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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 24th January 2024

S.R.O. No. 59/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th December 2023 passed in the ID Case No. 12 of 2015 by the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the General Manager, The Samaj, At/P.O. Buxi Bazar, Dist. Cuttack and Shri Bhabani Shankar Mohanty, S/o Shri Banshidhar Mohanty, At Kandal, P.O. Uttarana, Dist. Cuttack was referred to for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.12 of 2015

Dated the 26th December 2023

Present :

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

Between :

The General Manager,
The Samaj,
At/P.O. Buxi Bazar,
Dist. Cuttack.

And

Shri Bhabani Shankar Mohanty,
S/o Shri Banshidhar Mohanty,
At Kandal, P.O. Uttarana,
Dist. Cuttack.

. . First Party—Management

. . Second Party—Workman

Appearances :

Shri S. K. Das, Advocate	..	For the First Party—Management
Shri D. Nayak, Authorised Representative	..	For the Second Party—Workman

AWARD

The Government of Odisha in the Labour & E.S.I. Department in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (C) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication by this Court vide their Memo. No. 2986/LESI, dated the 30th March 2015.

“Whether the termination of services of Shri Bhabani Shankar Mohanty, Driver with effect from the 14th July 2014 by the General Manager, The Samaj, At/P.O. Buxi Bazar, Dist. Cuttack is legal and/or justified ? If not, what relief the workman Shri Mohanty is entitled to ?”

2. The case of the second party as involved in the present proceeding, in short, is that by dint of the order dated the 25th April 2007 of the concerned authority of the management he was initially engaged to work as a Driver on casual basis being a valid driving licence holder and subsequently, on the 24th August 2009 he was engaged in the said post on contract basis by considering his duty as perennial in nature vide Office Letter No. PL-1/280/2009 of the management. It is alleged that the management, instead of confirming the second party in the said post as he has been engaged since 2007, had extended his service period from time to time with minimal pay hikes. To that effect, the second party requested the management many a times, but to no avail. It is averred in the statement of claim that the second party is an active member of the Utkalmani Newspaper Employees Association (in short ‘the Union’) and the management is an ‘industry’ as defined in the ID Act.

It is also pleaded by the second party that after his above engagement as a Driver he was assigned with the work of receiving the Life Members and Office Bearers of the Servants of the People Society (SoPS) from airports, railway stations from time to time through official vehicle. But, after joining of the then General Manager (GM) namely Shri Suresh Chandra Mantry, he was directed to ply the official vehicle allotted to the GM. It is alleged that on every Sundays (although official holidays) the GM used to go to a Petrol Pump situated at Kendrapara which is under the proprietorship of his wife Mrs. Tulasi Manjari Mantry, for which he had to commute the GM from his residence at Bhubaneswar to Kendrapara on most of the Sundays. The specific pleading of the second party as embodied in the claim statement is that in one Sunday i.e., on the 10th June 2012 owing to the illness of her daughter he could not report to the GM as he had to go to the medical for the purpose of treatment of her daughter and when such fact was intimated to the GM, he reacted furiously, so also threatened him to snatch away his job if he failed to report. Thereafter, when the second party had been to report for duty, the GM misbehaved him inasmuch as changed his duty from plying the official vehicle to drive parcel vehicle at night. Further, on the 12th June 2012, after discharge of his daughter from a clinic situated at Cuttack when he along with his family were proceeding to his village, he got a telephonic call from the Asst. Circulation Manager on the way to report before the GM. Accordingly, he intimated the above position and stated to join in his regular night duty. Although he performed his night duty on the same day, but just after two days he was called for explanation on some fictitious ground by the Manager Administration of the management.

Pursuant thereto he explained regarding the happenings of the 12th June 2012 to the officer of the management, so also sought pardon from the GM. But, surprisingly, from that day, he was inflicted upon series of disciplinary proceedings in the guise of calling for explanation, deduction of wages, restriction in entry into work place by several officers of the management. That apart, he was also forced to become a witness against his Union President, namely Shri Devi Prasanna Nayak in a domestic enquiry, so also to lodge an FIR against him on an alleged event, but he himself refrained from such illegal action.

