

The Odisha Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 324 CUTTACK, TUESDAY, FEBRUARY 13, 2024/MAGHA 24, 1945

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 7th February 2024

S.R.O. No. 81/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 29th December 2023 passed in the I.D. Case No.06 of 1995 by the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Sambalpuri Bastralaya Handloom Co-operative Society Limited, At/P.O/Dist. Bargarh and its workman Shri Lal Bihari Rath, S/o Late Sadasiba Rath, At College Road, Bargarh, back side of Brangel Shop, Bargarh was referred to for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 06 OF 1995

Dated the 29th December 2023

Present :

Shri Raghu Nandan Das, LL.B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of Sambalpuri Bastralaya
Handloom Co-operative Society Limited,
At/P.O/Dist. Bargarh. . . First Party—Management

Vrs.

Its workman Shri Lal Bihari Rath,
S/o Late Sadasiba Rath,
At College Road, Bargarh,
back side of Brangel Shop, Bargarh. . . Second Party—Workman

Appearances :

Shri Bijay Kumar Purohit, Advocate, Sambalpur . . For the 1st Party—Management

Shri Niranjana Kar, Advocate, Sambalpur . . For the 2nd Party—Workman

Date of conclusion of argument . . 21-12-2023

Date of order . . 29-12-2023

AWARD

This case arises out of the reference made by the Government of Odisha in Labour and Employment Department under Section 12(5) r/w Section 10 (1) (c) of the I.D. Act, 1947 vide Memo No. 829/LE, dated the 19th January 1995 for adjudication of the dispute scheduled below :

SCHEDULE

“Whether the termination of services of Shri Lal Bihari Rath, Ex-Assistant Accounts Officer, by way of dismissal with effect from the 2nd January 1993 is legal and/or justified ? If not, what relief Shri Rath is entitled to ?”

2. After receipt of the reference by this Court, the workman appeared on the 8th February 1995 and filed his statement of claims. The case of the workman as per his statement of claims in brief is that he has been dismissed vide order No. 3740/92-93, dated the 2nd January 1993 (received on the 11th January 1993) passed by the M.D. of the management without an enquiry and without supplying any documents, on the basis of which charge sheet was framed bearing No. 2799/92-93, dated the 30th September 1992 on the charge of mis-appropriation of earned stock of the society worth of Rs. 6,58,836.93 paisa, manipulation and/or destruction of records.

2.1. After receipt of the departmental proceeding, the workman in his petition, dated the 7th October 1992 requested the disciplinary authority to supply him the copies of the relevant records and information vide Srl. No. 2 to 13, so as to enable him to submit his W.S. on the stipulated date. It is also the case of the workman that under Section 32 of the O.C.S. Act, 1962 r/w Rule 37 of the O.C.S. Rules, 1965, the Registrar shall Audit or caused to be audited by an Auditor, the accounts of every society once in every year, which shall be conducted according to the Rules. But, in the instant occasion, the M.D. of the Management appointed M/s. K.C. Samal & Co. Chartered Accountant (a private firm at Sambalpur) to conduct a Special Audit to find out fault against him, which is purely *mala fide*. The workman requested the authority to supply him a copy of the approval accorded by the R.C.S. for appointment of M/s K.C. Samal, Auditor. The workman also sought for certain information, so as to enable him to submit an explanation against the allegations. He had sought for copy of the order entrusting him as Store Keeper at Main Godown Raw Materials, which was not supplied to him. Unless entrustment is proved, the charge of mis-appropriation cannot be proved. Due to non-supply of the copies of the records, the workman could not submit his W.S. of defense, except a clear denial to the charge of misappropriation or destruction of any record thereto.

2.2. The Management vide letter No. 3154/92-93, dated the 3rd November 1992 directed him to inspect all relevant papers and document as sought for in his representation dated the 7th October 1992 in the office chamber of the Section Officer of the Management on the 5th November 1992 at 3-00 P.M. and to submit his explanation. But the workman had sought for copies of relevant documents as well as certain information. The Management had asked the workman to inspect, which does not fulfill the requirement of law. This non-supply of the copies of documents caused serious prejudice to him.

2.3. Moreover, the Management had appointed Shri R.N. Debata, Advocate as legal advisor in this matter as reveals from his letter dated the 7th October 1992. The copies of the documents, if supplied, would have facilitated the advocate for the workman to prepare his W.S. Hence, it was obligatory and mandatory on the part of the management to supply the relevant records, on which the charge was based. Thus, there was violation of natural justice and denial of reasonable opportunity to defend.

The management informed the workman that his representation dated the 5th November 1992 has been rejected and he should submit his W.S. within 48 hours. To this letter of the Management, the workman submitted his representation on the 23rd November 1992 challenging the same and also requesting it to allow him at least a fortnight time from the date of receipt of the desired documents, to enable him to submit his W.S. However, the Management remained silent on the representation, dated the 23rd November 1992 and issued a show cause Notice, dated the 14th December 1992 calling upon him to show cause on the proposed punishment of "dismissal" within 48 hours thereof. It was mentioned in the Notice that if no reply is received within the stipulated time, it will be presumed that the workman has nothing to offer.

