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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 7th February 2024

S.R.O. No. 85/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th January 2024 passed in the ID Case No. 06 of 2019 [u/s 2-A(2)] by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between the Managements of (1) The Managing Director, M/s. C & S Electric Ltd., Regd. Office-222, Okhla Industrial Estate, New Delhi-110 020, (2) The General Manager, HR-CMO, M/s. C & S Electric Ltd., Regd. Office-222, Okhla Industrial Estate, New Delhi-110 020, (3) The Branch Manager, M/s. C & S Electric Ltd., Sector-A, Zone-B, Industrial Estate, Mancheswar, Bhubaneswar-751 010 and Shri Sugandhraj Panda, Age 34 years, Emp. No. CSO 810345, S/o Late Parsuram Panda, At Present Plot No. 1156/2804, Laxmisagar, Uparsahi, Near Maa Gojabayani Temple, Bhubaneswar-751006 is hereby published as in the schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 06 of 2019 [u/s 2-A(2)]
Dated the 20th January 2024

Present :

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

Between :

- | | |
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| The Managements of— | . . . First Party—Managements |
| 1. The Managing Director, M/s. C & S Electric Ltd.,
Regd. Office 222, Okhla Industrial Estate,
New Delhi-110 020. | |
| 2. The General Manager, HR-CMO,
M/s.C & S Electric Ltd.,
Regd. Office 222, Okhla Industrial Estate,
New Delhi-110 020. | |

3. The Branch Manager,
M/s. C & S Electric Ltd.
Sector-A, Zone-B, Industrial Estate,
Mancheswar, Bhubaneswar-751 010.

And

Shri Sugandhraj Panda, aged about 34 years, . . . Second Party—Workman
Emp. No. CSO 810345,
S/o Late Parsuram Panda,
At Present Plot No. 1156/2804,
Laxmisagar, Uparsahi,
Near Maa Gojabayani Temple,
Bhubaneswar-751 006.

Appearances :

Shri Subrat Mishra, Advocate . . . For the First Party—Management

Shri Sushant Dash, Advocate . . . For the Second Party—Workman

AWARD

The legality and justifiability of the order of dismissal of the second party dated the 10th January 2019, is under challenge in the present application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act'). It is stated in the application that initially the second party raised a grievance before the DLO, Khurda, Bhubaneswar on the 29th January 2019 but as the matter could not be resolved by the labour machinery within the stipulated period of 45 days, he approached this Forum on the 28th March 2019 by filing the present application with a prayer for his reinstatement in service with full back wages, continuity of service and all other consequential service benefits.

2. The case of the second party, in brief, is that initially he was engaged as a Peon under the first party No.3 in the year 2001 and considering his work performance he was regularly absorbed as an "Office Boy" with effect from the 1st April 2006 on a monthly wages of Rs. 2,927 which was subsequently revised from time to time and with effect from the 1st April 2017 his last drawn wages was Rs.12,278 per month and he was also covered under the EPF and ESI Scheme. It is alleged that while working as such on the 28th November 2017 one Dipak Das falsely alleged against him to have stolen/misplaced starter article and on his protest said Dipak Das slapped and assaulted him causing blood injury for which on advice of his treating physician at Shree Hospital, Bhubaneswar he remained on leave. It is stated that on his recovery when the second party wanted to resume duty on the 11th December 2017 he was placed under suspension vide order dated the 11th December 2017 ignoring his contentions raised in the e-mails dated the 2nd December 2017 and the 7th December 2017 and later on charge sheeted him vide letter dated the 27th December 2017 on the allegation that he had slapped and threatened Mr. Deepak Das and spoiled the discipline of the establishment, thereby committed serious acts of misconduct. It is stated that though the second party submitted reply to the charge-sheet through his e-mail dated the 2nd January 2018 denying the allegations of misconduct, yet the management conducted a domestic enquiry by appointing an outsider Shri Aditya Mishra, Advocate vide letter dated the 24th February 2018 in which he participated but later on when he was not allowed to be represented by union representative and in course of enquiry he was compelled to sign in some computer typed papers by the E.O. as

a mark of protest he did not appear in the enquiry proceeding on and from the 8th September 2018. He stated to have received the copy of the enquiry report along with the second show cause notice from first party No.2 vide letter dated the 26th December 2018 and while replying the same vide letter dated the 29th December 2018 although he had prayed for re-opening of the enquiry on various grounds, yet the first party No. 2 without considering the same imposed on him the punishment of dismissal vide order dated the 10th January 2019 along with a Demand Draft for Rs.37,035 towards full and final settlement of his dues owing to his resignation from service which he returned on protest vide letter dated the 29th January 2019, but again the same having been sent to him by the management, he submitted a protest letter on the 19th February 2019 stating that he is not going to encash the above Demand Draft and would file the same before the Court of law without prejudice to his right to challenge the action of the management. According to the second party, his untimely dismissal completely devastated his social and financial backbone as it casts a stigma on his career and reputation and not only he himself but also his entire family suffered grave adversities and deprived of the source of sustenance. It is stated that when his grievance before the management yielded no result, he being a workman, as also the first party is an 'industry' and further his dismissal is an 'industrial dispute' as defined under the Act, he raised a complaint before the labour authority but the same having not resolved within the stipulated period of 45 days, he approached the present forum by filing the present application u/s 2-A(2) of the Act with a prayer for his reinstatement in service with full back wages and all other consequential service benefits.

