

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1613 CUTTACK, WEDNESDAY, NOVEMBER 24, 2004 / MARGASIRA 3, 1926

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th October 2004

No. 8857-li/1(B)-387/1991-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th June 2004 in Industrial Dispute Case No. 59 of 1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Mahanadi Chitrotpala Irrigation Circle, Cuttack and their workman Shri Bidur Nayak represented through Mahanadi Barrage Employees Union, Cuttack was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 59 OF 1993

Dated the 28th June 2004

Present :

Shri P. K. Sahoo, o.s.j.s. (Jr. Br.)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of .. First Party—Management
Mahanadi-Chitrotpala Irrigation Circle
Cuttack.

And

Their Workman .. Second Party—Workman
Shri Bidur Nayak
represented through
Mahanadi Barrage Employees Union
Cuttack.

Appearances :

For the First Party–Management	..	Shri Binod Behari Patnaik Government Pleader.
<hr/>		
For the Second Party–Workman	..	Shri A. C. Mohanty Advocate.

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department memo. No. 5549(7)-L.E., dated the 10th May 1993 for adjudication and Award.

2. The terms of the reference may briefly be stated as follows :—

“Whether the termination of services of Shri Bidur Kumar Nayak, N.M.R. Driver, by the Executive Engineer, Birupa-Genguti Island Irrigation Division, Nurtang, Cuttack with effect from the 1st August 1990 is legal and/or justified ? If not, to what relief Shri Nayak is entitled ?”

3. Workman Shri Bidur Kumar Nayak represented through the General Secretary of Mahanadi-Birupa Barrage and Chitrotpala-Genguti Irrigation Project Employees Union, Gandarpur, Cuttack under the present reference has challenged the legality and justifiability of the action of the Executive Engineer, Birupa-Genguti Island Irrigation Division, Nurtang, Cuttack (in short the management) in terminating him from the service with effect from the 1st August 1990. It is stated in the statement of claim that the workman was engaged as N. M. R. Driver under the management with effect from the 1st June 1986 and continued to work as such till the date of his termination on the 1st August 1990. During the above service period he had worked under the control of Chief Research Officer, Mahanadi Barrage Quality Control and Research Division, Cuttack and was subsequently transferred to various Divisions of the Circle, i.e. Executive Engineer, Birupa-Genguti Island Irrigation Division, Executive Engineer, Mahanadi Barrage Division No. III, and the Executive Engineer, Mahanadi Barrage Division No. II. Although he had rendered continuous uninterrupted service for more than four years with effect from the 1st June 1986 till the date of his termination on the 1st August 1990 with much sincerity, devotion and to the utmost satisfaction of the management in different Divisions of the Circle but the management without any rhyme or reason illegally terminated him from the service with effect from the 1st August 1990 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further stated on behalf of the workman that since the action of the management in terminating the services of the workman with effect from the 1st August 1990 was illegal, arbitrary and unjustified, the reinstatement of the workman in service with full back wages along with other service benefits has been prayed for by the General Secretary of the Employees Union. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. According to the management, the workman has been engaged as N. M. R. on daily wage basis and as and when need was felt and the workman

had not completed 240 days of continuous service. It is further averred in the written statement that since the workman did not work for more than 240 days in a calendar year, the provisions of Section 25-F of the Act was not attracted and there was no question of giving any notice or notice pay and retrenchment compensation. According to the management, the workman had never been appointed nor posted on transfer and therefore not entitled to any relief as prayed for. Accordingly the rejection of the claim of the workman has been prayed for by the management under the present reference.