2.4 The workman submitted his reply on the 21st November 1992 challenging the charges framed against him. It is also contended that Clause 20(2)(a) of the draft standing order of the society prescribes the "Procedure for imposition of major punishment" that without supplying the copies of the relevant document and without furnishing any information to the points raised, the Management cannot presume that the workman had accepted the charge. The management had not proved the allegations even in an *ex parte* enquiry. The management had failed to prove the charge against him.

2.5 The workman has been dismissed without any enquiry because copy of the same has not been supplied to him. Even, in all cases of *ex parte* enquiry, all the formalities of regular enquiry should be followed. It is important that a domestic enquiry cannot be closed for the non-appearance or non-participations of the accused. The Hon'ble Supreme Court held in AIR 1962 SC 1348 that the management is not absolved of its duty from following the prescribed procedure, even if the workman has withdrawn from the disciplinary enquiry. For the above reasons, it is contended that the order of dismissal cannot be sustained.

2.6 The workman was not supplied with the copy of the report of the Enquiring Officer prior to the imposition of the punishment on him as observed by the Hon'ble Supreme Court in the case of Union of India Vrs. Md. Ramzan Khan [JT (1990)-4-SC-4S6]. It is also submitted that in a quasi-judicial matter, if the delinquent is being deprived of the knowledge of the materials against him, those the same is made available to the punishing authority in the matter of reaching his conclusion, rules of natural justice can be affected. Thus, the dismissal of the workman was not only illegal, but also a clear example of unfair labour practice practiced by the Management with a prejudicial view on the basis of the findings of a private chartered Accountant of Sambalpur.

2.7 With the above averments, the workman prayed for following reliefs :-

- (i) To issue order/direction to quash the impugned order of "dismissal", being illegal and violative of the principle of natural justice;
- (ii) To issue order/direction to reinstate him from the date of "dismissal" with all service benefits treating the intervening period as duty and qualifying service;
- (iii) To issue any other consequential reliefs and cost of the

3. The management has filed its W.S. contending that the Sambalpur Bastralaya Handloom Co-operative Society Ltd., Bargarh (in short "Society") is a registered society under the O.C.S. Act, 1962 and the Rules made there under. The society has been constituted for the socio-economic up-liftment of its weavers members.

The workman was appointed as an Assistant in the society in the year, 1965. In 1966, he was promoted to the post of Store-keeper and was placed in-charge of stock of yarn of the society at Bargarh in respect of a Godown called "Main Godown Raw Materials". He was working as the stock in-charge of the said yarn from 1966 until he made over charges of the same to his successor Shri Halayudha Patel on the 30th June 1981.

3.1 The workman was the exclusive custodian of yam stock of the society from 1966 till the 30th June 1981, who was replaced by Shri Halayudha Patel, on being transferred. He was also responsible for up to date maintenance of accounts of the stock held by him and he was furnishing statements to the head office from time to time. At the end of every co-operative year, the stock of the society was being physically verified by Government. Officers. Accordingly, yarn stock under his custody was verified on the 30th June 1981 and Shri Halayudha Patel was placed in his place. The physical verification of yarn stock as on the 30th June 1981 and making over and taking over charges between the workman and Shri Patel took place simultaneously.

3.2 The yarn stocks under the custody of the workman as on the 1st July 1980 were verified showing yarn stock worth of Rs. 20,91,051.83. During the co-operative year 1980-81, he received yarn worth of Rs. 2,03,44,436.89 and issued yarn worth of Rs. 1,78, 81,784.70 to different persons. As such, the workman should have actual balance stock worth Rs. 45,61,112.02 as on the 30th June 1981 in terms of value.

At the time of physical verification of stock as on the 30th June 1981, the verifying officer found stock worth of Rs. 42,16,578.57 with the workman. But the workman prepared one verification statement showing nominal excess of Rs. 1,533.09 than that prepared by the verifying officer.

3.3 During the year 1992, the society noticed incorrect entries in one of the Stock Registers maintained by the workman. Accordingly, the society called upon the workman vide Letter No. 225, dated the 16th April 1992 to explain the position and to submit the relevant records for the year 1980-81. In response to such letter, the workman submitted his reply denying commission of any such act with bad intention. He also denied that he was ever in-charge of stocks and records. As the reply was unsatisfactory, he was called upon to submit the relevant records, to which also, the workman denied that he was ever in-charge of stock of yarn or records thereof during the year 1980-81. Thereafter, the society again issued letter to the workman directing him for production of records and he repeated the same subject.

3.4 Thereafter, the society apprehending commission of serious misconduct, placed the workman under suspension vide order No. 1480, dated the 30th May 1992. Further, the society appointed an independent Chartered Accountant Firm namely M/s K.C. Samal & Co. to audit the yarn Accounts of the year 1980-81, which were under the custody of the workman. The Firm submitted its report on the 25th August 1992, from which it appeared that the workman had misappropriated yam stocks worth of Rs. 6,58,836.93 during the year 1980-81 and falsified the records of the society to conceal the misappropriation.