3. On behalf of the first party managements, management No.3 entered contest in the case and filed the written statement challenging maintainability of the application on the ground that no industrial dispute has ever been complained of before the labour machinery as against the first party No.1 and 2 on the purported issue and the proceeding is bad in law for misjoinder of party(s). Admitting the employment of the second party under first party No.3, it is stated in the written statement that in course of his employment on the 28th November 2017 he argued with one of his superior officers Mr. Deepak Das and also abused, slapped and threatened him and had he not been rescued by another official namely, Mr. Saurabh the second party would have beaten Shri Das more. It is stoutly denied in the written statement that ever any wrong deed was committed by Shri Das, nor the second party had got any injury resulting his medical treatment, nor was he asked to resign from service, as alleged by the second party, rather the second party regretted for the incident dated the 28th November 2017 and begged apology for his conduct. It is stated that as the act of the second party constituted a misconduct he was placed under suspension and a departmental enquiry was drawn up. In the domestic enquiry he was given all opportunities in his defence, which of course he did not avail and on conclusion of the enquiry, a second show cause notice was issued to him together with a copy of the enquiry report and considering the reply received thereto, the punishment of dismissal was imposed on him as a disciplinary measure. In the above background, the first party asserts that the case of the second party has no merit and is liable to be answered in the negative as against the second party.

4. The second party filed a rejoinder to the written statement mostly reiterating his stand taken in the claim statement and further asserting therein that prior to approaching this forum the second party has validly raised his grievance before all authorities of the management and even while raising his complaint before the labour machinery copies of such petition was also served on all the first party managements by speed post on the 29th January 2019 and with the insertion of amendments in the Industrial Disputes Act vide the Industrial Disputes (Amendment) Act, 2010 (24 of 2010) (with effect from the 15th September 2010), a workman has got a direct access to

Labour Court or Tribunal in case of dispute arising due to discharge, dismissal, retrenchment or termination of service, subject to stipulations under the 2-A(2) of the Act.

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

ISSUES

- (i) Whether the case is maintainable?
- (ii) Whether the domestic enquiry conducted against the second party workman is fair and proper?
- (iii) Whether the action of the Management of M/s. C&S Electric Ltd. in dismissing the services of Shri Sugandhraj Panda, Office Boy of Bhubaneswar Office with effect from the 10th January 2019 is legal and/or justified?
- (iv) If not, what relief Shri Panda is entitled to ?

FINDINGS

6. *Issue No.(ii)*—Out of the issues, finding on Issue No. (ii) which relates to the fairness and propriety of the domestic enquiry conducted against the second party has already been arrived at by this Tribunal vide order dated the 23rd December 2022 holding the enquiry to be fair and proper, accordingly the parties having given opportunity to adduce evidence, if any, on other issues, while the second party examined himself the first party examined Shri Pravin Kumar Mishra its Commercial Officer (F&A) and no documentary evidence is adduced by either party.

7. *Issue No.(i)*—There being no dispute over the fact that the first party is an ‘industry’ and the second party a ‘workman’ under the Act, no discussion on that score is necessary. The first party has also raised a plea that there being no industrial dispute raised over the purported issue as against the Managing Director and General Manager of the first party, nor conciliation thereof was ever taken up by the labour machinery, the proceeding is not maintainable. As it appears from Ext.14 and Ext.15 (which are admitted into evidence without there being any objection from the side of the first party), the second party had made a representation to the Managing Director as well as General Manager of the first party with a prayer for consideration of his grievance and so also ventilated his grievance before the District Labour Officer, Khurda at Bhubaneswar on the 29th January 2019. The instant application preferred by the second party is of dated the 28th March 2019. Hence, there is reason to believe that his grievance could not be resolved by the first party or by the labour machinery within the stipulated period giving him a scope to approach the present forum to redress his grievance. There being on statutory infraction, the proceeding is held to be maintainable in this Forum.

Issue No.(i) is answered accordingly in favour of the second party.

8. *Issue Nos.(iii) and (iv)*—Both the issues being inter-linked with each other, are taken up for consideration simultaneously.

At the cost of repetition, it may be stated here that the domestic enquiry conducted against the second party has already been held by this Tribunal to be fair and proper vide order dated the 23rd December 2022 and therefore, in the second round of litigation this Tribunal is required to see as to whether the punishment imposed on the second party can be said to be disproportionate on the face of the proved misconduct. In the context, it is profitable to refer to a judgment dated the 22nd February 2005 of the Hon'ble Apex Court in the case of Mahindra and Mahindra Ltd. Vs. N.B. Narawade (Civil Appeal No. 1507 of 2003), wherein their Lordships have held thus :—

It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the concerned workman is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to herein above and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment.