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

ISSUES

- (i) Whether the termination of services of the second party workman, N. M. R. Driver by the first party management with effect from the 1st August 1990 is legal and/or justified ?
- (ii) What relief, if any, the second party workman is entitled to ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copies of the documents such as, certificates (5 Nos.) marked as Ext. 1 series. On the other hand, the management has examined one Shri Gopinath Patnaik as M. W. 1 and has relied upon the xerox copies of the documents such as, Service Book of Shri A. Dharma Raju, seniority list of the N. M. R. workers, Government Circulars marked as Exts. A to F respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of the workman clearly emerges that he was working as Jeep Driver under the management since 1986. He first joined at Mahanadi Barrage Quality Control Division, Cuttack. He continued to work under different Divisions till the 31st July 1990. Thereafter he was not entrusted with any work. He has categorically stated that he had completed more than 240 days of continuous service in a calendar year but the management without any reason terminated him from service without giving any notice or notice pay and retrenchment compensation. It is also in his evidence that the junior employees are still continuing in their respective posts and after his disengagement the other Jeep Drivers were engaged by the management. He has further stated that all the Divisions were the branches of the Mahanadi Barrage Division and he had worked under various Divisions on transfer. During the course of his evidence he has duly proved the certificates issued by the different Assistant Engineers as well as the Assistant Research Officer No. II, Mahanadi Barrage Quality Control and Research Division, Cuttack marked as Ext. 1 series indicating the period of engagement with effect from the 1st June 1986 till the 31st July 1990. It has been suggested to him that he had not completed 240 days of continuous service in a calendar year to which he has replied in the negative. The management through M. W. 1 has tried its best to prove and establish that the workman had not completed 240 days of continuous service under the

management. But on perusal of the evidence of M. W. 1 it is seen that he has clearly admitted the engagement of the workman under the management with effect from the 1st January 1990 till the 31st July 1990 as N. M. R. Driver and thereafter he was disengaged with effect from the 1st August 1990 due to completion of the work. He has further stated that since the workman did not work continuously for more than 240 days, no compensation was paid to him. In his evidence he has totally expressed his ignorance about the engagement of the workman in other Divisions. He admits during his cross-examination that he has not seen any document with regard to the engagement of the workman during 1989 but he was working during the year 1990 as it revealed from the muster roll for the year 1990. He has clearly admitted that the muster rolls for the year 1989 and 1990 are available in the office and he has no personal knowledge about the details of the engagement of the workman. It has been suggested to him by the workman that prior to the 31st July 1990 he had worked for more than 240 days preceding 12 calendar months in Birupa-Genguti Island Irrigation Division and that the employee namely, A. Dharma Raju joined in the Division on transfer on the 3rd September 1992 as Driver to which he has given negative replies. He admits in his cross-examination that the employee namely, Shri Daitari Parida was originally appointed as N. M. R. Mate during September, 1988 and he is now continuing as N. M. R. Driver since the 1st August 1992. In course of his evidence he has proved the documents such as, Service Book of A. Dharma Raju, seniority list of N. M. R. workers and the Government Circulars marked as Exts. A to F respectively. On perusal of his evidence it is clearly evident that he has no personal knowledge about the details of the engagement of the workman rather he admits that the muster rolls for the year 1989 and 1990 indicating the details of the engagement of the workman have not been produced in the instant case.

8. After carefully examining the evidence led by both the parties it is abundantly clear that the workman had rendered continuous uninterrupted service in different Divisions of the Circle with effect from the 1st June 1986 till the 31st July 1990. In this respect the evidence of the workman clearly goes to show that he first joined under Mahanadi Barrage Quality Control and Research Division, Cuttack with effect from the 1st June 1986 as N. M. R. Driver and continued to work as such till the 4th July 1989. Thereafter he worked under Mahanadi Barrage Division No. III, Jagatpur from the 1st August 1989 to the 31st November 1989, under Birupa-Genguti Island Irrigation Mechanical Subdivision, Cuttack with effect from the 1st December 1989 till the 31st March 1990 and from the 1st April 1990 to the 31st July 1990 he had worked as N. M. R. Driver under Birupa-Genguti Island Irrigation Subdivision No. II, Kathapada. The workman has relied upon the certificates issued by different Assistant Engineers of different Divisions of the Circle indicating the period of engagement with effect from the 1st June 1986 till the 31st July 1990 marked as Ext. 1 series. All these certificates already relied upon and proved by the workman clearly go to show that he has rendered continuous uninterrupted service for more than four years and during the span of four years no allegation of misconduct had at all been raised by different authorities of the Divisions of the Circle. Neither any enquiry nor any departmental proceeding had ever been initiated against the workman during his tenure of service. On the whole there was no stigma of any kind during the tenure of his service. M. W. 1 in his evidence has clearly admitted the engagement of the workman under the management with effect from the 1st January 1990 till the 31st July 1990. Thereafter he