3.5 Thereafter, the society issued charge sheet No. 2799, dated the 30th September 1992 against the workman on the charges of misappropriation, and falsification and destruction of records thereof. While replying to the charges, the workman prayed for copies of certain documents, to which the society directed him for inspection of the same on the 5th November 1992 and to submit explanation by dated the 13th November 1992. In response to this, the workman again sought for the copies of documents and one month time, which was rejected. The workman avoided to submit his explanation on the charges, for which the society under its Certified Standing Order

held that he had accepted the charges. The society also examined the relevant records and found that the workman had misappropriated yarn stock worth Rs. 6,58,836.93 with criminal intent during the year 1980-81. He had also falsified the records and manufactured false documents. So, he was called upon to show cause, why he shall not be dismissed. The reply of the workman was found unsatisfactory and he was dismissed vide order dated the 2nd January 1993 as a measure of punishment.

3.6 The society also filed Dispute case No. 06, of 1992-93 in the Court of A.D.T.-cum-A.R.C.S., Bargarh, which is pending. The society also filed an F.I.R. in the Bargarh P. S. resulting into G. R. Case No. 185 of 1993 which is also pending, After dismissal from service, the workman has been gainfully employed. He is an officer of the society and this Court has got no jurisdiction to adjudicate the present dispute. The dismissal of the workman from service is legal and justified. With the above averments, it is prayed to answer the reference in favour of the first party/management and against the Second party/workman.

4. To the W.S. of the Management, the workman has submitted a rejoinder. In this rejoinder, he asserted that he has not misappropriated a single paisa of the Management. The allegation of misappropriation made by the Management is false implication, which is actuated with mala fide. He was all along working as per the instructions of his superiors. At no point of time, he has taken over charge of the yarn of the go-down.

5. Out of the pleading of the parties, this Court has framed the following issues:—

- (i) Whether the service termination of Shri Lal Bihari Rath, Ex-Assistant Accounts Officer by way of dismissal with effect from the 2nd January 1993 is legal and/or justified ?
- (ii) If not, to what relief he is entitled to ?

6. In order to prove the case, the First party/Management has examined four witnesses on its behalf. Documents have been marked from Ext. 1 to Ext. 27 on behalf of this Management. Similarly, the workman has examined himself as W.W.No. 1. He has exhibited documents, which have been marked from Ext. A to Ext. VV.

Learned counsel for the workman has relied upon the following judgments of the Hon'ble Apex Court and the Hon'ble High Court in support of the case of the workman:

- (i) 1991 S.C.C. (L & S) 638, State of M.P. Vrs. Bani Singh and another;
- (ii) 2009 (Supp.-I) OLR 935, A. K. Dutta Vrs. Registrar (Judicial), High Court of Orissa, Cuttack and another;
- (iii) 1999 S.C.C. (L & S) 429, Kuldeep Singh Vrs. Commissioner of Police and others;
- (iv) 1987 S.C.C. (L & S) 295, Makhan Singh Vrs. N.C.A.S.S. Ltd. and another; .
- (v) Supreme Court Service Rulings Vo1.6, 704, Dol Vrs. H.C. Goel;
- (vi) 2000 S.C.C. (L & S) 85, Hardwari Lal Vrs. State and D.P. and others;
- (vii) 2014 (I) OLR 53, S.N., Mishra Vrs. Commissioner-cum- Secretary, Government of Odisha, Department of Water Resources and another; and
- (viii) Supreme Court Service Rulings Vol.16, 558, State of D.P. & others Vrs. T.P. Lal Srivastava.

6.1 Similarly, learned counsel for the Management has relied upon the following judgments of the Hon'ble Supreme Court and the Hon'ble High Court in support of the case of the management;

- (i) AIR 1965 SC 1803, *Workmen of the Motipur Sugar Factory Pvt. Ltd. Vrs. The Motipur Sugar Factory Pvt. Ltd.*;
- (ii) (1973) 1 SCC 813, *Workmen Vrs. Firestone Tyre and Rubber Co.*;
- (iii) (2021) 12 SCC 460, *State of M. P. and another Vrs. Akhilesh Jha and another*;
- (iv) AIR 1989 Orissa 109 (FB), *Jayaram Panda Vrs. D.V. .Raiyani and others*;
- (v) 98 (2004) CLT 389, *Bharat Chandra Khilar Vrs. General Manager, Bank of India and others*; and
- (vi) (1996) 2 SCC 714, *Municipal Committee, Bahadurgarh Vrs. Krishnan Behari and others*.

7. *Issue No. (i)*— This issue is the only and vital issue to adjudicate the reference made to this Court. The first point to decide this issue can be stated as whether in between the period 1966 and dated the 30th June 1981 at the management go-down at Bargarh, the workman committed misconduct by misappropriating the yam stock worth Rs. 6,58,836.93 showing false calculation of yam stock.

The specific pleading of the workman from the very beginning is that he has been dismissed without any inquiry and without supplying any document on the basis of which the charge sheet (Ext. JJ) was framed. It is also his specific pleading that after receipt of Ext. JJ, he requested to the Disciplinary Authority to supply him the copies of relevant documents to enable him to submit his W.S. within the stipulated date. He also requested the authority to supply him copy of the approval accorded by the R.C.S. for the appointment of M/s K. C. Samal, Auditor to enable him to answer his observation. The most important points is that, at item No. 3 of his representation dated the 7th October 1992 (Ext. KK), he requested to supply him a copy of the order entrusting him as the Store-keeper of the Main Go-down Raw Material (M.G.R.M.).

