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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 11th April 2005

No. 3649–li/1(B)-40/1993-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2005 in Industrial Dispute Case No. 116/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. Tripty Drinks (P) Ltd., Jagatpur, Cuttack and its Workman Shri Sarada Prasad Das was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 116 OF 1995

Dated the 31st March 2005

*Present :*

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

*Between :*

The Management of .. First Party–Management  
M/s. Tripty Drinks (P) Ltd., Jagatpur.

And

Its Workman .. Second Party–Workman  
Shri Sarada Prasad Das.

*Appearances :*

For the First Party–Management .. Shri S. B. Tripathy, Advocate

For the Second Party–Workman .. Shri S. B. Mishra, Advocate

## AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) 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. 7097(5)-L. E., dated the 16th June 1995 for adjudication and award.

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

“Whether the termination of services of Shri Sarada Prasad Das, Sales Supervisor with effect from the 26th May 1992 by way of refusal of employment by the management of M/s. Tripty Drinks (P) Ltd., Jagatpur, Cuttack is legal and/or justified ? If not, what relief Shri Das is entitled to ?”

3. The case of the workman Sarada Prasad Das, in brief is that he was initially appointed as Sales Supervisor on probation for a period of six months vide letter No. 1110, dated the 20th July 1988 on consolidated wages Rs. 1,000 per month by the management of M/s. Tripty Drinks (P) Ltd., Jagatpur, Cuttack (in short the management). After successful completion of his probation period, he was confirmed in the said post vide letter No. 325, dated the 1st/27th May 1989 and his appointment as Sales Supervisor commenced from the 20th July 1988. He continued to discharge his duty assigned to him to the utmost satisfaction of the management till he was refused employment on the 26th May 1992. According to the workman, the management without any rhyme or reason illegally terminated him from service with effect from the 26th May 1992 without following the mandate of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act). It is further averred in the statement of claim that neither any charge was framed nor any enquiry was conducted against him by the management before such termination. Since the action of the management in terminating his service with effect from the 26th May 1992 was illegal and unjustified, he raised the present dispute and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. The workman while challenging the action of the management with regard to termination of his service has now prayed for his reinstatement in service with back wages and other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman *inter alia* stated that the workman voluntarily tendered his resignation and accepted all his legal dues towards full and final settlement. According to the management, the services of the workman had not been terminated rather he tendered his resignation voluntarily to get better employment elsewhere. Since the workman had voluntarily tendered his resignation and received all his dues towards full and final settlement, he is not entitled to get 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 Shri Sarada Prasad Das, Sales Supervisor with effect from the 26th May 1992 by way of refusal of employment by the management of M/s. Tripty Drinks (P) Ltd., Jagatpur, Cuttack is legal and/or justified ?
- (ii) If not, what relief Shri Das 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, appointment order, confirmation letter, duty chart and representation marked as Exts. 1 to 3 respectively. On the other hand the management has examined one D. S. Ray and Bikram Kumar Bhoi as M. Ws. 1 and 2 and has relied upon the xerox copies of the documents such as full and final settlement of the dues of the workman, register of letter received marked as Exts. A and B 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 reveals that he joined in the establishment of the management with effect from the 20th July 1988 as Clerk-*cum*-Supervisor on probation for a period of six months vide Ext. 1 and was confirmed in the service vide Ext. 2 and continued to discharge his duty sincerely and faithfully up to 25th May 1992. He was refused employment on the 26th May 1992. The management while refusing employment had not given any notice or notice pay and retrenchment compensation to him. Neither any charge was framed nor any domestic enquiry was conducted against him but he was illegally refused employment by the management. Subsequently he made representation to the management praying for his reinstatement in service vide Ext. 3. During cross examination he admits that he has received a sum of Rs. 4,934 by cheque from the management towards full and final settlement vide Ext. A . It has been suggested to him that he had submitted resignation letter on the 27th April 1992 and that he was not refused employment and that he voluntarily abandoned the service by tendering resignation to which he has negatively replied. On the other hand, the evidence led by the management through M. Ws. 1 and 2 clearly goes to show that the workman voluntarily tendered his resignation which was accepted by the management and thereafter the claim of the workman was finally settled and an amount of Rs. 4,934 was paid to him. The resignation letter dated the 27th April 1992 of the workman was received by the management on the 29th April 1992 vide Sl. N. 321 of the register of letter received vide Ext. B. Both the above witnesses have clearly stated that the resignation letter submitted by the workman is not available in the office but the resignation letter was accepted by the management and all the statutory dues were paid to the workman towards full and final settlement which he had received. They have categorically stated that the workman was not refused employment but he tendered his resignation voluntarily and therefore he is not entitled to any relief as prayed for. Both the above witnesses have been cross examined at length but the evidence in cross examination is not scattered by the workman in any manner.

8. The perusal of the documents relied upon by the management vide Exts. A and B clearly emerges that the resignation letter of the workman was received by the management on the 27th April 1992. An amount of Rs. 4,934 was paid to the workman by cheque towards full and final settlement. After carefully examining the above documents, I find no cogent reason to disbelieve the same, rather it leads me to arrive at a just conclusion that the workman had tendered his resignation voluntarily which was accepted by the management and an amount of Rs. 4,934 was paid to him towards full and final settlement. Admittedly the management

has not been able to produce the resignation letter submitted by the workman but on this ground alone the above documents can not be thrown aside. Apart from that the fact of such resignation has nowhere been challenged by the workman in any manner during the evidence. Therefore, I find no cogent reason to disbelieve those documents. The workman has taken a plea that he was refused employment and the management while refusing employment had not given any notice or notice pay and retrenchment compensation but such plea taken by the workman has not been substantiated during evidence. In that view of the matter, the plea taken by the workman is without substance. From the above discussion it is crystal clear that the services of the workman have not been terminated by the management by way of refusal of employment rather he has voluntarily tendered his resignation and accepted all his dues towards full and final settlement. Under the above circumstances the workman is not entitled to any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO  
31-3-2005  
Presiding Officer  
Labour Court  
Bhubaneswar.

P. K. SAHOO  
31-3-2005  
Presiding Officer  
Labour Court  
Bhubaneswar.

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By order of the Governor  
D. MISHRA  
Deputy Secretary to Government