

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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No. 1162 CUTTACK, MONDAY, AUGUST 21, 2006/SRAVANA 30, 1928

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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 27th July 2006

No. 6822-li/1(BH)-39/1994 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th June 2006 in Industrial Dispute Case No. 210 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of the Executive Engineer, Mayurbhanj Irrigation division, Baripada, Dist. Mayurbhanj and its Workman Shri Narendra Kumar Behera, N.M.R. Mate At Gambharia, P. O. Paunshuli, Via Jamsuli, Dist. Balasore was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 210 OF 1995

Dated the 30th June 2006

*Present :*

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

*Between :* The Executed Engineer .. First Party—Management  
Mayurbhanj Irrigation Division  
Baripada, Dist. Mayurbhanj.

And

Shri Narendra Kumar Behera .. Second Party—Workman  
N.M.R. Mate, At Gambharia  
Post Paunshuli, Via Jamsuli  
Dist. Balasore.

*Appearances :*

For the First Party—Management .. Shri S. P. Brahma

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For the Second Party—Workman .. Shri S. B. Mishra, Advocate

## 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. 9902(5)-L.E., dated the 7th August 1995 for adjudication and Award.

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

“Whether the action of the Executive Engineer, Mayurbhanj Irrigation Division, Baripada, in terminating the services of Shri Narendra Kumar Behera, N.M.R. (Mate) with effect from the 5th May 1993 is legal and/or justified ? If not, what relief he is entitled to ?”

3. Illegal termination of workman Shri Narendra Kumar Behera with effect from the 5th May 1993 by the Executive Engineer, Mayurbhanj Irrigation Division, Baripada, (in short the management) is the subject matter of challenge under the present reference.

Matrix of the necessary facts as bear on the controversy involved in the present reference is that the workman was engaged by the management as N.M.R. with effect from the 1st January 1986. He continued to work till he was refused employment on the 5th May 1993. According to the workman, he had rendered continuous uninterrupted service for more than seven years with much sincerity, devotion and to the best satisfaction but the management without any rhyme or reason illegally terminated him from service with effect from the 5th May 1993 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). When all his efforts for reinstatement bore no fruit, he approach the labour machinery but 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 concerned has claimed for his reinstatement in service with back wages along with other benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. According to the management, the workman concerned had only worked with effect from the 1st January 1986 to the 31st March 1990. Thereafter he did not turn up for joining his duties and voluntarily left the service. During the above said period the workman concerned had infact worked 70 days in the year 1986-87, 169 days in the year 1988, 109 days in the year 1989 and 89 days in the year 1990. It is categorically averred in the written statement that the concerned workman had never completed 240 days of service in terms of the statutory provisions of the Act. He had never worked as a regular employee under the management but he was engaged as and when the work was available for him. Since the workman did not work for more than 240 days in a calendar year, the provisions of Section 25-F of the Act were not attracted and there was no question of payment of compensation. That apart the workman had been engaged during the above said period for the construction of the project work on daily wage basis and he was paid his wages for

the days he had actually worked. The management had neither appointed nor terminated his service at any point of time. Since the workman had voluntarily abandoned the job with effect from the 1st April 1990, he is not entitled for any relief. On the above back grounds, 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 Executive Engineer, Mayurbhanj Irrigation Division, Baripada, in terminating the services of Shri Narendra Kumar Behera, N.M.R. (Mate) with effect from the 5th May 1993 is legal and justified ?
- (ii) If not, what relief he is entitled to ?”

6. The management in support of its case has examined one Shri Keshab Chandra Mohanty as M. W. 1 and has relied upon the xerox copy of the letter No. 33956, dated the 13th September 1990 of the Government in the Irrigation Department addressed to Engineer-in-Chief, Irrigation and others marked as Ext. 1. Despite opportunity the workman has failed to examine any witness 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 M. W. 1 clearly reveals that the workman had worked since the 21st October 1987 till the 31st March 1990. During the above period he had worked from the 21st October 1987 to the 30th December 1987, the 1st January 1988 to the 20th June 1988, the 21st August 1989, the 30th December 1989 and from the 1st January 1990 to the 31st March 1990. Thereafter the workman voluntarily left the service with effect from the 1st April 1990. During evidence he has duly proved the letter of the Government regarding the total ban on the engagement of workers on the N. M. R. marked as Ext. 1. He has been cross-examined by the workman at length but nothing material and substantial has been elicited during cross-examination so as to discard his evidence.

8. The Hon'ble Apex Court in a recent decision 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.”

The proof of working for 240 days is stated to be on the employee in the event of any

denial of such a factum. It is for the employee concerned to prove that he has infact completed 240 days in the last preceding 12 months period in terms of the statutory provisions of the act. The above such fact has also been crystallised in other judgements in the case of Chief Engineer Construction Vrs. Kashaba rao (d) LRs. reported in 2005-II- I.I.J. 479 (Supreme Court) and in the case of Manager R. B. I., Bangalore Vrs. S. Mani and others reported in 2005-II I.I.J 258 (Supreme Court) wherein the Hon'ble Apex Court has consistently taken by view that :

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

9. In the present case despite opportunity the workman concerned has failed to adduce any evidence in support of his case. Even no document has been filed by the workman in support of his claim. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period has been produced by the workman. Therefore, in absence of any rebuttal evidence absolutely I find no cogent reason to disbelieve the sole testimony of M. W. 1. Besides, no cogent material is also forthcoming to prove and establish that the workman had infact worked for 240 days in a year and had completed 240 days of service in terms of the statutory provisions of the Act.

10. On careful scrutiny and analysis of the evidence led by the management, the document relied upon by it and keeping in view the settled position of law, I am of the considered view that the burden of proving as to the completion of 240 days of contituous work in terms of the statutory provisions of the act has not been discharged by the workman in the present case. In that view of the matter, the workman concerned is not entitled for any relief.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO  
30-6-2006  
Presiding Officer  
Labour Court, Bhubaneswar

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30-6-2006  
Presiding Officer  
Labour Court, Bhubaneswar

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