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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 25th January 2024

S.R.O. No. 62/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 16th December 2023 passed in the ID Case No. 44 of 2022 [u/s 2-A(2)] by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between the Management of (1) Hi-tech Medical College & Hospital, Health Park, Pandara, Rasulgarh, Bhubaneswar-25, Dist. Khurda, represented through its Chairman-cum-Managing Director, (2) the Director, Hi-tech Medical College & Hospital, Health Park, Pandara, Rasulgarh, Bhubaneswar-25, Dist. Khurda, (3) the Director, Hi-tech College of Engineering, Pandara, Rasulgarh, Bhubaneswar-25, Dist. Khurda and Shri Dilip Kumar Behera, S/o Trinath Behera, Vill. Pandara, P.O. G.G.P. Colony, P.S. Mancheswar, Bhubaneswar, Dist. Khurda is hereby published as in the schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 44 OF 2022 [u/s 2-A(2)]

Dated the 16th December 2023

Present :

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

Between :

The Management of —
(1) Hi-tech Medical College & Hospital,
Health Park, Pandara, Rasulgarh,
Bhubaneswar-25, Dist. Khurda,
represented through its Chairman-
Cum-Managing Director.
(2) The Director, Hi-tech Medical College &
Hospital, Health Park, Pandara.
Rasulgarh, Bhubaneswar-25, Dist. Khurda.

.. The First Party—Management

(3) The Director, Hi-tech College of Engineering, Pandara, Rasulgarh, Bhubaneswar-25, Dist. Khurda.

And

Shri Dilip Kumar Behera, aged about 45 years, . . . The 2nd Party—Workmen
S/o Trinath Behera, Vill. Pandara,
P.O.G.G.P. Colony, P.S. Mancheswar,
Bhubaneswar. Dist. Khurda

Appearances :

Shri D. C. Mohanty, Advocate . . . For the First Party—Management
Shri Hareram Mishra, Advocate . . . For the Second Party—Workman

AWARD

This is an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') preferred by the second party challenging the action of the first party management in terminating his service by way of refusal of employment with effect from the 11th April 2022 as illegal and unjustified with a prayer for his reinstatement in service with full back wages, continuity of service and other consequential service benefits. It reveals from the application that soon after his illegal termination the second party had raised a complaint before the District Labour Officer, Bhubaneswar on the 11th April 2022 but as the same could not be resolved within the stipulated period, he approached this Forum on the 20th August 2022 by filing the present application under Section 2-A(2) of the Act.

2. Briefly stated case of the second party is that on being selected by the management he was appointed as a Security Guard on the 2nd February 2007 to work in the Security Department of M/s. Hi-tech Medical College & Hospital and upon joining he worked as such till the 10th April 2022 and while working under the first party he was covered under the EPF Scheme and was allotted with EPF Account No. OR/BBS/0015427/000/0000031. It is stated that on the 1st December 2010 he was transferred to the Hi-tech College of Engineering at Bhubaneswar, a sister concern of M/s. Hi-tech Medical College & Hospital where he worked till the 16th July 2020. Again on the 17th July 2020 the Administrative Officer of Hi-tech College of Engineering transferred him to work under the Hi-tech Medical College & Hospital with a direction to join there on the 18th July 2020. It is alleged that on his joining under the Hi-Tech Medical College & Hospital when he requested for enhancement of his wages at par with the Security Guards of Hi-tech Medical College and Hospital he was again transferred to the Hi-tech College of Engineering in the month of November, 2020. It has specifically been pleaded that he was getting wages of Rs.7,500 per month which was less than the minimum wages declared by the Government as per its Notification No.2433-LC. dated the 30th April 2022 which was given effect to from the 1st April 2022 and on his demanding the said minimum wages, he was refused employment with effect from the 10th April 2022. According to him, he having rendered continuous service for more than 15 years under both the units of the management and there having no occasion for the management to call for any explanation, nor any enquiry was ever conducted against him for any dereliction of duty, his refusal of employment

in gross violation of the mandatory provisions of the Act is not sustainable in the eye of law and accordingly the second party has prayed for the relief (If his reinstatement, continuity of service with full back wages and other consequential service benefits, as during the period of his unemployment he was not gainfully employed elsewhere and was facing a lot of financial difficulties to maintain him as well as his family members.

3. The Chairman-*cum*-Managing Director, Hi-tech Medical College and Hospital entered contest in the proceeding and filed the written statement. Challenging maintainability of the proceeding, the first party has taken a categorical stand that it has never terminated the service of the second party, rather he himself absconded from duties with effect from the 13th April 2022 and therefore, the first party was not required to comply with the mandatory provisions of the Act. It is alleged that on multiple occasions the second party remained absent from duty unauthorized for which he was called for explanations with direction to join his duty immediately but instead of submitting any reply to the same he preferred to remain silent over the matter. It is averred in the written statement that since there is termination of service of the second party as alleged, the question of grant of reinstatement and other reliefs does not arise at all. The first party, however, has conceded in its written statement that still it has opened its door for joining of the workman where-after a decision would be taken regarding wages and service benefits of the second party on consideration of his entitlements.