In addition to the above, the main plank contention of the second party is that on the 28th May 2014 while he was driving the parcel vehicle bearing Regd.No.OR-05-AG-1819 to Cuttack Railway Station, a rickshaw puller crossed the road at Mangalabag Police Station and in order to save his life the second party used both brakes, for which both the wheels were burst owing to massive heat generation. For that reason, the vehicle dashed to a road side shop. However, the second party and Despatch In-charge (who was in the vehicle) were saved. Further contention of the second party is that on his report about such incident, an FIR was registered before the Mangalabag Police Station. But, he was called for explanation on his above alleged rash and negligence driving to which he submitted a reply on the 27th June 2014 and consequently he was dismissed from service with effect from the 14th July 2014 vide Order No.1086/GM/2014 basing upon an 'in-house enquiry'. According to the second party, the action of the management in dismissing him from service is cryptic, predetermined, unlawful and in utter disregard to the principles of natural justice, for which he has prayed for his reinstatement in service with full back wages and all other consequential service benefits.

3. Contesting the claim of the second party, the management entered its appearance and filed its written statement thereby admitting the appointment of the second party as a 'Driver' under it on contractual basis vide Office Order No. PL-1/280/2009 dated the 24th August 2009 for one year and he joined as such on the 25th August 2009 by accepting the terms of engagement. But, prior to it, the second party was working as a casual Driver as & when required basis and he was getting Rs.120 per day. However, his contractual period was extended from time to time. Similarly, his consolidated pay was also hiked from time to time. It is averred in the WS that after expiry of his last contractual term of appointment i.e., on the 31st March 2014 he was given another contractual appointment from the 1st April 2014 till the 30th September 2014 for a period of six months and for that period he was kept under observation. Specifically, it is contended that during such extension period i.e., the 28th May 2014 the second party dashed the Mahindra Bolero Pick-up Vehicle bearing Regd. No.OR-05-AG-1819 against a Rickshaw Puller so also shop/building belonging to one Mr. Sushanta Ku. Das of Nuapatna, Cuttack due to his rash and negligence driving under intoxication, for which the management has sustained huge loss by incurring huge expenditure towards treatment of said Rickshaw Puller, providing him a new rickshaw, repairing of the said building of Mr. Sushanta Ku. Das and repairing of its vehicle as mentioned above. As a result, the second party was called for explanation for the above reason indicating therein about the loss sustained by the management and pursuant thereto the second party submitted his reply on the 27th June 2014 denying the charges brought against him. Since the second party was a Contractual Driver appointed for a fixed tenure, there was no need to conduct an enquiry as to such allegations made against him. However, in order to bring the truth, the GM of the management vide his letter dated the 10th July 2014 decided to constitute an In-House Committee to enquire into the reply/explanation of the second party. As such, the In-House Committee consisting of the Chairman, Law Officer, Personnel Officer and Asst. Manager, HR of the management gave its detailed report on the 12th July 2014

thereby observing that all the charges made out against the second party have been clearly established beyond reasonable doubt. So, basing upon such report, so also in terms of Clause-7 of offer of Contract dated the 24th August 2009 of the second party, the management terminated him from service with effect from the 14th July 2014 by giving Rs.9,600 vide Demand Draft bearing No. 867091, dated the 14th July 2014 in lieu of one month notice period even though he was not legally entitled to the same. According to the management, as his engagement was coming under the exclusion Clause (bb) of Section 2(oo) of the ID Act, no prior permission from the Govt. or payment of compensation as contemplated under Section 25-F of the ID Act was required to be given. With the aforementioned backgrounds, prayer has been made for the dismissal of the case.

4. In view of the pleadings of the parties, the following issues emerged for proper adjudication of the industrial dispute:—

ISSUES

(i) Whether the termination of services of Shri Bhabani Shankar Mohanty, Driver with effect from the 14th July 2014 by the General Manager, The Samaj, At/P.O. Buxi Bazar, Dist. Cuttack is legal and/or justified ?