was disengaged with effect from the 1st August 1990 due to completion of work. In his evidence he has categorically stated that he has no personal knowledge with regards to the engagement of the workman in any other Division. In this respect he has totally expressed his ignorance about the details of the engagement of the workman and it is quite obvious, because he had joined as Executive Engineer under the management with effect from the 18th July 1996 only. After examining the evidence of M. W. 1 it is seen that his evidence does not reveal with regard to the details of the engagement of the workman under different Divisions in the Circle. That apart, the certificates marked Ext. 1 series have nowhere been challenged and disputed by the management anywhere in the evidence. Therefore, all the certificates under Ext. 1 series appear to be genuine and leave no room to entertain doubt rather it clearly indicates the continuous uninterrupted service of the workman concerned with effect from the 1st June 1986 till the 31st July 1990. It has been established by the workman that although he had rendered continuous service for more than four years but the management without any rhyme or reason illegally terminated him from the service without giving any notice or notice pay and retrenchment compensation which, in my opinion, are in complete violation of the mandatory provisions of Section 25-F of the Act.

9. It has been decided in catena of decisions that Section 25-F of the Act being a beneficial legislation it has to be strictly complied with and is a mandatory pre-condition. The non-compliance of Section 25-F of the Act renders the order of retrenchment void *ab initio*. It is well settled that compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes null and void. A workman under Section 25-F of the Act is entitled to one month's notice before retrenchment or one month's pay in lieu thereof. Such notice or payment in lieu thereof is a condition precedent for effecting retrenchment. But in the instant case such condition precedent has not been followed by the management. The non-compliance with the provisions of Section 25-F of the Act renders the termination of service of the workman ineffective and the workman is therefore entitled to reinstatement. In view of the above legal position it can safely be concluded that the termination of the workman is retrenchment. Therefore the termination having been made in violation of the mandatory provisions in Section 25-F of the Act is void *ab initio*. Nobody has disputed the proposition that if the termination is retrenchment then it is void in view of the violation of the provisions of Section 25-F of the Act. Admittedly the workman was not given any notice or notice pay in lieu of notice or retrenchment compensation. So the termination, in my view is void *ab initio*. The Hon'ble Apex Court has consistently taken the view that the provisions of Section 25-F of the Act is mandatory and in violation thereof will render the retrenchment void *ab initio*. After carefully examining the entire evidence on record coupled with the proved documents and keeping in view the settled position of law, I am of the view that the action of the management in terminating the services of the workman with effect from the 1st August 1990 is illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter the workman is entitled to the relief of reinstatement.

10. The perusal of the schedule of reference clearly emerges that the workman has been terminated from service with effect from the 1st August 1990. Nowhere it has been proved and established that the workman has been gainfully employed elsewhere with effect from

the date of his termination. Under such circumstances the ends of justice would be best served if the workman will be reinstated in service. But on the facts and circumstances of this case, as the workman had not worked with effect from the date of his termination, he is entitled to get a lump sum compensation to the tune of Rs. 7,000 in lieu of back wages. Both the above issues are answered accordingly.

11. Hence it is ordered :

That the termination of services of Shri Bidur Kumar Nayak, N. M. R. Driver by the Executive Engineer, Birupa-Genguti Island Irrigation Division, Nurtang, Cuttack with effect from the 1st August 1990 is neither legal nor justified. The workman Shri Nayak is entitled to be reinstated in service with a lump sum compensation of Rs. 7,000 (Rupees seven thousand only) in lieu of back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
28-6-2004
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
28-6-2004
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
D. MISHRA
Under-Secretary to Government