

# The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

**No. 817 CUTTACK, WEDNESDAY, MAY 18, 2005/ BAISAKHA 28, 1927**

**LABOUR & EMPLOYMENT DEPARTMENT**

NOTIFICATION

The 30th April 2005

No.4245–li/1(BH)-55/93/L.E.—In pursuance of Section 17 of Industrial Disputes Act 1947 (14 of 1947), the Award dated the 24th March 2005 in I.D. Case No. 67/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Balasore Electrical Division, Balasore/ S.D.O., O.S.E.B., Basta Sub division and its workman Shri Pitamber Singh and 2 others represented through O.S.E.B., Workers Union, Balasore was referred for adjudication is hereby published as in the schedule below:

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIALDISPUTE CASE NO. 67 of 1995

Dated the 24th March 2005

*Present:*

Shri P. K. Sahoo, O.S.JS (Jr. Branch),  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

*Between:*

1. The Management of the Executive Engineer,  
Balasore Electrical Division, Balasore.

2. S.D.O., O.S.E.B., Basta Sub division

.. First-party—Management

AND

Its workmen Shri Pitamber Singh  
And 2 others represented through Workers Union

.. Second-party—Workmen

*Appearances:*

Shri N. C. Routray

.. For the first-party—Management

Shri R. C. Satpathy

.. For the second-party—Workmen

2  
AWARD

The State Government in exercise of power 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. 2802 (6)/L.E., dated 25-2-1995 for adjudication and Award.

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

“ Whether the action of the Executive Engineer, O.S.E.B., Basta Electrical division, Basta, Balasore refusing Employment to Shri Pitamber Singh, Shri Srimanta Soren and Shri Seral Hansada, N.M.R. Workers with effect from 30-04-1986 is legal and/or justified ? If not, what relief they are entitled to ?”

3. The brief facts giving rise to the present O.S.E.B., reference are that the above named workmen were working under the Management of Executive Engineer, Basta Electrical Division, Basta, Balasore (in short the Management) as N.M.R. since 1980 till they were refused employment on 30-4-1986. According to the workmen they had rendered continuous uninterrupted service for about six years but the management without any rhyme or reason refused employment verbally without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). While challenging the action of the management in refusing employment with effect from 30-4-1986, the workmen through the General Secretary, O.S.E.B. Workers Union have now prayed for their reinstatement in service with back wages. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workmen *inter alia* contended that workman Seral Hansada named in the Schedule of reference had never been working under the Management at any point of time. The other two workmen were engaged as and when work was available for them. It is further stated that they have never worked for more than 240 days as regular employees, therefore, with regard to the refusal of employment of the workmen concerned the provisions of Section 25-F of the Act were not attracted and there was no question of payment of compensation and the management was not under the obligation to comply with the provisions of the said Act and therefore the workmen are not entitled for any relief. On the above backgrounds the rejection of the claim of the above workmen 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:—

(i) Whether the action of the Executive Engineer, O.S.E.B., Electrical Division, Basta, Balasore refusing employment to S/S hri Pitamber Singh, Shri Srimanta Soren and Shri Seral Hansada, N.M.R. Workers with effect from 30-4-1986 is legal and/or justified ?

(ii) If not, what relief they are entitled to ?

6. The workman in support of their case have examined themselves as W.Ws. 1 and 2 and have relied upon the xerox copies of the documents such as, the circular dated 26-5-1987, 18-6-1996 and original compilation of Board's Rules, Regulation, Important Orders and Circulars of O.S.E.B. Vol.I, Part-1, Administration and the relevant circular dated 5-8-1976 at pages 425 to 429 which are marked as Ext. 1 to 3/a respectively. The workman, Shri Seral Hansda named in the schedule of reference has neither examined himself nor relied upon any document in support of his case. On the other hand, the Management has examined one Nimain Charan Routray as M.W.1 but has not 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 W.W.1, Pitamber Singh and W.W.2, Srimanta Soren reveals that they were working under Baliapal Electrical Section with effect from 1980 and 1983 respectively. They had worked till they were refused employment by the Management on 30-4-1986. It is also in their evidence that the Management had not given any notice or notice pay and retrenchment compensation to them before refusal of such employment. The Management had neither framed any charge-sheet nor conducted any domestic enquiry against them before refusal of such employment. Both of them during cross-examination have denied to have remembered the date of their joining in the services of the Management. W.W.1 in his

