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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 11th July 2006

No. 6275-li/1(B)-115/1999-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st May 2006 in Industrial Dispute Case No. 3 of 2000 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Director, State Resource Centre for Adult Education, Orissa, Janasikhya Bhawan, Unit-5, Bhubaneswar and its workman Shri Harihar Das, Village Anantapur, P.O. Dhusaria, Dist. Cuttack was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 3 OF 2000  
Dated the 31st May 2006

*Present :*

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

*Between :*

The Director  
State Resource Centre  
for Adult Education, Orissa  
Janasikhya Bhawan, Unit 5  
Bhubaneswar. . . . . First Party—Management

And

Shri Harihar Das  
Village Anantapur  
P.O./P.S. Dhusaria  
Dist. Cuttack. . . . . Second Party—Workman

*Appearances :*

For the First Party—Management . . . . . Shri A. K. Sahoo

For the Second Party—Workman himself . . . . . Shri Harihar Das

## 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. 16601(5)-L.E., dated the 20th December 1999 for adjudication and Award.

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

“Whether the termination of services of Shri Harihar Das, daily wage labourer, with effect from the 1st June 1996 by the Director, State Resource Centre for Adult Education, Orissa, Bhubaneswar is legal and/or justified ? If not, what relief the workman is entitled to ?”.

3. By way of this reference workman Shri Harihar Das has challenged the legality and justifiability of the action of the Director, State Resource Centre for Adult Education, Orissa, Bhubaneswar (in short the management) in terminating his services with effect from the 1st June 1996.

Matrix of the necessary facts as bear on the controversy involved in the present reference is that the workman was engaged as a Kit Packer on daily wage basis with effect from December, 1991. He continued to work as such till the date of his termination on 1st June 1996. It is categorically averred in the statement of claim that although he had rendered continuous uninterrupted service with effect from December, 1991 till the date of termination on the 1st June 1996 with much sincerity, devotion and to the utmost satisfaction but the management 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). After such termination he approached the Labour Machinery but to no effect. The matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication the workman has claimed for his reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, filed its written statement opposing the claim of the workman *inter alia* contended that the workman had never worked under the management after May 1995. According to the management, the workman was engaged as Kit Packer with effect from the 29th April 1992 and worked till December, 1993 not on daily wage basis but on piece rate contract basis. After closure of the kit packing work, he was refused employment with effect from December, 1993. Again he was engaged in the establishment of the management with effect from August, 1994 and had worked till the 31st May 1995. During the above said period he was working regularly on daily wage basis but from the 1st June 1995 he was refused employment as there was no work available for him. It is categorically averred in the written statement that the workman had never worked since the 1st June 1995 till the 1st June 1996 and during the year 1994 and 1995 he had only worked for a total period of 146 days. It is further averred in the written statement that the workman was engaged as and when the work was available for him and he had never worked for more than 240 days as a regular employee in terms of the statutory provisions of the Act and therefore, with regard to the termination of the workman the provisions of retrenchment are not attracted and the management was not under obligation to comply with the provisions of Section 25-F of the Act. In such premises, the workman is not entitled for any relief. On the above backgrounds, 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 termination of services of Shri Harihar Das, daily wage labourer with effect from the 1st June 1996 by the Director, State Resource Centre for Adult Education, Orissa, Bhubaneswar is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?”

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copy of the certificate issued by the then Administrative Officer of the management in his favour marked as Ext. 1. On the other hand, the management has examined one Ajaya Kumar Sahoo as M. W. 1 and has relied upon the xerox copy of the statement of Kit Packer commencing from the 29th April 1992 till December, 1993 and from August, 1994 to May, 1995 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.

