

# The Orissa Gazette

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## **LABOUR & EMPLOYMENT DEPARTMENT**

### **NOTIFICATION**

The 27th April 2005

No.4098–li/1(B)-31/2005-L.E.—In pursuance of Section 17 of the Industrial Disputes Act,1947 (14 of 1947), the Award, dated the 31st March, 2005 in I.D. Case No. 44/1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of Bhubaneswar Municipality, Bhubaneswar and its workman Shri Pramod Kumar Swain was referred for adjudication is hereby published as in the scheduled below :

### **SCHEDULE**

#### **IN THE LABOUR COURT, BHUBANESWAR**

**INDUSTRIAL DISPUTE CASE No. 44 OF 1993**

**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  
Bhubaneswar Municipality,  
Bhubaneswar. . . First-party—Management

And

Its Workman  
Shri Pramod Kumar Swain. . . Second-party—Workman.

*Appearances:*

Smt S. Nanda, Advocate  
Shri S. S. Panda, Advocate . . For the First-party—Management

Shri S. Mishra, Advocate . . For the Second-party—Workman

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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.4321 (5)/LE., dated the 17th April 1993 for adjudication and Award.

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

“Whether the action of the management of Bhubaneswar Municipality, Bhubaneswar in terminating the services of Shri Pramod Kumar Swain, with effect from 1-3-1990 is legal and/or justified? If not, what relief Shri Swain is entitled to?”

3. Matrix of the necessary facts as bear on the controversy involved in the present reference is that workman Pramod Kumar Swain was engaged as D.L.R. by the management of Bhubaneswar Municipality, Bhubaneswar (in short the management) with effect from September, 1988. He continued to work till January, 1988 in the Engineering Section and thereafter he worked in the Health office of the management till 29-2-1990. According to the workman, he had rendered continuous uninterrupted service with effect from September, 1988 till 29-2-1990 with much sincerity, devotion and to the utmost satisfaction of the management. But the management on 1-3-1990 without any rhyme or reason terminated him from service without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). Against the order of illegal termination, he raised a dispute before the Assistant Labour Officer, Bhubaneswar but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Bhubaneswar ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. Since the action of the management in terminating him from service with effect from 1-3-1990 was illegal and unjustified, he has now prayed for his reinstatement in service with back wages along with other service benefits. Hence the Misc.case.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman *inter alia* contended that the workman was never engaged by the management with effect from September, 1988. He had also never worked under the management with effect from September, 1988 to 29-2-1990. According to the management, the workman was engaged as Peon on D.L.R. basis in the dairy section with effect from 2-1-1995 and is still continuing in the establishment of the management. It is averred in the written statement that the management came to know about the *ex parte* Award passed by this Court in the present case on 2-1-1995 wherein the management was directed to reinstate the workman in service with full back wages with effect from 1-3-1990. Against the *ex parte* Award of this Court, the management preferred to file O.J.C. No. 1500/95 before the Hon'ble High Court of Orissa, Cuttack. The Award dt. 2-1-1995 was accordingly set aside by the Hon'ble Court and this Court was directed to re-hear the present case *de novo* after giving opportunity to all the parties. During the pendency of the aforesaid O.J.C. basing on the application under Section 17-B of the Act filed by the workman, the Hon'ble Court directed the payment of wages including the arrear wages from the date of the Award. According to the management, since the workman was never engaged from September, 1988 to 29-2-1990, he is 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. On the basis of the above pleadings of the parties, the following issues have been framed.

