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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 23rd August 2005

No. 7137-Ii/1 (BH)-12/1996 (Pt)/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 27th day of May 2005 in I.D. Case No. 169/1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Principal, M.P.C., Baripada, Mayurbhanj and its workman Shri Bholanath Sahu and others was referred for adjudication is hereby published as in the scheduled below:—

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 169 OF 1996

Dated the 27th May 2005

*Present:*

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

*Between:*

The Principal,  
M.P.C. College, Baripada,  
Dist. Mayurbhanj.

. . First party—Management

And

1. Shri Bholanath Sahu,  
At/P.O. Saraskana,  
Dist. Mayurbhanj.
2. Shri Aswini Kumar Das,  
At/P.O. Sirsa,  
Dist. Mayurbhanj.
3. Shri Narendra Sahu,  
At. Belgadhia,  
P.O. Belgaria,  
Via. Jharpokharia,  
Dist. Mayurbhanj.

4. Shri Somanath Nayak,  
At. Gadagadia,  
P. O. Agiria,  
P. S. Baisinga,  
Dist. Mayurbhanj.

. . Second party—Workmen

*Appearances:*

Shri S.K. Das

. . For first party—Management

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Shri S.K. Kar

. . For second party— Workmen

## 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. 17457 (5)/LE., dated the 11th December 1996 for adjudication and Award.

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

“Whether the action of the Management of the Principal, M.P.C. College, Baripada, District/ Mayurbhanj in terminating the services of Sarbashri Bholanath Sahu, Aswini Kumar Das, Narendra Sahu and Somanath Nayak, Cooks of Hostel No.1 of M.P.C College, Baripada with effect from 15-2-1993 is legal and/or justified ? if not, to what relief they are entitled ?”

3. The brief facts giving rise to the present reference are that all the above workmen were working as Cooks of Hostel No.1 of M.P.C. College, Baripada under the Management of the Principal, M.P.C. College, Baripada, District. Mayurbhanj (in short the Management) for years together workman Aswini Kumar Das was appointed as Cook in the year 1955 whereas workman, Somanath Nayak, Bholanath Sahu and Narendra Sahu were appointed as Cook in the year 1961, 1963 and 1965 respectively. They rendered continuous uninterrupted service since the date of their joining as Cook till they were terminated from service with effect from 15-2-1993. According to the workmen although they had rendered continuous services with much sincerity, devotion and to the utmost satisfaction of the Management but the Management without any rhyme or reason terminated their services without following the mandate Section 25-F of the Industrial Disputes Act, 1947 ( in short the Act ). It is categorically averred in the statement of claim that the action of the Management in terminating their services with effect from 15-2-1993 was illegal and unjustified. On the above backgrounds all the above workman seek industrial adjudication praying for their reinstatement in service with full back wages. Hence the reference.

4. The Management filed written statement opposing the claim of the workman *inter alia* contended that all the workmen left their job when they were detected pilfering rice and other edibles from the store on 13-2-1993 and 15-2-1993. In the above premises, the rejection of the claim of the workmen 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 Principal, M.P.C.College, Baripada, District Mayurbhanj in terminating the services of Sarbashri Bholanath Sahu, Aswini Kumar Das, Narendra Sahu and Somanath Nayak, Cooks of Hostel No.1 of M.P.C. College Baripada with effect from 15-2-1993 is legal and/ or justified ?