The above being the position of law to decide the issue under consideration, now it is to be examined on the basis of evidence available on record as to how far the parties to the dispute are able to substantiate their respective stand on the score.

9. The punishment of dismissal was imposed on the second party; he being found guilty of the charges which were to the following effect:—

xx You are working with C&S Electric Ltd. In the capacity of Office Boy and you reported duty at 9-20 A.M. on the 28th November, 2017, Mr. Deepak Das asked to provide the sample starter, instead of supporting him by searching the same you argued with him, abused him and trashed him. You slapped and threatened Mr. Deepak Das who was rescued by Mr. Saurabh Das otherwise you would have beaten him more. Thereby you spoiled the discipline of the establishment and committed serious acts of misconduct calling for the disciplinary action.

Above acts on your part are acts of serious misconducts within the general meaning of word and as defined under Clause 2.5 (Discipline, Termination, Separation and Grievance Policy) of Employment Practice/Service Rules of the Company. xx”.

On establishment of the above charges against the second party in a duly constituted domestic enquiry, now it is argued on behalf of the second party that on conclusion of the enquiry he had made a representation to the Disciplinary Authority on the 29th December 2018 seeking re-opening of the enquiry and to allow him an opportunity to prove his innocence but the first party without considering the same and ignoring his past unblemished service under it for almost 18 years, inflicted on him the extreme punishment of dismissal from service. According to the second party, the punishment of dismissal is shockingly disproportionate to the alleged acts and needs interference.

Per contra, it has been specifically argued on behalf of the first party that there is ample evidence on record that soon after completion of the enquiry a copy of the findings of the enquiry officer along with a second show cause was issued to the second party on the 26th December 2018 and after having received reply thereof from the second party on the 29th December 2018, the disciplinary authority taking into consideration the aggravating circumstances *vis-a-vis* the gravity of the misconduct committed by the workman and moreover the indifferent attitude of the second party towards his duty and discipline had come to a reasonable conclusion of dismissing

the second party from service as a disciplinary measure and accordingly passed orders on the 10th January 2019 for his dismissal from service. Leaned counsel for the management submitted that looking to the gravity of the misconduct committed by the second party, the punishment cannot be held to be shockingly disproportionate requiring any interference by the Tribunal in exercise of its powers under Section 11-A of the Act.

10. W.W. 1 while adducing evidence on other issue has stated many things with regard to the domestic enquiry, findings on which has already been arrived at by this Tribunal. His examination in chief discloses that he has focused very much on his representation dated the 29th December 2018 (Ext. 12) which was addressed to the first party and stated that his grievance for re-opening of the enquiry was not considered by the Disciplinary Authority, which amounts to legal victimisation, On perusal of record, it is found that Ext. 12 is the reply of the second party to the second show cause dated the 26th December 2018 (Ext. 11). On further perusal of record it is found that the Disciplinary Authority has duly considered the representation dated the 29th December 2018 of the second party and considering the seriousness of the proved misconduct of the second party and to maintain discipline in the industry imposed on him the punishment of dismissal from service.

M.W. 1 has stated in his examination in chief as to the conduct of the enquiry against the second party and the role of the Disciplinary Authority soon after receipt of the findings of the Enquiry Officer on the charges levelled against the second party. During his cross-examination M.W. 1 feigned his knowledge as to if the management remained silent on the second party's raising grievance under Ext. 10. A scrutiny of Ext. 10 reveals that the same was a belated representation dated the 20th November 2018 addressed to the Enquiry Officer and so also to the Presenting Officer requesting them to allow him to be represented through a lawyer, inasmuch as, Ext. 16 the enquiry report discloses that by the time of submission of Ext. 10 by the second party the enquiry proceeding had already been over and the Enquiry Officer had already recorded his findings vide order dated the 10th September 2018. In that view of the matter, Ext. 10 is of no help to the second party; the same having been addressed to the Enquiry Officer and the Presenting Officer. Though M.W. 1 faced cross-examination, yet nothing material brought out from his mouth to discredit his statement in examination in chief.

11. Keeping in view the verdict of the Hon'ble Apex Court in the case of Mahindra & Mahindra (*supra*) and on a cumulative assessment of the evidence on record; the charges levelled against the second party and the punishment imposed as a result of the proved misconduct, I do not find any extenuating circumstances to exercise powers under Section 11A of the Act and to substitute any other punishment in place of the one that has been imposed by the Disciplinary Authority, accordingly the action of the first party in dismissing the second party from service with effect from the 10th January 2019 is held to be legal as well as justified, as a consequence of which the second party is not entitled to any relief in the present proceeding.

Issues Nos. (iii) and (iv) are answered accordingly.

Dictated and corrected by me.

BENUDHAR PATRA
20-01-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
20-01-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 1086—LESI-IR-ID-0013/2024-LESI.]

By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government