evidence has categorically stated that he was refused employment by the then Junior Engineer. W.W.2 in his cross-examination has stated that he was working under the Lineman as and when the work was available and the Lineman was paying the wages to him. He clearly admits that he has no document with him to show that he was working under the Management or under the Lineman for the period from 1983 till the date of refusal of employment on 30-4-1986. He further admits that he can not produce any document to show that he was working as N.M.R. either under the Management or under the Lineman for the above said period. It has been suggested that they were working as daily wagers and they had not completed 240 days of work and that they are not entitled to be reinstated in service with back wages to which both the above witnesses have categorically denied. During evidence both the above witnesses have proved the xerox copies of the Circulars dated 26-5-1987 and 18-6-1996, the relevant Circular dated 5-8-1976 of the Compilation of Board's Rules, Regulation, Important Orders and Circulars of O.S.E.B. Vol. I, Part-1, Administration. On the other hand, the evidence of the Management led through M.W.1, Nimain Charan Routray clearly shows that both the workmen were never engaged by the Management as N.M.R. at any point of time and they were not refused employment with effect from 30-4-1986. According to him workmen Pitamber Singh and Srimanta Soren had never been working under the Management with effect from 1980 and 1983 respectively till the date of their alleged refusal of employment on 30-4-1986. He has categorically stated that both the above named workmen had never worked under the Management continuously for a period of 240 days in a calendar year preceding the date of refusal of employment. He had further stated that the circulars dated 26-5-1987 and 18-6-1996 vide Exts. 1 and 2 respectively are only applicable to the regular N.M.R. employees but the same are not applicable to the daily wagers. Since the above named workmen were never engaged by the Management as N.M.R., they are not entitled for reinstatement in service with back wages. During cross-examination he has clearly stated that there is no document to show that workmen Pitamber Singh and Srimanta Soren were working under the management as N.M.R. under Baliapal Section. It has been suggested to him that the above named workmen were working under the management as N.M.R. regular employees to which he has negatively replied.

8. Both the management and the workmen have led evidence in support of their respective cases. The management has taken a plea that the above named workmen had never worked under the Management as N.M.R. worker but they were working as daily wagers and they were engaged as and when the work was available for them. The further plea of the Management is that the above named workmen have never worked for 240 days as regular employees, therefore, with regard to the refusal of employment the provisions of Section 25-F of the Act were not attracted and the Management was not under the obligation to comply with the provisions of the said Act and there was no question of payment of any compensation. Therefore, the workmen are not entitled for any relief and the reference may be answered in the aforesaid terms. On the other hand, it is the definite case of the workmen that they have worked for more than 240 days in the preceding calendar year and the Management without any rhyme or reason refused employment with effect from 30-4-86 without following the mandate of Section 25-F of the Act. The principal issue thus appears to be as to whether the above named workmen had completed 240 days of service in terms of the statutory provisions. The requirement of the Statutes of 240 days can not be disputed and it is for the workmen to prove that they have in fact completed 240 days in the last preceding 12 months period. In this respect, I have carefully gone through the evidence already adduced by the workmen. Admittedly the proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum and in the present case after carefully examining the evidence on record nowhere it has been proved and established by the workmen that they had worked for more than 240 days in the year preceding their refusal of employment. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period have been produced by the workmen so as to lead me to arrive at a conclusion that the workmen had worked for more than 240 days in the year preceding their refusal of employment. The mere oral evidence can not be regarded as sufficient evidence to come to the conclusion that the above named workmen had, in fact, worked for 240 days in a year. In that view of the matter, the plea taken by the workmen is without substance. Rather I find considerable force in the stand taken by the management. From the above discussion, it is clearly evident that the workmen have miserably failed to substantiate their cases and therefore the assertion of the workmen is without substance. In that view of the matter, I am of the considered view that the action of the management in refusing employment to the workmen with effect from 30-4-86 was legal and justified. Under the above circumstances, the workmen are not entitled to any relief as prayed for. Both the above issues are answered accordingly.

9. Hence it is ordered :

**ORDER**

That the action of the Executive Engineer; O.S.E.B., Basta Electrical Division, Basta, Balasore refusing employment to S/Shri Pitambar Singh, Shri Srimanta Soren and Shri Seral Hansada N.M.R. workers with effect from 30-4-86 is legal and justified. In the above premises, the above named workmen are not entitled to any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me

P. K.. Sahoo  
24-3-2005  
Presiding Officer  
Labour Court.  
Bhubaneswar

P. K.. Sahoo  
24-3-2005  
Presiding Officer  
Labour Court.  
Bhubaneswar

---

By order of the Governor

D. MISHRA  
Under -Secretary to Government