7.1 It is also his specific pleading that in case of misappropriation, unless the entrustment is prove, prosecution cannot bring home the charges. Due to non-supply of the copies of the records, the workman could not submit his W.S. of defense; except a clear denial to the charges leveled against him. In this regard, the management pleaded that the workman was the exclusive custodian of the yam stocks of the society from 1966 till the 30th June 1981. Admittedly, there is no documentary evidence filed by the Management in this regard. Ext. A has been relied upon by the workman, which shows that the orders reflected therein was to be effective from the 15th April 1981. But, the present dispute relates to the period from the 1st July 1980 to dated the 30th June 1981. That apart, Ext. A discloses that Shri Bibhibasan Sahu, Chemist (M.W. No. 2) was to remain overall charges of Dying-house and was to be responsible for its efficient and smooth working. The workman, as per entry-6 against his name, was also to attend other works as and when necessary as per direction of Shri B. Sahu, Chemist and Shri P .A. Subramanian, Dyeing-master. The above facts corroborate the pleading of the workman that he was doing his duty at the M.G.R.M. as per the direction of his superiors.

7.2 In this regard, the management has also relied upon the documents vide Ext. 5 to 5/487 series, which are the copy of challans being received by the present workman showing himself as the Store-keeper. All these documents also show that there is a Checking officer, who had checked

all such documents and another Officer-in-charge, or Secretary, or another officer bearer. So, it cannot be held on the basis of these series of documents that the workman was exclusively liable for stock of yarn. Even, the management has relied upon some other documents like Exts. 19, 20, 21, 22, 23, etc. from which, it appears that the workman was working as the Store-keeper. But, the important point is that the management has not filed any document showing entrustment of the stock of yarn and Registers in favour of him at M.G.R.M of the management.

7.3 So far as the oral evidence of the witnesses examined on behalf of the Management is concerned, M.W. No. 1 in his cross-examination at Para. 2 has deposed that "Ext. A became effective with effect from the 15th April 1981. On the strength of Ext. A, the workman has not taken any charge of the same duties from anyone, as he was previously in charge of the same duties. I cannot say whether there is any other separate specific office order specifying that this workman remained in charge of the store from a specific date except Ext. A".

7.4 Similarly, M.W. No. 2 at Para. 13 of his cross-examination has deposed that "I cannot say from whom the workman took over such charge and on which date". He cannot say "Whether the job chart of 1976 has been filed in this Court". Even at Para.14, this M.W. No. 2 admitted that in the capacity of Dying factory in charge, he was receiving stock of yarn and associated bill and after that, he has preparing stock and bill. Para.15 and Para.16 of this witness is very much relevant in this regard.

Similarly, M.W. No. 3 at Para. 14 of his cross-examination has deposed that "I also cannot say when, from whom and the price of yarn, the workman had taken the charge". At Para. 15, this witness deposed that "But I cannot say, from whom and the price of yarn stock, the workman had taken charge on the 15th April 1981". Para. 17 of this witness discloses that vide Ext. DD yarn had been given to the concerned weaver, although he denied about the truthness of the signatures appearing thereon.

7.5 Similarly, M.W. No.4 has deposed at Para.15 of his cross-examination that "I cannot say, from whom, when and how much amount of money, the workman had taken charge". At Para. 16, "I cannot say, when order was given to the workman to work as Store keeper of yarn stock of Sambalpuri Bastralaya H.L.C.S., Ltd.".

From the above documentary and oral evidence on record, it appears that there is no proof of entrustment of stock of yarn in favour of the workman by the management. The management is alleging misappropriation of stock of yarn worth more than six lakh during the relevant period, but it is not producing any document showing such entrustment of articles in his favour. The workman is specifically pleading and deposing that he was never in charge of the stock of yarn and was performing his duty as per the order of his official superiors. Although, it appears that the workman has signed on several documents as Store keeper, but in absence of any evidence to that effect, this Court is unable to hold him responsible for the stock of yarn, when no document has been filed to that effect, and which the workman is denying from the very beginning.

8. The next vital point raised by workman is that he sought for the copy of order showing the approval accorded by the R.C.S. for the appointment of M/s K.C. Samal to enable him to answer his observation. The workman also pleaded that as per the Rules, the Registrar shall Audit or cause to be audited by an Auditor, duly authorized by him in this behalf, the accounts of every society. He pleaded that the conduction of special audit against him by the management was purely mala fied. In this regard, the management has relied upon Ext. 3, which is the special Audit Report of M.G.R.M. stock for the year 1980-81 made by M/s K.C. Samal.

8.1 As per Section 62 of the O.C.S. Act, 1962, the above contention of the workman is correct. It is the Auditor-General who is authorized to audit or cause to be audited the accounts of every society for each Co-operative year. Similarly, he may engage one or more Chartered Accountants for such purpose. In the instant case, the M.D. of the management has appointed M/s K.C. Samal to cause audit of the yarn accounts of M.G.R.M. as per the pleading of the management mentioned at Para. 10 of the W.S. There is no clear provision under law regarding such power of the M.D. of the management, which the workman is challenging from the very beginning. Learned counsel for the management, during course of argument urged that there is no legal bar for such audit. But, it is quite astonishing that when the management suspected some serious misconduct by the workman relating to stock of yarn of the year 1980-81, why the same was not intimated to the higher authorities, or permission was not sought for to conduct audit by the Assistant A.G.C.S., Sambalpur Circle, Bargarh, whose office is situated at Bargarh itself. It is also contended on behalf of the learned counsel for the workman that the auditor M/s K. C. Samal was not made a witness in this case by the management, for which the workman was prevented to cross-examine him.