4. Reiterating its stand taken in the claim statement, the second party filed a rejoinder to the written statement of the management with a further stand that the joining offer to the second party as stated in their written statement is nothing but a conspiracy and the same is with a motive to put the second party in further problem.

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

- (i) Whether the case is maintainable ?
- (ii) Whether Shri Dillip Kumar Behera has voluntarily abandoned his service with effect from the 13th April 2022 ?
- (iii) Whether the action of the Management of M/s.Hi-tech Medical College and Hospital,. Health Park, Pandara, Rasulgarh, Bhubaneswar-25 in terminating the services of Shri Dillip Kumar Behera, Ex-Security Guard by way of refusal of employment with effect from the 11th April 2022 is legal and/or justified ?
- (iv) If not, what relief the workman Shri Behera is entitled to ?

6. To substantiate their respective stand, while the second party examined himself as WW 1 and relied on documents marked Exts. 1 to 6 on his behalf, the first party examined one Shri Abinash Kumar Swain, HR(Executive) as MW1 and relied on copies of two documents on its behalf which have been marked as Exts. A and B.

FINDINGS

7. *Issue No. (ii)*—This issue is taken up for consideration at the first instance as the first party has categorically stated in its pleadings as well as evidence that the second party having voluntarily abandoned his employment, the dispute alleging termination of his service with effect from the 13th April 2022 by the first party in violation of the mandatory provisions of the Act is not tenable.

In the context, the learned counsel appearing for the management drew attention of the Tribunal to Ext. A, the copy of the notice issued to the second party asking him to resume duty immediately and to explain as to why disciplinary action will not be taken against him for remaining unauthorized absent from duty with effect from the 13th April 2022 and contended that despite receipt of the same when the second party remained silent over the matter and falsely raised the dispute alleging termination of his service, his claim does not merit any consideration as he has voluntarily left the employment.

The learned counsel for the second party, on the other hand, submitted that the contention advanced on behalf of the first party on this issue is not to be sustained as the first party in its letter under Ext. A had issued an ultimatum to the second party to the effect that had he not resume duty he would face disciplinary action. It was never the intention of the management that failure on the part of the second party to resume to duty would culminate into a presumption of voluntary abandonment of job. It is further submitted that with a view to avoid the rigours of law the management has relied on the notice Ext. A knowing fully well that the second party has been terminated from service by way of refusal of employment. The refusal of employment of the second party since amounts to termination of his service due to non-compliance of the provisions of the Act, it is submitted, is not sustainable in the eye of law.

8. The employment of the second party under the first party for the period from the 2nd February 2007 till April, 2022 is not disputed. No document is also placed on behalf of the management that prior to the alleged unauthorised absence the second party was ever asked for any explanation; nor any enquiry was conducted against him for any dereliction of duty. On scrutiny of Ext. A it transpires that the management had called for an explanation from the second party for his remaining absent from duty from the 13th April 2022, but no follow up action seems to have been taken by the management for non-compliance of the notice by the second party. Not even a scrap of paper is produced by the management showing any step to have been taken by the management to enquire into the matter by charge sheeting the second party for his alleged misconduct, nor intimating him that for non-compliance of its direction, his absence from duty would be treated as voluntary abandonment of employment. As held by the Hon'ble Apex Court in the case of *G. T. Lad & Ors. v. Chemicals & Fibres of India Ltd*, reported in AIR 1979 SC 582, 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 officer 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 in hand, while adducing evidence the second party has stated that when he demanded wages as per the minimum wages declared by the Government the first party refused him employment with effect from the 11th April 2022 and paid a deaf ear to all his request for reinstatement for which he lodged a complaint before the District Labour Officer, Khurda at Bhubaneswar vide his complaint dated the 20th June 2022 (Ext. 1). In his cross-examination though he has admitted to have not replied to the letter dated the 7th June 2022 (Ext. A), yet basing

on such statement an inference cannot be drawn that he had the intention to quit the employment. Ext. A can at best be considered as a show-cause issued to the second party to explain his conduct; In absence of specific stipulation in Ext. A to the effect that failure to resume duty would be construed that the second party has voluntarily abandoned the job, the plea advanced on this score by the first party is not acceptable. From the conduct of the second party as well as the surrounding circumstances therefore, this Tribunal is of the view that the second party had never intended to give-up his employment.

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

9. *Issue No. (i)*—Consistent with his pleadings, the second party has filed documents pertaining to his request made to the labour machinery for their intervention in the matter of termination of his employment by the first party., Ext. 1 is the said document which reveals that alleging his refusal of employment, the second party lodged a complaint before the District Labour Officer, Khurda at Bhubaneswar on the 20th June 2022. This part of his evidence is not disputed by the first party. The present application under Section 2-A(2) of the Act has been preferred by the second party on the 20th August 2022 and it is explained by the second party that he resorted to the provisions of the Act as the dispute could not be resolved by the labour machinery within the prescribed period. On perusal of Ext. A; the application in the present proceeding and the Statutory provisions coupled with the findings arrived at on Issue No.1, the proceeding is held to be maintainable in this Forum.