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

5. During hearing of the case, when the second party examined himself as WW No.1 and relied upon 43 numbers of documents which are marked vide Exts.1 to 43, the management, on the other hand, examined three numbers of witnesses as MW Nos.1 to 3 and placed reliance on a bunch of documents which are marked as Exts.A to CC/1.

FINDINGS

6. *Issue No. (i)*—This issue is taken up first for adjudication being related to the legality and propriety of the termination of the second party from service with effect from the 14th July 2014 by the GM of the management. Before entering into any discussion on that dispute in question, it is pertinent to mention here the uncontroverted facts of the parties at the outset. It is admitted by both the parties that the second party was initially engaged by the management as a Driver on causai basis; subsequently, vide Ext. 2 (Xerox copy of his offer of appointment) he was appointed as such on contractual basis for one year with a consolidated amount of Rs.5,500 per month and he joined under the management on the 25th August 2009 vide Ext. 3 (Xerox copy of his joining report).

The second party during his cross-examination while admitted to have worked under the management as a contractual employee till the date of his termination. However, at the same time denied to have received any written communication regarding the extension of contractual service period after 2012. But, surprisingly, he himself in his evidence at Para.4 testified that unfortunately the management on completion of each contractual period, used to extend his service continuously from the 14th August 2009 to the 31st March 2014 with minimal pay hikes. It is the further plea of the second party that after that he was also continuing under the management without any written extension order when the management stated that on the 31st March 2014 his contractual period of service has been extended for six months i.e., from the 1st April 2014 to the 30th September 2014 vide Ext. SS (which has been marked with objection) and on this aspect a question was also put to the second party during his cross-examination to which he emphatically refused such suggestion. The MW No. 1 during his evidence at Para.15 stated that the contractual engagement of the second party extended from time to time basing upon the requirement of the management along with other workers and accordingly the last extension of the disputant was up to the 31st

March 2014 which was within his knowledge, but such evidence is not established through any documentary evidence. In this connection, the MW No.1 during his cross-examination at Para. 44 stated that he cannot say the mode of service of extension for the last six months to the second party as he was not in service then. However, the management failed to file any document from which an inference can be drawn that the second party was served with the copy of Ext. SS. Whatever may be, the second party was a contractual employee under the management during his service period as evident from his pleadings, so also evidence. On this aspect, it is felt apposite to mention here that the second party WW No.1 during his cross-examination at Para. 28 admitted to have joined under the management as a contractual employee and continued as such till the date of his termination.

Admittedly, vide Ext. 20, the service of the second party was put to an end with effect the 14th July 2014 when he was continuing as a contractual employee under the management as the management itself contended that the contractual period of the second party was extended for the period from the 1st April 2014 to the 30th September 2014. Therefore, in such circumstances, it cannot be stated that on expiry of contractual period, the contract of engagement of the second party is automatically terminated as alleged by the management. In the context, the argument is well advanced on behalf of the second party that his service has been terminated illegally as he was neither given any opportunity of hearing nor the management followed the principle of natural justice prior to the termination of his service. In the counter argument, the learned counsel appearing for the management consistently argued that taking recourse to Clause 7 of his appointment letter marked vide Ext. 2, the management having terminated the contract with the second party, its action in no way be held to be illegal and not in accordance with the law. To that effect, the second party was also paid one month's wages in lieu of one month notice period even though he is not legally entitled to the same. Add to it, the management also pointed out that as the engagement of the second party was coming under the exclusion Clause (bb) of Section 2(oo) of the ID Act, no prior permission from the Govt. or payment of compensation as contemplated under Section 25-F of the ID Act was required to be given. In view of the above facts and circumstances, the management prayed to reject the claim of the second party.

The second party also during his cross-examination at Para. 27 explicitly asserted that in compliance to Clause-7 of Ext. 2, the management issued termination letter to him accompanied with a D.D. amounting to Rs.9,600 and he has also received the same.