8.2 Ext. 3 has been prepared by M/s K. C. Samal. It appears from this document that the society could not produce some Registers and other relevant records for verification of the auditor. Admittedly, audit was conducted, for the year 1980-81, during August, 1992, i.e., after lapse of about 11 years. The auditor went through Ext. F, G, etc. during preparation of Ext. 3. He has made liable the workman towards shortage of stock as per Ext. F.

Now, coming to Ext. R/Ext. 7, this is the application made to the management by Bibatsa Kumar Rath and Halayudha Patel alleging commission of irregularities by the workman. To this document, the workman has given his reply vide Ext. 8, which is very much relevant. This document discloses that every year, yarn worth lakhs of rupees and thousand nos. bales were being transacted through M.G.R.M., for which there is possibility that different nos. of yarns may be mentioned differently, without any ill-intention. Moreover, it was directed to the workman to see whether the value of yarn stock was correct or not, and the quantity of yarn was never taken into accounts.

8.3 The Management has made reply vide Ext. 9 to Ext. 8 of the workman. This Ext. 9 discloses that the management verified the records/documents of the year 1980-81 and found that the workman had made irregularities in the yarn stock accounts." If such documents/records were available with the management, then why the copies of the same were not supplied to the workman. That apart, vide Ext. 9, the Management directed the workman to produce all documents like Stock register, challan, etc. before Shri B. Sahu, to which, the workman expressed his inability to produce those articles vide Ext. 10.

Further more, Para. 25 of the cross-examination of M.W. No. 2 discloses that he was present during the stock verification. He admitted that the workman never asked him to sign on the stock verification list without actual physical stock. He also deposed that he was never given the responsibility of physical verification of the alleged stock. He has also, in the same paragraph, deposed that actual stock verification was not his duty, for which he signed on the stock verification list without actual stock verification. It appears that the workman had no intention to cheat or cause loss to the management, for which he never asked M.W. No. 2 sign on the stock verification list without actual physical stock. M.W. No.2 was present, when Halayudha Patel took charge of yarn stock from the workman on the 2nd July 1981. Till the year 1992, there was no complaint about the same and all of a sudden, the dispute arose vide Ext. 7/Ext. R.

8.4 Now, commg to Ext. JJ, this is the charge sheet, dated the 30th September 1992 issued by the management against the workman. To this Ext. JJ, the workman made is reply vide Ext. KK, in which he sought for copies of certain documents vide Sl. No. 2 to 13 to submit his written statement of defense. Admittedly, the management refused to supply such copies and directed him to inspect those papers/documents in the chamber of the Section Officer of the society. This is evident from Ext. LL, which is a clear cut example of violation of principle of natural justice. When a departmental enquiry/proceeding is contemplated against an employee, it is the settled law to provide copies of documents to him on which the prosecution/department relies upon. The management had refused such prayer of the workman on the ground of irrelevant and *non est* documents, but it is the workman who is to decide which document he requires for his defense. It is not the proper way to direct him to inspect of those documents in the chamber of an official, when the charge is so long against him. That apart, when the workman did not submit his show cause to the charges, it was deemed by the management that he has accepted the charges. As such, the management proposed to dismiss him from service and called upon him to show cause on the proposed punishment within 48 hours. It is noteworthy to mention here that, no enquiry was conducted to find out the guilt of the workman, whereas it is the settled law that, even if a delinquent employee does not file show cause or does not take part in the departmental proceeding, an *ex parte* inquiry should be conducted to find out his guilt.

8.5 Without conducting any such enquiry, the management passed Dismissal order, vide Ext. SS, on the 2nd January 1993 against the workman, which is again a violation of the principle of natural justice. From the above analysis of evidence on record, it clearly reveals that the workman was not given sufficient opportunity to defend the allegations, made against him, leading to the departmental proceeding ultimately leading to his dismissal. He was not supplied with copies of documents relied upon by the management preparing the charge sheet against him. Due to such defect, the workman could not file his written statement of defense/show cause to the charge sheet issued against him. No enquiry, even on *ex parte* basis, was held to prove/disprove the charges made against him, and ultimately he was dismissed from service.

Admittedly, the allegation made against the workman dated back to about eleven years relating to matters of misappropriation, falsification of accounts and destruction of records/registers. He was not supplied with copies of such documents relied upon by the management. He was unable to file his written statement of defense, and without any enquiry, he was dismissed from service. It is not forthcoming, why the management did not supply the copies of documents sought for by the workman.