It reveals from the evidence of the workman that he joined in the establishment of the management as a Kit Packer with effect from December, 1991. He continued to work as such till May, 1996 but he was refused employment on the 1st June 1996. During the tenure of service there was no allegation against him and the management had never initiated any disciplinary proceeding against him for any act of misconduct. He has categorically stated that the management illegally terminated him from service without giving any notice or notice pay and retrenchment compensation. During evidence he has duly proved the certificate issued in his favour by the then Administrative Officer on the 22nd November 1993 marked as Ext. 1. He admits in his cross-examination that he was neither issued with any appointment order nor the termination order indicating his termination with effect from the 1st June 1996. He further admits that he cannot produce any document to show that he was engaged by the management and that he had completed 240 days of continuous service in terms of the statutory provisions of the Act and that he had received wages from the management. The further admitted evidence is that he was issued with the certificate vide Ext. 1 by the then Administrative Officer on the 22nd November 1993 but the said certificate Ext. 1 does not indicate the details of his engagement under the management. The evidence led by the management through M. W. 1, clearly reveals that the workman was engaged as a Kit Packer with effect from the 29th April 1992 and he worked till the closure of the kit packing work in the month of December, 1993. Again he was engaged in the establishment of the management with effect from August, 1994 and had worked till the 31st May 1995. During the above said period he was working regularly on daily wage basis but from the 1st June 1995 he was refused employment as there was no work available for him. He has categorically stated that neither any appointment order nor any termination order was issued to the workman. During evidence he has duly proved the statement of Kit Packer indicating the engagement of the workman from April, 1992 to December, 1993 and from August, 1994 to May, 1995. During cross-examination he has categorically stated that the workman had never worked from December, 1991 to 31st May, 1995. The record available in the establishment of the management also does not reveal the above fact. He has further stated that he was refused employment with effect from the 1st June 1995 as there was no work available for him. It has been suggested to him that the workman had completed 240 days of service in terms of the statutory provisions of the Act and that he is entitled to be reinstated in service with back wages to which he has replied in the negative.

8. From the above discussion the principal issue thus appears to be as to whether the workman has completed 240 days of service in terms of the statutory provisions of the Act.

In a recent decision, the Hon'ble Apex Court in the matter between Y. M. Yellatti and Assistant Executive Engineer reported in 2006 (108) FLR 213 (Supreme Court) has taken a view that :

“The burden of proof as to the completion of 240 days of continuous work in a year is on the claimant to show that he had worked for 240 days in a given year.”

Admittedly the requirement of the Statute cannot be disputed and it is for the workman to prove that he had in fact completed 240 days in the last preceding 12 months period. The above fact has also been crystallised in another judgement in the case of Chief Engineer, Construction Vrs. Keshava Rao (d) by LR's. reported in 2005-II-LLJ 479 (Supreme Court) and in the case of Manager, R.B.I., Bangalore Vrs. S. Mani and others reported in 2005-II-LLJ 258 (Supreme Court) wherein the Hon'ble Apex Court has consistently taken the view that :

“The initial burden of establishing the factum of continuous work for 240 days within the year was on the workman.”

9. The perusal of the evidence of the workman emerges that he had rendered continuous service under the management with effect from December, 1991 till May, 1996 but surprisingly no proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for the above period as claimed by him has been produced in the instant case. On the other hand, the fact with regard to the engagement of the workman with effect from December, 1991 till May, 1996 in the establishment of the management has totally been denied and disputed by the management. The evidence led by the management clearly goes to show that the workman had worked under the management with effect from the 29th April 1992 till December, 1993 and from August, 1994 to the 31st May 1995 but from the 1st June 1995 he was refused employment as there was no work available for him. It has been clearly established by the management that the workman had never worked under the management since the 1st June 1995. The workman has also not succeeded in proving the above fact. In support of his case, the workman has also not adduced any clear, cogent and reliable evidence to prove and establish that he had in fact worked after the 1st June 1995. The fact of such denial by the management has not at all been challenged and substantiated by the workman anywhere in the evidence. Therefore, in absence of any clear, clinching and reliable evidence the more oral statement cannot be regarded as sufficient evidence to come to an irresistible conclusion that he had in fact worked for 240 days in terms of the statutory provisions of the Act. After carefully examining the evidence adduced from both the sides and keeping in view the settled position of law, I am of the considered opinion that the burden of proving as to the completion of 240 days of continuous work in terms of the statutory provisions of the Act has not successfully been discharged by the workman in the present case. In that view of the matter, the workman is not entitled for any relief.

10. As stated earlier, certain facts are not in dispute. The admitted case is that the workman had worked from time to time as desired by the management and the management had availed the services of the workman till May, 1995. It is admitted fact that the management has engaged one person in its establishment in the year 2002. A bare perusal of the document Exts. 1 and A relied upon by the workman and the management respectively clearly reveals that the workman had worked till May, 1995. Before parting with the case, having regard to both the above documents, I would like to state herewith that opportunity should be given to the workman by the management at the first instance when there will be necessity to engage casual labourer in its establishment.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO  
31-5-2006  
Presiding Officer  
Labour Court, Bhubaneswar

P. K. SAHOO  
31-5-2006  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor  
N. C. RAY  
Under-Secretary to Government

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