As discussed above, the service of the second party was terminated in adherence to the Clause 7 of the appointment letter (Ext. 2) of the second party and Clause 7 of Ext. 2 provides that "The Board of Management shall also have the discretion to terminate your engagement by giving 30 days' notice or payment in lieu thereof without assigning any reason whatsoever. Similarly, you can leave the engagement by giving one month notice or payment of an amount equivalent to your one month's wages in lieu of the notice".

At this stage, it is profitable to refer the decision of the Hon'ble Allahabad High Court in the case of Shailendra Nath Shukla and Ors. V. Vice-Chancellor, Allahabad University and Ors., 1987 LIC. 1607 have been pleased to held as follows:—

"Terminations which are included in it are those which are brought about either because of non-renewal of contract or because of expiry of time stipulated in agreement. The meaning is plain and simple. But, in a society with so wide gap where bargaining power of employee is nil who is exposed to exploitation, the nature of employment cannot be judged on the letter issued by the

employer but on the nature of duties performed. For instance, workers employed for doing a particular job which may be for more than 240 days can be said to be covered by this clause as their engagement comes to an end because of completion of work. Similarly, a workman employed for a stipulated period or completion of work whichever may be earlier may be covered in this clause. But if contractual employment is resorted to as mechanism to frustrate the claim of employee to become regular or permanent against a job which continues or the nature of duties is such that the colour of contractual engagement is given to take it out from the principal clause then such agreements shall have to be tested on anvil of fairness and *bona fide*. An agreement for arm twisting or to perpetuate the policy of hire and fire cannot be deemed to be included in Clause (bb). Because if it is left to employer not to renew contract whenever he likes irrespective of any circumstance then the protection afforded to a workman by treating every termination of service as retrenchment shall be rendered nugatory. It has to be confined to those limited cases where either the work or post ceases to exist or job comes to an end or the agreement for a specific period was *bona fide*. It cannot be extended to such cases where the job continues and the employee's work is also satisfactory but periodical renewals are made to avoid regular status to the employees. That would be unfair labour practice.

The Punjab and Haryana High Court in the case of Bhikku Ram V. Presiding Officer Industrial-cum-Labour Court, Rohtak, 1996-III-LLJ (Suppl.) 1126, [1995] Lab.I.C., has held as follows:-

"If the employer resists the claim of the workman and invokes Section 2(oo) (bb), burden lies on the employer to show that though the employee has worked for 240 days in twelve months prior to termination of his service, such termination of service cannot be treated as retrenchment because it is in accordance with the terms of the contract of employment or on account of non-renewal of the contract of employment ... only a *bona fide* exercise of right by an employer to terminate the service in terms of the contract of employment or for non-renewal of the contract will be covered by Clause (bb). If the Court finds that the exercise of rights by the employer is not *bona fide* or the employer has adopted the methodology of fixed term employment as a conduct or mechanism to frustrate the rights of the workman, the termination of the service will not be covered by the exception contained in Clause (bb), Instead the action of the employer will have to be treated as an act of unfair labour practice, as specified in the Fifth Schedule of the Act.

In the case of Chakradhar Tripathy V. State of Orissa and Ors., 1992 L.I.C. 1813, the Hon'ble High Court of Orissa have been pleased to held that by taking resort to 'colourable' contracts, the protection of Section 25-F cannot be allowed to be frustrated.

The Hon'ble High Court of Madhya Pradesh in the case of Madhya Pradesh Bank Karmachari Sangha Vs. Syndicate Bank & anr-1997 -III-LLJ(Supp)-536 by referring the various judgments of the Hon'ble Supreme Court as well as other High Courts has concluded as under in Para. 18;

18. It becomes apparent—(i) that the provisions of Section 2(oo) (bb) are to be construed benevolently in favour of the workman; (ii) that if the workman is allowed to continue in service by making periodic appointments from time to time, then it can be said that the case would not fall under Section 2(oo)(bb); (iii) that the provisions of Section 2(oo)(bb) are not to be interpreted in the manner which may stifle the main provision; (iv) that if the workman continues in service, the non-renewal of the contract can be deemed as *mala fide* and it may amount to be a fraud on statute; (v) that there would be strong presumption of non-applicability of Section 2 (oo)(bb) where the work is of continuous nature and there is nothing on record that the work for which a workman has been appointed had come to an end.