#### ISSUES

- (i) Whether the action of the management of Bhubaneswar Municipality, Bhubaneswar in terminating the services of Shri Pramod Kumar Swain with effect from 1-3-1990 is legal and/or justified ?
- (ii) If not, what relief Shri Swain 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 forwarding letter dt. 7-8-1996 marked as Ext. 1. On the other hand, the management has examined one Baikuntha Nath Sahoo as M.W.1 and has relied upon the xerox copy of the tentative gradation list of N.M.R./D.L.R. workers prepared by the Executive Officer in the year 2000 marked as Ext. A 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 joined in the establishment of the management as D.L.R. in September, 1988 and as per the direction of the Executive Officer he worked in the Engineering Section till he was engaged as N.M.R. with effect from 1-2-1989. Thereafter he worked in the Health office of the management and was directed to work in the residence of the Chief Medical Officer of the management. He had worked continuously since the date of his joining till he was terminated from service on 1-3-1990. It further appears from his evidence that the management while terminating his service had not given any prior notice or notice pay and retrenchment compensation although he had worked more than 240 days in terms of the statutory provisions of the Act. It is also in his evidence that in the year 1995 an *ex parte* Award was passed but against the said order the management preferred to file O.J.C. No.1500/95 before the Hon'ble Court and as per the direction of the Hon'ble Court dt. 10-8-1995 the management paid his arrear dues and he is now continuing in the establishment of the management. According to him, since the action of the management in terminating him from service with affect from 1-3-1990 was illegal and unjustified, he has now prayed for his reinstatement in service with back wages. During evidence he has proved the forwarding letter of the Health Officer marked as Ext.1 indicating his engagement from 1-2-1989 to 1-2-1990. He has been cross-examined at length but nothing material and substantial has been elicited by the management to discard his evidence. Rather it appears from his cross-examination that he was engaged verbally by the Executive Officer with effect from September, 1988 and had worked in the Engineering Section as well as in the Health Offices till he was terminated from service with effect from 1-3-1990. It has been suggested to him that the forwarding letter Ext.1 is a forged document and that he is not entitled to be reinstated in service with back wages to which he has negatively replied. On the other hand, the evidence led by the management through M.W.1 clearly goes to show that the workman has been working in Diary

Section as Peon on D.L.R. basis with effect from 2-1-1995. As per the gradation list vide Ext. A the workman has been continuing in the said Dairy Section since 2-1-1995 and there is no record available in the office to show that the workman was working under the management as D.L.R. prior to 2-1-1995. During cross-examination he has stated that he (M.W.1) joined in the D.L.R. section on 28-3-2003 and prior to that he had never worked in the said section. He admits that the Health Office comes under the establishment of the management and there was no gradation list prior to the year 2000 but for the first time a gradation list was prepared by the management in the year 2000. He has denied his knowledge regarding the receipt of the letter Ext.1 by the Dairy Section. Suggestions have been given to M.W.1 to the effect that the gradation list Ext. A has been manufactured for the purpose of this case and that he suppressed the original letter Ext.1 and that the workman is entitled to be reinstated in service with back wages to which he has denied. He admits that he has got no personal knowledge about the appointment and the termination of the workman.

8. Both the management and the workman concerned have adduced evidence in support of their respective cases. It is the positive case of the workman that he joined in the establishment of the management since September, 1988 and rendered continuous service till 29-2-1990 but the management without any rhyme or reason had illegally terminated him from service with effect from 1-3-1990 without giving any prior notice or notice pay and retrenchment compensation. According to the workman he had worked more than 240 days as a regular employee in terms of the statutory provisions of the Act and therefore, with regard to the termination the provisions of Section 25-F of the Act are attracted and the management is under the obligation to comply with the said provisions of the Act. In support of his case he has relied upon the letter bearing No. 4967, dt. 7-8-1996 of the Health Officer of the management vide Ext.1 wherein the period of engagement has been shown. The perusal of the said document clearly reveals that the workman was working in the Health office with effect from 1-2-1989 to 1-2-1990 on N.M.R. basis. The said document indicating the period of engagement of the workman in the Health Office of the management has nowhere been challenged by the management anywhere in the evidence which clearly leads me to come to an irresistible conclusion that he had in fact worked for more than 240 days in the year preceeding his termination. Admittedly the requirement of the statute of 240 days can not be disputed and the proof of working for 240 days is stated to be on the workman to prove that he has in fact completed 240 days in the last preceeding 12 months period. The document Ext.1 clearly indicates the period of engagement and the same is regarded as sufficient evidence to come to the conclusion that the workman had, in fact, worked for 240 days in a year. The above document having not been challenged by the management anywhere in the evidence clearly leads me to arrive at a just conclusion that the workman had, in fact completed 240 days in the last preceeding 12 months period. In this respect the workman has successfully proved his case to the effect that he has rendered continuous uninterrupted in terms of the statutory provisions. It has also been established by the workman that the management while terminating his service had not given any prior notice or notice pay and retrenchment compensation to him which in my considered view are in complete violation of the mandatory provisions of Section 250-F of the Act. On the other hand, the management has tried its level best to prove and establish that the workman had never worked with effect from September, 1988 till 1-3-1990 when his services were terminated by the management. But the management in this