8.6 Another important documents is Ext. VV relied upon by the workman, which is the statutory audit report of the Management for the period 1980-81 made by the A.O.C.S., Sambalpur Circle, Bargarh. This document at page-39 discloses that, the Management/Society had a distributable profit of Rs. 6,80,134.23, after meeting all expenses and provisions, which was suggested to be distributed according to the provisions of bye-laws of the society. As such, this statutory audit report does not show any irregularity alleged to be made by the workman. However, Para. 30, Sl. No. 42 shows that Shri B. Sahu, Chemist (M.W. No. 2) was in charge of Dying branch. He failed to produce the records and information of his branch for audit, for which the actual state of affairs could not be brought to light. It was also suggested to initiate an Administrative Enquiry to the suspected irregularities in empty containers account, but as it appears, no such enquiry was conducted.

8.7 The other important document is Ext. EE, which is the latter No.1822, dated the 22nd August 2011 written by the Assistant A.G.C.S., Sambalpur Circle, Bargarh to the A.G.C.S., Odisha, Bhubaneswar. The second para of this document discloses that the M.Ds. working with the management, except Shri T. P. Mahapatra and Shri M. B. Mahapatra, had not ensured inspection under Section 64 or enquiry under Section 65 of the O.C.S. Act, 1962 pertaining to the year 1980-81. It is also revealed that had they savoured 1980-81 stock storage, they would have definitely taken recourse of Section 65 and Section 64 of the O.C.S. Act, 1962 by local R.C.S. and ensured detection, but nothing such has happened. It also appears that the un-statutory/private audit made by M/s K. C. Samal lacks legal strength, as per this document. It is also disclosed that the stock shortage amount of Rs. 6,58,835.00 said to have been detected by M/s K. C. Samal is non-existent and not tenable under law. It was also suggested to delete the recovery shown by the auditor of the office of Assistant A.G.C.S., Sambalpur Circle, Bargarh from the ensuing audit report. This is a public document, which discloses so many things.

8.8. Learned counsel for the Management, during course of argument, contended that the Management is no way related to this document, which is an intra-communication between two public offices. But, if the whole contents of Ext. EE are taken into consideration, it is a vital piece of document indicating the innocence of the workman. This document may be an intra-communication, but it is completely related to the matters in issue in this reference, which is made by a Government Official in his official capacity. The Government official making this document is the Assistant A.G.C.S., Sambalpur Circle, Bargarh, who is authorized under law to make audit of such societies under the provision of the O.C.S. Act, 1962.

9. The workman in his cross-examination has deposed that he joined under the management from June, 1963 in the Dying house and was doing work as per verbal instruction, of his superior officers. On the 2nd July 1981, he handed over charge of yam stock to Shri Halayudha Patel as per verbal instruction of the M.D. and Manager of the Dying house. At the Dying house, he was not in charge, of anything. In his cross-examination the workman repeated and deposed that, whatever work he was doing in the Dying house, it was as per instructions of the manager of Dying house. He has deposed that he had not taken over charge of anything from anybody with lock and key, and the management has not proved by filing taking over charge report by the workman. The workman has also filed copy of Attendance Register of the Dying house for the year 1980-81 vide Ext. TT and details of leave availed by him. During his leave period, yam issued (Ext. UU) from the yam house worth Rs. 7,09,632.30. This shows that the workman was not in charge of yarn stock with lock and key. Moreover, as per Ext. C and Ext. D, Shri Bibhisan Sahu, Manager in charge, had given loan to Utkal Trading Company on the 24th January 1981 without the knowledge of the workman. In such a situation, the workman cannot be held to be in exclusive charge of yarn stock.

9.1 It is also found that, M.W. No.1, examined on behalf of the management, in his examination-in-chief has deposed a lot of things, which are beyond the pleading made in the W.S. of the management. Such particulars of the examination-in-chief of M.W. No.1 had to be pleaded in the W.S. of the Management. Without doing so, new facts have been deposed in the examination-in-chief of M.W. No.1, which is also beyond the principle of pleadings.

On an overall analysis of the evidence on record, this Court is of the considered opinion that management has failed to prove entrustment of stock of yam in favour of the workman. If at all any irregularities were being found to be done by the workman, those had to be audited by the Government auditor and not by a private auditor like M/s K. C. Samal, which is not sanctioned under law. That apart, the principles of natural justice have been violated while conducting the enquiry against the workman.

10. Now coming to the ratios relied upon by both the parties, it appears that, in AIR 1965 SC 1803, Workmen of the Motipur Sugar Factory Pvt. Ltd. (*supra*) relied upon by the management, the Hon'ble Apex has held that the entire matter is open before the tribunal, if the employer has failed to make enquiry before discharge. This judgment is applicable to the present case. Similarly, in (1973) 1 SCC 813, Workmen (*supra*) the ratio decided is applicable to the present case. The ratio decided in (2021) 12 SCC 460, State of M.P. & another (*supra*) is also applicable to the present case as because the delay in conducting the enquiry III this case is not an issue.

10.1 Similarly, the ratio of AIR 1989 Orissa 109 (FB), Jayaram Panda (*supra*) is not applicable to the present case, as the criminal case is pending against the present workman. The ratio decided in 98 (2004) CLT 389, Bharat Chandra Khilar (*supra*) is similar to the ratio decided in Jayaram Panda case. The ratio decided in (1996) 2 SCC 714, Municipal Committee, Bahadurgarh (*supra*) is not applicable to the present case, as the workman has not been held guilty till now on any criminal charge by the Criminal Court.