The Hon'ble High Court of Bombay in the case of Alexandar Yesudas Maikel Vs. Perfect Oil Seals And Isp & Ors. reported in 1996-1-LLJ-533 (Bom) has been pleased to hold as follows:—

“5. In any event, one cannot lose sight of the fact that Clause (bb) has itself been restrictively interpreted and judicial Consensus appears to be that, if the post continues and the work continues, Clause (bb) cannot be said to operate as a charter for unscrupulous employers to jettison their workmen.

Further in the case of HARJINDER SINGH V. PUNJAB STATE WAREHOUSING CORPORATION reported in 2010 (1) SCR 591, the Hon'ble Supreme Court while dealing with the two numbers of judgments passed in the case of Government Branch Press V. D. B. Belliappa (1979) 1 SCC 477 and Glaxo Laboratories (India) Ltd. V. Presiding Officer (1984) 1 SCC 1 held that “the plea of employer that the appointment was purely temporary and could be terminated at any time in accordance with the terms and conditions of appointment cannot be accepted”.

It also cannot be lost sight of that Section 2(00)(bb) is specifically meant to cover only such employment which would be needed for an employer for a specific period alone and beyond which the requirement will not be there and even on such occasions, the employer should not be put into an unnecessary predicament of facing the other consequences that would normally occur while resorting to retrenchment. The benefit of the said exception will have to be strictly restricted to such specific situations alone and the same cannot be allowed to be misused or abused by the employers even in regard to cases where the nature and requirement of employment is perennial.

Admittedly, the nature of employment of disputant was “Driving”, so also perennial in nature; he has worked under the management with effect from the 25th April 2007 as a causal driver and thereafter since the 24th August 2009 to till the 13th July 2014 as a contractual driver continuously and there is no evidence from the side of employer that the engagement of the disputant in such a position was under a scheme or project. So, in view of the principles laid down by the Hon'ble Court as discussed *supra*, the management while retrenching the second party from his service was under obligation to comply the provisions of Section 25-F of the Act. But, admittedly, the management has not done so in the instant case.

What have been stated above, it is also forthcoming from the pleadings of both the parties that the main reason behind the termination/retrenchment of the second party was the accident dated the 28th May 2014 and admittedly, on the said date the second party dashed the vehicle (Mahindra Bolero Pick-up vehicle bearing No.OR-05-AG-1819 of the management) against a Rickshaw Puller so also the shop/building of one Mr. Sushanta Kumar Das while he was plying the said vehicle from Samaj Office to Cuttack Railway Station for disposal of papers. In the context, the second party clarified that due to burst of right front side tyre of the said vehicle such accident happened. By opposing such contention advanced on behalf of the second party, the management contended that due to the rash and negligent driving of the second party the above accident was caused as on the date of accident he was in a state of intoxication, for which it had to sustain huge loss (as stated above). But, the MW No. 1 during his cross-examination at Para. 44 denied to have filed any document relating to the alleged rash and negligent driving by the second party under intoxication. Admittedly, the management has not filed any document from which it could have revealed that the second party was plying vehicle on the date of accident under intoxication. From the documents relied upon by both the parties, it transpires that prior to the accident dated the 28th May 2014, the second party was also called for explanation on several occasions for his negligence

