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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 29th July 2006

No. 6944—li/1(S)-14/2004-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th June 2006 in Industrial Dispute Case No. 2 of 2005 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of M/s Kailash Auto Finance Limited, Ainthapali, Sambalpur and its Workman Shri Basant Kumar Biswal was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER  
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 2 OF 2005

Dated the 28th June 2006

*Present :*

Shri P. K. Mohapatra, LL. B.  
Presiding Officer, Labour Court,  
Sambalpur.

*Between :*

The Management of  
M/s Kailash Auto Finance Limited  
Ainthapali, Sambalpur-768004  
through Branch-in-Charge

.. First Party—Management

And

Its Workman  
Shri Basant Kumar Biswal  
S/o Shri Kartikeswar Biswal  
At Kanja, P.O. Badakantakul  
Via Bentala, Dist. Angul.

.. Second Party—Workman

*Appearances :*

For the First Party—Management	.. Shri Rabindranath Swain Officer (Recovery)
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For the Second Party—Workman	.. Self

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 & 12 of the Industrial Disputes Act, 1947 for adjudication of dispute vide Reference Memo No. 1184(4), dated the 3rd February 2005 scheduled below :

“Whether the termination of services of Shri Basant Kumar Biswal, Peon-*cum*-Guard by way of refusal of employment with effect from the 21st February 2004 by the management of M/s Kailash Auto Finance Limited, Ainthapali, Sambalpur is legal and/or justified ? If not, what relief the workman is entitled to ?”.

2. Shri Basant Kumar Biswal, s/o Shri Kartikeswar Biswal of village Kanja, P.O. Badakantakul, via Bantala, Dist. Angul (hereinafter referred as workman) has raised an industrial dispute against M/s Kailash Auto Finance Limited, Ainthapali, Sambalpur (hereinafter referred as ‘Management’) as because the management had terminated him from service with effect from the 21st February 2004 and in spite of his repeated request the management did not pay any heed to it and then he had approached the Labour Office and as the conciliation failed, so a failure report was presented to the Government and being satisfied that an industrial dispute exists between the parties, it was referred to this Court for adjudication. The schedule of reference runs as follows :—

“Whether the termination of services of Shri Basant Kumar Biswal, Peon-*cum*-Guard by way of refusal of employment with effect from the 21st February 2004 by the management of M/s Kailash Auto Finance Limited, Ainthapali, Sambalpur is legal and/or justified ? If not, what relief the workman is entitled to ?”.

3. According to the workman he was working as a Peon-*cum*-Guard with effect from the 2nd October 1996 to the 20th February 2004 without any break of service and his salary was raised from Rs. 900 per month to Rs. 1,500 per month and in addition to it, he was receiving Rs. 400 per month for sweeping the office room, but on the 21st February 2004 at 9-30 A.M. without any prior notice or reason the Branch Manager of the management, namely Shri G. Debendra Rao refused him to work in the office and in turn they have engaged another person. As the management has terminated the service in the guise of refusal of work without any domestic enquiry and without observing the principles of the natural justice and by not paying the monetary compensation as contemplated in the Industrial Disputes Act, so the termination is to be held as illegal and he be reinstated in service with full back wages.

4. The management side have contested the above claim by stating that the workman was not a regular employee under them and he was not being paid in the muster roll as a daily labourer as because his service was utilised as and when required during repossession activity. It is also the case of the management that since last 4 years the company is facing financial loss and they have now reduced their employees strength and even they have decided

to close the Sambalpur office within a short period. In Para. 8 of the written statement it is averred by the management that the workman did not oblige them when they are in need of his service and now he has come up with some false allegations against the company to satisfy his grudge. To sum up, the management side have come up with the plea that the claim of the workman is not maintainable.

5. By taking the note of the pleadings of the parties the following issues have been settled in this case :—

### ISSUES

- (i) “Whether the termination of services of Shri Basant Kumar Biswal, Peon-*cum*-Guard by way of refusal of employment with effect from the 21st February 2004 by the management of M/s Kailash Auto Finance Limited, Ainthapalli, Sambalpur is legal and justified ?
- (ii) To what relief the workman Shri Biswal is entitled ?”

### FINDINGS

6. *Issue No. (i)* :—According to the workman on the 21st February 2004 the Manager of the Company Shri G. Debendra Rao told him not to attend the office work and they appointed another man in his place. It is also the case of the workman that while terminating his service they have not given any service benefits and the statutory notice was also not given to him. The management side have examined the present recovery officer as the only witness. According to him, in the month of March 2004 the workman did not turn up for 8 days continuously as he got another engagement and as in the subsequent months they were not in need of his service, so they denied him to attend the work of the company. He has further stated that they have paid up-to-date dues to him on the date when employment was refused to him. By taking the note of the evidence adduced by the parties what emerges is that the workman has claimed refusal of employment by the management, but the management side have claimed that they have refused him to work in their concern as because he did not turn up at the time of their need and accordingly they have paid up-to-date dues to him and refused further employment to him. In such a situation the onus shifts to the management side to suffice that they have paid the up-to-date dues to the workman when they have refused employment to him. But very surprisingly, no document is filed to suffice this aspect. The workman has filed xerox copies of some vouchers and in his evidence he has also stated about the salary he was getting from the management. Though the workman was cross-examined by the management, but nothing substantial is elicited to disbelieve the crux of the issue. The evidence of the workman that he was getting Rs. 400 per month as extra money for cleaning the office and that he had served the company up till the 20th February 2004 is not at all challenged by the management side while cross-examining him. Though a suggestion is given to the effect that the xerox copies of vouchers are forged documents, but it is hard to say that those are forged as the original documents which ought to be available with the management are not filed to infer the genuinity of the same. It is also suggested to him that his

service was purely temporary and money is being paid to him on the date of refusal of employment. But no document is filed to suffice this aspect. In view of the above document the plea taken by the workman sounds probable and as he was removed from the service without any payment of service benefits and notice, so refusal of employment which can be equated with his termination from service is to be held as illegal and the workman is entitled to be reinstated in service with full back wages.

7. Admittedly, the workman has not adduced any evidence that during the intervening period he was not gainfully employed at another place. But as the management has removed him from service without complying the statutory requirements, so the workman is entitled to get the service benefits with full back wages. The above issue is answered accordingly.

8. *Issue No. (ii)* :—I have already answered *Issue No. (i)* in favour of the workman. It is further held that the workman is entitled to get all the service benefits as because his termination was illegal. So the above issue is answered to the extent that the workman will get all the service benefits after reinstatement in service. Hence the following Award :—

#### AWARD

The reference is answered in favour of the workman on contest. The termination of services of Shri Basant Kumar Biswal, Peon-*cum*-Guard by way of refusal of employment with effect from the 21st February 2004 by M/s Kailash Auto Finance Limited, Ainthapalli, Sambalpur is held to be illegal and unjustified and accordingly the workman is entitled to be reinstated in service within two months with full back wages.

Dictated and corrected by me.

P. K. MOHAPATRA  
28-6-2006  
Presiding Officer  
Labour Court, Sambalpur

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28-6-2006  
Presiding Officer  
Labour Court, Sambalpur

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