11. Now, coming to 1991 S.C.C. (L & S) 638, State of M.P. (*supra*) relied upon by the learned counsel for the workman; it appears that the ratio laid down can be held to be applicable to the present case. But, the workman had not pleaded about the same and the management also did not defend the same. During course of argument, learned counsel for the workman urged that the ratio decided in 2009 (Supp.-I) OLR 935, A. K. Dutta (*supra*) is applicable to the present case. In this case, the Hon'ble High Court as held that "The charges should be specific, definite and giving details of the incident which form the basis of charges. No enquiry can be sustained on the vague charges. Enquiry has to be conducted fairly, objectively and not subjectively". In the instant case, it appears that the charge sheet vide Ext. JJ is very lengthy.

11.1 The ratio decided in 1999 S.C.C. (L & S) 429, Kuldeep Singh (*supra*) is applicable to the present case. Similarly, the ratio decided in 1987 S.C.C. (L & S) 295, Makhan Smgh (*supra*) is not applicable to the present case. The ratio decided in Supreme Court Service Rulings Vo1.6, 704, Vol Vrs. H.C. Goel; is also applicable in the present case, as the Hon'ble Apex Court has held that in domestic enquiry also, mere suspicion should not be allowed to take the place of proof. It is argued on behalf of the workman that there is no clear, cogent and trustworthy evidence against him in this case to hold him guilty in this case.

11.2 The ratio decided in 2000 S.C.C. (L & S) 85, Hardwari Lal (*supra*) is also argued by the workman to be applicable to this case. The ratio decided in 2014 (1) OLR 53, S.N. Mishra (*supra*) can be held to be applicable to the present case. There is dearth of reliable evidence against the workman in this case to hold him guilty for misappropriation, as alleged. Lastly, in Supreme Court Service Rulings Vo1.16, 558, State of V. P. & others Vrs. T. P. Lal Srivastava (*supra*), it has been held that, even if the employee did not give his reply in a disciplinary proceeding, the department/ authority is not absolved of the duty to hold an ex parte enquiry to find out whether or not the charge has been proved. The above ratio, as stated earlier, is squarely applicable to the present case, as the management did not make any enquiry against the workman, when he did not file any show cause, and the management deemed that the workman has accepted the charge.

2. From the above analysis, this Court is of considered opinion that the dismissal of workman Shri Lal Bihari Rath by the management with effect from the 2nd January 1993 vide Ext. SS, is held to be illegal and unjustified being not sanctioned under law. As such, he is to be reinstated in his former post with full back wages, as admissible. But, it appears that he is now aged about more than 81 years and has crossed the age of retirement.

Hence, the following award is passed:

AWARD

The reference is answered in favour of the workman and against the Management on contest without any cost. The dismissal of workman Shri Lal Bihari Rath by the management with effect from the 2nd January 1993 vide Ext. SS, is held to be illegal and unjustified. As such, he is to be reinstated in his former post with full back wages, as admissible. But, it appears that he is now aged about more than 81 years and has crossed the aged of retirement. Hence, the management of Sambalpuri Bastralaya H.L.C.S., Ltd. Bargarh, District Bargarh is directed to pay all the back wages and all financial benefits, as the workman would have been entitled to, if he had not been dismissed with effect from the 2nd January 1993. Moreover, the workman will be entitled for such benefits till the date of his retirement.

Dictated and corrected by me.

RAGHU NANDAN DAS
29-12-2023
Presiding Officer
Labour Court, Sambalpur

RAGHU NANDAN DAS
29-12-2023
Presiding Officer
Labour Court, Sambalpur

[No. 1061—LESI-IR-ID-0008/2024-LESI.]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government

List of witnesses examined on behalf of the First Party/Management:

M.W. 1 : Dhruba Charan Rath
 M.W. 2 : Bibhisan Sahu
 M.W. 3 : Duryodhan Meher
 M.W. 4 : Hemanta Mishra

List of witness examined on behalf of the Second party/workman

W.W.1 : Lal Bihari Rath

List of documents marked as exhibits on behalf of the Management:

Ext. 1 : Xerox copy of letter No. 3785, dated the 3rd June 1981 of Management
 Ext. 2 : Xerox certified copy of Stock Register
 Ext. 3 : Xerox copy of Special Audit report for the year 1980-81
 Ext. 4 : Xerox copy of Stock Verification Report dated the 30th June 1980
 Ext. 5 to 5/487 : Xerox copies of challans
 Ext. 6 to 6/1 : Standard Bills
 Ext. 7 : Photocopy of Report dated the 15th April 1992 of Shri B.K. Rath and H. Patel.
 Ext. 8 : Photocopy of Reply dated the 23rd April 1992 of Workman
 Ext. 9 : Photocopy of letter No.426, dated the 26th April 1992 of Management to the workman.
 Ext. 10 : Photocopy of Reply dated the 5th May 1992 of Workman
 Ext. 11 : Photocopy of Notice No.1114, dated the 21st May 1992 of Management to workman.
 Ext. 12 : Photocopy of Reply dated the 23rd May 1992 of Workman
 Ext. 13 : Photocopy of Suspension order No. 1480, dated the 30th May 1992
 Ext. 14 : Photocopy of letter No.3256, dated the 18th November 1992 of management to the workman.
 Ext. 15 : Photocopy of Resolution, dated the 7th February 1991 of Board of Directors
 Ext. 16 : Photocopy of Relieve Order, dated the 9th uly 1981 of Workman issued by Dying master.
 Ext. 17 : Photocopy of challan No. 1709, dated the 25th April 1988 Showing value of waste paper.
 Ext. 18 : Copy of statutory Audit Report of the Year 1994-95 conducted by Audit Officer, Co-operative Societies, S.A.C., Bargarh.
 Ext. 19 : Xerox copy of Service Book of workman
 Ext. 20 & 21 : Xerox copies of periodical Annual Increment of workman
 Ext. 22 : Copy of leave application of workman dated the 16th May 1980
 Ext.23 : Copy of Annual Stock Verification Statement of 1980-81
 Ext.23/a : Signature of workman on Ext. 23
 Ext.24 to 241 e : Documents showing receipt of goods by Workman from Shri Bibhisan Sahu, Manager of Dying House.
 Ext. 25 : Copy of Audit Report of the year 2006-07
 Ext. 26 : Copy of Audit Report of the year 2016-17
 Ext. 27 : Copy of Sub-ledger, dated the 24th April 2023