respect has miserably failed to demonstrate that the workman has not worked for more than 240 days in the preceding calendar year. Besides, the evidence led by the management through M.W.1 reveals that against the order of the *ex parte* Award, dt. 2-1-1995 the management preferred to file O.J.C. No. 1500/1995 before the Hon'ble Court and as per the direction of the Hon'ble Court dt. 10-8-1995 the management paid the current dues and the arrear dues from the date of the Award. Apart from that the gradation list of N.M.R./D.L.R. employees prepared by the management in the year 2000 leaves room to entertain doubt about its genuineness since the name of the workman does not find place after Sl. No. 223. Therefore the said document Ext. A appears not to be trustworthy and therefore can not be safely relied upon.

9. After carefully examining the evidence led by the parties, I am of the considered view that the workman has successfully prove his case with regard to his continuous uninterrupted service having been rendered by him in the establishment of the management with effect from September, 1988 till the date of his termination on 1-3-1990. Law is well settled that Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. Compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes a null and void. There is no dispute that under Section 25-F of the Act a workman 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. Therefore, 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 instant case such condition precedent has not been followed by the management while terminating the services of the workman. The Hon'ble Apex Court in the Case of Karnataka State Road Transport Corporation *vs.* N. Boraiah, Gammon India Ltd. *vs.* Niranjana Das and workman *vs.* Food Corporation of India reported in AIR 1983 Supreme Court 1320, 1984(48) FIR 310 and AIR 1985 Supreme Court 670 respectively 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*". Therefore in view of the above legal position I am of the opinion that the termination having been made in violation of the mandatory provisions in Section 25-F of the Act is void *ab initio*. After careful consideration of the evidence led by the parties being coupled with the proved documents and keeping in view the settled position of law, I am of the considered view that the action of the management in terminating the services of the workman with effect from 1-3-1990 was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter the workman is entitled for reinstatement.

10. The perusal of the schedule of reference clearly emerges that the workman has been terminated from service with effect from 1-3-1990 till the date of engagement in the establishment of the management on 2-1-1995. It is not disputed between the parties that the workman has been paid his wages from 2-1-1995 till date in view of the direction of the Hon'ble Court given in O.J.C. No. 1500/1995. There is no cogent evidence on record to prove and establish that the workman has been gainfully employed elsewhere with effect from the date of termination till the date of his engagement on 2.1.1995. In that 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 till the date of his engagement on 2-1-1995, he is entitled to get a lump sum compensation to the tune of Rs. 5,000 in lieu of back wages, which, in

my view, would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

11. Hence it is ordered :

### ORDER

That the action of the management of Bhubaneswar Municipality, Bhubaneswar in terminating the services of Shri Pramod Kumar Swain with effect from 1-3-1990 is neither legal nor justified. The workman, Sri Swain is entitled to be reinstated in service but as he has already been reinstated in service with effect from 2-1-1995, he is only entitled to get a lump sum compensation to the tune of Rs. 5,000 (rupees five thousand) only in lieu of back wages with all service benefits and continuity of service.

The reference is thus answered accordingly.

Dictated and corrected by me

P. K. SAHOO  
31-03-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar

P. K. SAHOO  
31-03-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar

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