in duty, so also rash driving. But, it is the plea of the management that as the second party was a contractual employee under it, there was no need to conduct any enquiry against him before his termination. However, from the documents available on the case record from the side of the management, it is evident that relating to the above incident dated the 28th May 2014 so also on the reply of the second party thereto, the management had formed an In-house Committee and basing upon the report of the said In-house Committee the service of the second party was put to an end basing upon the terms and conditions enumerated in his appointment letter under Ext. 2. In such context, the very first objection of the second party is that he was totally unaware about such development. No document is also placed on behalf of the management to show the second party was intimated such development. The MW No.1 during his cross-examination stated that he does not know if the second party was intimated formation of an In-house Committee in order to enquiry into the reply/explanation given by the disputant or not. Throughout the case record, the second party reiterated that the Dispatch In-charge of the management had accompanied him on the date of accident. Although the second party has not disclosed his name, but the management neither whispered a single word about in its WS nor put a single question to that effect or examined its Dispatch In-Charge in this case who could better explain the reason of such accident. The management having failed to examine the vital witness (Dispatch In-charge) in this case, an inference requires to be drawn against it. However, the management exhibited the Xerox copy of report of the Enquiry Committee as Ext. ZZ, but nowhere in the said document the Committee has mentioned a single word regarding the intoxication of the second party on the date fixed. But, in the said report it has been mentioned that due to the rash and negligence driving of the second party such incident dated the 28th May 2014 was happened.

However, it is apt to refer a decision of the Hon'ble Apex Court in the case of Jagdish Mitter Vs. Union of India AIR 1964 SC 449, wherein it has been held that "when an authority wants to terminate the services of a temporary servant, it can pass a simple order of discharge without casting any aspersion against the temporary servant or attaching any stigma to his character. As soon as it is shown that the order purports to cast an aspersion on the temporary servant, it would be idle to suggest that the order is a simple order of discharge. The test in such cases must be: Does the order cast aspersion or attach stigma to the officer when it purports to discharge him ? If the answer to this question is in the affirmative, then notwithstanding the form of the order, the termination of service must be held, in substance, to amount to dismissal". In the said case the Hon'ble Court also held that in every case the purpose of the inquiry is crucial".

Hence, as the first party having failed to convince the Court on the applicability of Clause-2(bb) of Section 2(oo) of the Act in view of the above verdict of the Hon'ble Apex Court as well Hon'ble High Courts and in view of the settled position of law that the management was under obligation to conduct an enquiry against the second party prior to put his service to an end on the above alleged incident (basing upon which he was ousted from service) which was not done in the present case, this Court is of the firm view that the case of second party is well covered within the definition of "termination" as stipulated under Section 2(00) of the Act requiring compliance of the provisions of Section 25-F of the Act by the first party management.

Thus, on an analysis of the evidence as adduced above by both the parties orally as well as documentary and in view of the principles laid down by the Hon'ble Apex Court, the view (i.e., his termination has not been effected in accordance with law) of the second party in the instant case is affirmed and accordingly, the action of the management in terminating the second party from service with effect from the 14th July 2014 is held to be neither legal nor justified.

What have been stated above, the second party has also taken a stand that the then GM having no authority had issued Ext. 20 in his favour. But, failed to assign the manner of prejudice suffered by him for that reason when the then GM had also issued appointment letter & extension orders in his favour, allotted vehicle to him, called for explanation from him and he himself submitted his joining report before him. Be that as it may, the second party during his cross-examination at Para. 38 stated that the GM of the management is the overall decision maker about the official affairs and when this Court has already held that the termination of the second party from service is illegal, there is no need to discuss in detail about the competency of the GM, who has issued Ext. 20 in favour of the second party.

7. *Issue No. (ii)*—In view of the finding arrived above, now it is to be seen as to what relief the workman is entitled to. As admitted by both the parties the second party was not a regular employee under the management, rather a contractual employee. Hence, in the light of the facts of the present case including the status and nature of employment of the second party and his length of employment under the management, this Court while declining to grant the relief of reinstatement and back wages in favour of the second party, feels it appropriate to award some monetary compensation which would meet the ends of justice. 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., for about 07 years, his age, continuous service and his last salary i.e., Rs. 9,600 per month as admitted by both the parties, the first party management is directed to pay a lump sum compensation of Rs. 1,00,000 (Rupees one 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
26-12-2023
Presiding Officer
Labour Court, Bhubaneswar

APARNA MOHAPATRA
26-12-2023
Presiding Officer
Labour Court, Bhubaneswar
[No. 605—LESI-IR-ID-0005/2024-LESI.]
By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government