Issue No.1 is answered accordingly.

10. *Issue No. (iii)*—This issue relates to the legality and justifiability of the action of the management in terminating the services of the second party by way of refusal of employment with effect from the 11th April 2022.

The fact that the second party had rendered continuous service under the first party for a period of more than fifteen years is not in dispute. To prove his employment under the first party, the second party has relied on copy of his identity card (Ext. 2); copy of his order of transfer issued by the Administrative Officer, Hi-Tech College of Engineering, Bhubaneswar to the HR., Hi-Tech Medical College & Hospital, Bhubaneswar dated the 17th July 2020 (Ext. 3); EPF slip for the year 2012-13 (Ext. 4) and copy of his 1st page Savings Bank Pass Book along-with bank statement showing credit of monthly wages by the first party to his Bank Account till March, 2022 (Ext. 5). Owing to the definite finding arrived at by this Tribunal on Issue No.1 together-with the evidence, as discussed *supra*, it leaves no room to conclude that the second party was refused employment by the first party and such refusal amounts to termination of his service. In the context, it is profitable to refer to the judgement of the Hon'ble Apex Court in the case of *State Bank Of India v. Shri N. Sundara Money* reported in AIR 1976 SC 1111, wherein their Lordships have held thus :—

“2(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include –

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health; for any reason whatsoever-very wide and almost admitting of no exception.

Still, the employer urges that when the order of appointment carries an automatic cessation of service, the period of employment works itself out by efflux of times, not by act of employer. (1) [1960] 2 S.C.R. 866, 871-872. Such cases are outside the concept of 'retrenchment' and cannot entail the burdensome conditions of s. 25F. Of course, that a nine-days employment, hedged in with an express condition of temporariness and automatic cessation, may look like being in a different street (if we may use a colloquialism) from telling a man off by retrenching him. To retrench is to cut down. You cannot retrench without trenching or cutting. But dictionaries are not dictators of statutory construction where the benignant mood of a law and, more emphatically, the definition clause furnish a different denotation. Section 2(00) is the master of the situation and the Court cannot truncate its amplitude. A break-down of s. 2(00) unmistakably expands the semantics of retrenchment. 'Termination... for any reason whatsoever' are the key words. Whatever the reason, every termination spells retrenchment. So the sole question is-has the employee's service been terminated? Verbal apparel apart, the substance is decisive. A termination takes place where "a term expires either by the active step of the master of the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated, Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May" be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of s.25F and s.2(00). Without speculating on possibilities, We may agree that 'retrenchment' is no longer *terra incognita* but area covered by an expansive definition. It means 'to end, conclude, cease'.

In view of the observations of the Hon'ble Apex Court in N. Sundara Money's case(*supra*), the termination of service of the second party attracts the provisions of Section 25-F of the Act which reads as under :-

25F. Conditions precedent to retrenchment of workmen —

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :

(b) the workman has been paid, at the time of retrenchment, pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

It is an admitted position that the conditions precedent to retrenchment were not adhered to by the first party while terminating the service of the second party knowing fully well that he had rendered continuous service under it for a period of more than 15 years. The management even not placed any document substantiating the alleged dereliction of duty on the part of the second party, as pleaded in its written statement, much less any follow up action taken against the second party pursuant to non-compliance of the instructions contained in Ext. A.

11. In the result, the termination of service of the second party with effect from the 11th April 2022 by the first party amounts to retrenchment and for non-compliance of the statutory provisions, its action cannot be held to be either legal or justified.

The issue No. 3 is accordingly answered in favour of the second party.

12. *Issue No. iv*—In view of the finding on Issue No. 3, the next question that falls for determination is as to what relief the second party is entitled. The second party has rendered continuous service for more than 15 years under the first party and as pleaded as also stated by him, he is not gainfully employed elsewhere since the date of his termination and is living with much financial difficulties. No contrary evidence is laid on behalf of the management to disbelieve the aforesaid testimony of the second party. The second party is now aged about 45 years. Considering the status, length of employment and the fact that he has been illegally terminated from employment by the first party, the relief of reinstatement in service, in my view, would be appropriate if awarded in favour of the second party. Accordingly, the first party is directed to reinstate the second party in its employment forthwith.

As regards back wages, since the second party is found to have contributed nothing for the management during the period he remained unemployed and being an able bodied person a presumption can be drawn that he might have engaged himself in any other avocation to eak out his livelihood, a compensation to the tune of Rs. 25,000 (Rupees twenty five thousand) only in lieu of back wages, in my view, would be appropriate to compensate him for his suffering.

In view of my finding on Issue No.4, the first party is directed to reinstate the second party in service forthwith and to pay him a compensation of Rs. 25,000 (Rupees twenty five thousand) only in lieu of back wages within a period of two months of the date of publication of the Award in the Official Gazette, or else to pay interest on the said amount @ 6% per annum till it is actually paid to the second party.

Dictated and corrected by me.

BENUDHAR PATRA
16-12-2023
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
16-12-2023
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 687—LESI-IR-ID-0001/2024-LESI.]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government