

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 257 CUTTACK, FRIDAY, FEBRUARY 11, 2005 / MAGHA 22, 1926

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th January 2005

No. 770—li/l (B)-180/1993-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd December 2004 in Industrial Disputes Case No. 233 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the M/s. Orissa State Civil Supply Corporation Ltd., Bhubaneswar and its workman Shri Purna Chandra Mallick was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 233 OF 1995

Dated the 23rd December 2004

Present :

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

Between :

The Management of .. First Party—Management
Orissa State Civil Supply Corporation Ltd.
Bhubaneswar.

And

Their Workman .. Second Party—Workman
Shri Purna Chandra Mallick.

Appearances :

For the First Party—Management .. Shri S. B. Rout

For the Second Party—Workman himself .. Shri P. C. Mallick

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. 10381-L. E., dated the 14th August 1995 for adjudication and Award.

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

“Whether the termination of services of Shri Purna Chandra Mallick, Watchman, Bapujinagar Branch by the management of Orissa State Civil Supply Corporation Ltd., Bhubaneswar with effect from the 25th June 1992 is legal and/or justified ? If not, what relief Shri Mallick is entitled to ?”

3. The brief facts giving rise to the present reference are that workman Shri Purna Chandra Mallick was engaged as Watchman in the Model Fair Price Shop by the management of Orissa State Civil Supply Corporation Ltd., Bhubaneswar (in short the management) with effect from the 17th August 1991. His services were placed under the control of District Manager, Orissa State Civil Supply Corporation, Khurda and in fact he was engaged in the Model Fair Price Shop opened at Jagamara in view of the requirement of the District Manager under the Model Fair Price Scheme. He continued to work as such till the date of his termination on the 25th June 1992. According to the workman, he had rendered continuous uninterrupted service for more than 240 days in the establishment of the management with much sincerity, devotion and to its utmost satisfaction but the management without any rhyme or reason had illegally terminated him from service with effect from the 25th June 1992 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act) while challenging the legality and justifiability of the action of the management in terminating his services with effect from the 25th June 1992, he has now prayed for his reinstatement in service with full back wages. Hence, the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. While admitting the engagement of the workman with effect from the 17th August 1991 the management has categorically averred that the terms and conditions of the engagement were purely temporary in nature for a specified period of 44 days on daily wage basis at the prescribed rate under the provisions of Minimum Wages Act and the extension of such engagement was considered exclusively on reasons of requirement and necessity with the condition that such engagement was terminable at any time without assigning any reason thereof. On acceptance of the above terms and conditions of engagement, the workman reported for duty with effect from the 17th August 1991 for a period of 44 days which period was extended from time to time on daily wage basis according to the requirement and necessity of the management. It is further stated by the management that consequent upon closure of Model Fair Price Shop at Jagamara, the services of the workman were no longer required as reported by the District Manager, Orissa State Civil Supply Corporation, Khurda and thereafter no appointment order was issued to the workman. According to the management this being termination of service on expiry of the contract period, there being no renewal in the wake of closure of the Shop, the case of the workman can not be accepted and he is no more entitled to get any relief as 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 by the first party management with effect from the 25th June 1992 is legal and/or justified ?
- (ii) If not, what relief the 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 office order, dated the 17th August 1991, extension order No. 1251, dated the 21st May 1992, office order No. 1468, dated the 10th June 1992, Memo No. 260, dated the 28th January 1992 and letter No. 1755, dated the 26th November 1991 marked as Exts. 1 to 5 respectively. The management, on the other hand, has neither examined any witness nor relied upon any document 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 had worked continuously under the management with effect from the 17th August 1991 till the 24th June 1992 but the management without giving any notice or notice pay and retrenchment compensation and without conducting any enquiry of any allegation had illegally terminated his services with effect from the 25th June 1992. He has categorically stated that after such termination, the management had illegally engaged another person with effect from the 25th June 1992. During evidence, he has proved the xerox copies of the documents, such as appointment order, extension order, office order, dated the 10th June 1992, Memo, dated the 28th January 1992 and letter, dated the 26th November 1991 marked as Exts. 1 to 5 respectively. During cross-examination, nothing material and substantial has been elicited so as to disbelieve and discard his evidence. Rather the workman has clearly stated that although he was officially shown as Watchman at Jagamara shop but in fact he was working at Bapujinagar.

8. Admittedly the management has neither examined any witness nor relied upon any document in support of its case. The perusal of the sole evidence of the workman clearly emerges that he had rendered continuous service with effect from the 17th August 1991 till the date of his termination on the 25th June 1992 and had completed 240 days of service in terms of the statutory provisions as a regular employee but the management without following the mandate of Section 25-F of the Act had illegally terminated his services with effect from the 25th June 1992 and therefore the termination having been made in violation of the mandatory provisions of the Act, in my view, is void *ab initio*. Besides the stand taken by the management in its written statement has nowhere been proved and established in any manner. Even the management has not elicited anything material and substantial from the evidence of the workman in support of its plea so as to come to a definite conclusion that the plea taken by the management in its written statement are absolutely correct. Rather I am of the considered view that the management has miserably failed to demonstrate the plea already taken in its written statement. In absence of any rebuttal evidence to that effect, the plea taken by the management, in my opinion, is without substance. Rather the documents already relied upon by the workman clearly go to show that he had rendered continuous service in terms of the mandatory provisions of the Act.

9. Law is well settled that compliance of Section 25-F of the Act is must, otherwise, the order of termination became null and void. Section 25-F of the Act being a beneficial legislation, it has to be strictly complied with and is a mandatory pre-condition but in the present case at hand, the condition precedent has not been followed by the management while terminating the services of the workman. The Hon'ble Apex Court in the matter of Karnataka State Road Transport Corporation Vrs. M. Boraiah reported in AIR 1982 Supreme Court 1320, Gammon India Ltd. Vrs. Niranjan Das reported in 1984 (48) FLR 310 and Workmen Vrs. Food Corporation of India reported in AIR 1985 Supreme Court 670 has consistently taken the view that "The provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*". After carefully examining the evidence of the workman and the documents already relied upon by him and keeping in view the settled position of law, I am of the opinion that the action of the management in terminating the services of the workman with effect from the 25th June 1992 was 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 25th June 1992 and nowhere it has been proved and established by the management that the workman has been gainfully employed elsewhere with effect from the date of his termination. In such view of the matter, the workman is entitled to be reinstated in service but on the facts and circumstances of the present 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. 5,000 in lieu of back wages which, in my opinion, would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

11. Hence, it is ordered :

That the termination of services of Shri Purna Chandra Mallick, Watchman, Bapujinagar Branch by the management of Orissa State Civil Supply Corporation Ltd., Bhubaneswar with effect from the 25th June 1992 is neither legal nor justified. The workman Shri Mallick is entitled to be reinstated in service with a lump sum compensation of Rs. 5,000 (Rupees five thousand only) in lieu of back wages.

The reference is thus answered accordingly .

Dictated and corrected by me.

P. K. SAHOO
23-12-2004
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
23-12-2004
Presiding Officer
Labour Court, Bhubaneswar

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