List of documents marked as exhibits on behalf of the workman:

- Ext. A : Xerox copy of Duty chart
- Ext. B : Xerox copy of purchase Bill No. 3584, dated the 23rd May 1981 of K.W.C.S.M. Ltd.
- Ext. C : Xerox copy of Acknowledgment, dated the 22nd April 1981 of receipt of goods by Utkal Trading Co.
- Ext. D : Xerox copy receipt of Utkal Trading Co. dated the 24th January 1981 taking goods on loan.
- Ext. E : Xerox copy charge sheet relating to handing over and taking over of charge, dated the 2nd July 1981.
- Ext. F : Xerox copy Stock Verification Certificate filed by M.W. No. 1
- Ext. F/1 : Signature of Manager on Ext. F
- Ext. G : Xerox copy Stock ledger extract
- Ext. H : Xerox copy of reconciliation of yarn stock
- Ext. J : Xerox copy Leave application, dated the 9th July 1980
- Ext. K : Xerox copy Leave application, dated the 27th May 1981
- Ext. L : Xerox copy of Letter of Shri K. C. Samal to the audit officer
- Ext. M : Xerox copy of Audit Certificate
- Ext. N : Xerox copy of Balance sheet for 1980-81
- Ext. P : Xerox copy of Audit Report for 1980-81
- Ext. Q : Xerox copy of Letter dated the 23rd September 1992 of workman to Management.
- Ext. R : Xerox copy Enquiry Report
- Ext. R/1 : Signature of B.K. Rath on Ext. R
- Ext. R/2 : Amount of Rs. 4938.20 appearing on Ext. R
- Ext. S : Grey yarn statement (stock)
- Ext. T : Dyed yarn stock statement
- Ext. V : Dyed yarn receive statement
- Ext. W : Dyed yarn receive statement
- Ext. X : Shortage account of M.G.R.M. yarn stock
- Ext. Y : Particulars mentioned in Annexure-11 of W.S.
- Ext. Y/1 : Entry in Ext. Y
- Ext. Y/2 : Entry in Ext. Y
- Ext. Z : Statement of stock prepared in terms of bale by Management
- Ext. Y/3 : Entry made in Ext. Y
- Ext. Z/1 : Entry made in Ext. Z
- Ext. AA : Challan depositing amount in token of sale of waste paper
- Ext. BB : Audit Report for 1990-91
- Ext. CC : Audit Report for 1993-94
- Ext. DD : Copy of Suta Challan No.1271, dated the 14th May 1981
- Ext. EE : Letter No. 1882, dated the 22nd July 2011 of A.A.G.C.S., Sambalpur Circle, Bargarh.

Ext. FF	: Audit Report for the year 2004-05, Page- 5
Ext. GG	: Letter No. 2711, dated the 14th June 2011 of PIO, Sambalpur Bastralaya H.L.C.S., Ltd.
Ext. HH	: Copy of Journal Voucher Statement of Sambalpur Bastralaya H.L.C.S., Ltd.
Ext. JJ	: Photo copies of Charge sheet dated the 30th September 1992
Ext. KK	: Photo copies of petition of workman, dated the 7th October 1992
Ext. LL	: Photo copy of letter dated the 3rd November 1992 of Management
Ext. MM	: Photo copies of answer of workman, to Management dated the 5th November 1992.
Ext. NN	: Photo copy of Lawyer's Notice of the Management to workman, dated the 7th October 1992.
Ext. PP	: Photo copies of answer of workman to Management dated the 23rd November 1992.
Ext. QQ	: Photo copies of order of Management, dated the 14th December 1992
Ext. RR	: Photo copies of show cause of workman, dated the 21st December 1992
Ext. SS	: Photo copies of Dismissal Order, dated the 2nd January 1993 of workman
Ext. TT	: Xerox copies of Attendance Register of Dying House for 1980-81
Ext. UU	: Abstract of quantity of yam issued by the Management during holidays of workman.
Ext. VV	: Copies of Audit Report of the year 1980-81 Conducted by Audit Officer Shri P. K. Dash.