to rejoin his duties prior to issuance of show cause. So, it can be presumed that with an intention to terminate the services of the second party, the above show cause was issued to him. The MW No.1 during his cross-examination clearly stated that no specific notice was issued to the second party to join in duty after starting of the operation process of the production department of the plant with effect from the 18th January 2016 till the 23rd March 2016. For the sake of argument, if it is admitted that the second party was absent from his duty unauthorisedly, then what prevents the management to follow disciplinary proceedings by conducting a domestic enquiry against him for such absence in view of the above decisions of the Hon'ble Court. At this stage, it is apt to mention here that in the show cause dated the 23rd March 2016 (Ext-4), it has been mentioned that if the second party fails to submit his explanation within 48 hours of receipt of the said show cause he will liable for disciplinary actions. But, in the 3 instant case, no domestic enquiry was initiated against the second party relating to his alleged unauthorised absence before terminating him from service. Hence, in view of the discussions made above, so also the principles laid down by the Hon'ble Courts as stated *supra*, the termination of the second party was in clear violation of the principles of natural justice. Add to it, although the management admitted in Para. 3 of its WS that vide appointment letter dated the 23rd March 2007, the second party was appointed as a Kiln Operator in Process Department and continued to work till the 14th November 2014, but very interestingly, the management has also not followed with the provisions of the 10 Act while terminating the second party as no evidence is available. to, that effect on the case record from the side of the management.

In the premises, viewing the case from any angle, the action of the management cannot be said to be either legal or justified.

Issue No. (ii) is answered accordingly.

9. *Issue No. (iii)*—On determination of issue No.1, it is now to be seen as to what relief the second party is entitled to. On perusal of the case record, it is found that the first party management by recalling its witness i.e., MW No.1 exhibited the Bank Statements of second party (which were produced by him on the direction of this court) and by relying upon the said documents, the first party management assiduously contended that the second party is 'gainfully employed'. On the contrary, it is argued on behalf of the second party that to sustain his livelihood and of his family so also to resist the litigation, if at all the second party is intermittently self-employed, then it can not be said to be gainful employment in any establishment so as to deny the reliefs. Admittedly, the first party could not successfully prove that the disputant workman was gainfully engaged in any other establishment as an employee. But, as per the above documents the parties are not in variance that after his termination from service (i.e., on the 14th May 2016) the second party was working in different organisations as an independent contractor for some period and getting payment for that. It being the admitted position that as the second party is out of employment since 2016 and almost seven years have already elapsed in the meantime and taking overall facts and circumstances of the case and all other aspects including the aspect that he was self-employed, so also the length of litigation, in my considered view, demand of justice would be met if the second party is awarded a lump sum compensation of Rs. 3,30,000 (Rupees Three Lakh Thirty Thousand) only in lieu of his reinstatement and back wages.

The first party management is directed to pay the aforesaid compensation to the workman within a period of two months from the date of publication of the Award or else the amount of compensation would carry a simple interest of 6% per annum.

The application is disposed of accordingly.

Dictated and corrected by me.

APARNA MOHAPATRA
22-12-2023
Presiding Officer
Labour Court, Bhubaneswar

APARNA MOHAPATRA
22-12-2023
Presiding Officer
Labour Court, Bhubaneswar

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By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government