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

6. All the above workmen in support of their respective case have examined themselves as W.W.1,2,3 and 4 and has relied upon the xerox copy of the order of this Court Dt. 7-8-2002 passed in I.D. Misc. Case No. 143/93 marked as Ext.1. On the other hand, the Management 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 already led by the workmen clearly emerges that workmen Narendra Sahu (W.W.1), Bholanath Sahu (W.W.2), Aswini Kumar Das (W.W.3) and Somanath Nayak (W.W.4) were working as Cook with effect from 1963, 1955 and 1961 respectively under the Management. They continued to work as such till they were terminated from service with effect from 15-2-1993. It further reveals from their evidence that the Management without any rhyme or reason illegally terminated their services without giving any prior notice or notice pay and retrenchment compensation for which they have now prayed for their reinstatement in service with back wages. They have categorically stated that they have filed I.D.Misc. Case No. 143/1993 and an order has been passed on 7-8-2002 vide Ext.1 directing the Management to pay the differential wages. During cross examination all the above workmen have clearly stated that no written order was issued to them and against the order Dt. 7-8-2002 passed in I.D. Misc. Case No. 143/1993, the Management preferred to file W.P.(C) No. 1641 of 2003 before the Hon'ble Court and the matter is still pending. All the above workmen during cross examination have clearly denied that they have voluntarily abandoned their services with effect from 15-2-1993. The Management, on the other hand, has neither examined any witnesses nor relied upon any document in support of its case.

8. On a close scrutiny of the evidence already led by the workmen it is crystal clear that they had rendered continuous uninterrupted service since 1955 and onwards till their services were terminated with effect from 15-2-1993 and the Management while terminating their services had not given any notice or notice pay and retrenchment compensation. Admittedly they were not issued with any appointment order but the Management has now here disputed their engagement with effect from 1955 and onwards till they were terminated from service with effect from 15-2-1993. The Management has taken a stand before this Court that the workmen voluntarily abandoned their services when they were detected pilfering rice and other edibles from the stores on 13-2-1993 and 15-2-1993 but such plea has nowhere been substantiated by the Management during evidence. In absence of any rebuttal evidence to that effect the plea already taken by the Management leaves room to entertain doubt. Besides, the Management has led no evidence to the effect that the workmen were not working as Cook in the Hostel No.1 of the College with effect from 1955 and onwards. Rather it is clearly evident from the evidence of the above workmen that they and rendered continuous service for years together and the Management without any rhyme or reason had illegally terminated their services with effect from 15-2-1993 without giving any prior notice or notice pay and retrenchment compensation which in my view, are in complete violation of section 25-F of the Act. Compliance of section 25-F of the Act is must, otherwise, the order of termination becomes null and void. There is also no dispute that under section 25-F of the Act, a workman is entitled to one month's notice before retrenchment of one month's pay in lieu thereof. Such notice or payment in lieu thereof is a condition precedent for effecting retrenchment. "In the present case at hand, such condition precedent has not at all been followed by the Management while terminating the services of the workmen. It has been decided in a catena of decisions that the provisions of section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. In view of the settled position of law, I am of the opinion that the termination having been made in violation of the mandatory provisions of section 25-F of the Act is void *ab initio*. On a careful consideration of the evidence led by the workmen 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 workmen with effect from 15-2-1993 was illegal, unjustified and against the mandate of section 25-F of the Act. In that view of the matter, the workmen are entitled to the relief of reinstatement.

9. On perusal of the schedule of reference it is seen that the services of the workmen have been terminated with effect from 15-2-1993 and there is no material on record to show that the workmen have been gainfully employed elsewhere with effect from the date of their termination. In such premises, the workmen are entitled for reinstatement in services, but on the facts and circumstances of the present case, as the workmen had not worked with effect from the date of their termination, they are entitled to get a lump sum compensation to the tune of Rs. 3,000 each towards back wages. Both the above issues are answered accordingly.

10. Hence it is ordered.

#### ORDER

That the action of the Management of the Principal, M.P.C. College, Baripada, District Mayurbhanj in terminating the services of Sarbashri Bholanath Sahu, Aswini Kumar Das, Narendra Sahu and Somanath Nayak, Cooks of Hostel No.1 of M.P.C. College, Baripada with effect from 15-2-1993 is neither legal nor justified. All the above workmen are entitled for reinstatement with a lump sum compensation of Rs. 3,000/- (Rupees three thousand) only each towards back wages.

The reference is thus answered accordingly.

Dictated and corrected by me

P.K. SAHOO  
27-05-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

P.K. SAHOO  
27-05-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

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By order of the Governor

D.MISHRA

Under-Secretary to Government