

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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No. 1217 CUTTACK, TUESDAY, AUGUST 29, 2006 / BHADRA 7, 1928

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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 1st August 2006

No. 7046—li/l (BH)-26/1997-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. 3 of 1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Manager, M/s Utkal Asbestos Limited, At Jorian, Dist. Dhenkanal and its workman Shri Nirmal Charan Rout, At/P.O. Govindapur, Dist. Dhenkanal was referred for adjudication is hereby published as in the schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 3 OF 1998

Dated the 30th June 2006

*Present :*

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

*Between :*

The General Manager . . . First Party—Management  
M/s Utkal Asbestos Limited  
At Korian, Dist. Dhenkanal, Pin-759001.

And

Shri Nirmal Charan Rout . . . Second Party—Workman  
At/P.O. Govindapur  
Dist. Dhenkanal.

Appearances :

For First-Party Management	.. Shri S. Das, Advocate
For the Second-Party Workman	.. Shri S. B. Das, 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.419(5)-LE., dated the 9th January 1998 for adjudication and Award.

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

“Whether the termination of services of Shri Nirmal Charan Rout, Steno-Typist with effect from the 15th January 1996 by the management of M/s Utkal Asbestos Limited, Dhenkanal is legal and/or justified ? If not, what relief Shri Rout is entitled to ?”

3. Workman Shri Niranjana Rout by way of this reference has challenged the legality and justifiability of the action of the management of M/s Utkal Asbestos Limited, Dhenkanal (in short the management) in terminating the services with effect from the 15th January 1996.

The facts in brief as narrated in the statement of claim tend to reveal that the workman concerned was appointed as Steno-Typist under the management with effect from the 10th August 1992. He was confirmed in the said post on the 22nd June 1984. According to the workman, he had rendered continuous service with much sincerity, devotion and to the utmost satisfaction of the authorities of the management. During his employment he submitted leave application on the ground of his illness and in fact he was under the medical treatment in E. S. I. dispensary, Dhenkanal from the 20th November 1995 to the 20th January 1996 but surprisingly enough the management without any rhyme or reason terminated his service with effect from the 15th January 1996 without any prior notice on the ground of his unauthorised absence from the 15th December 1995 to the 15th January 1996. According to him, the termination with the stigma of unauthorised absence violates the principles of natural justice. Neither any charge-sheet was issued nor any domestic enquiry was conducted against him prior to such termination. He was also not given any opportunity of personal hearing on this matter. It is categorically averred in the statement of claim that although he had performed his duty with much sincerity but the management terminated his service with effect from the 15th January 1996 without following the mandate of Section 25-F of the Industrial Dispute Act, 1947 ( in short the Act.) After such termination he approached the labour machinery but to no avail. Ultimately the matter was referred to this court by the government in the Labour and Employment Department for adjudication. According to the workman since the termination was illegal and in violation of the principles of natural justice and when the management had not complied with the mandatory provisions of the Act, he has now claimed for his 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 workman. According to the management, the workman concerned

being Steno-Typist while holding the post of trust and confidence was time and again remaining unauthorised absence and due to such unauthorised absence he was warned severally. Even during the probation period due to such unauthorised absence he was warned by the management twice and his probation period was extended as a consequence thereof. During his tenure of service with effect from 1980 to 1993 he was issued with eight warning letter for such absentecism and in every occasion he begged apology and gave undertaking not to repeat such mistake. The management also in a every occasion took a lenient view and allowed him to work in its establishment. It is further averred in the written statement that on the 20th September 1993 he tendered his resignation and the managmeent also accepted his resignation with effect from the said date but subsequently he begged apology in writing and requested the management to allow him to withdraw his resignation. Thereafter he undertook not to abstain from the work without prior permission. A warning letter was also issued and after careful consideration of the matter, the management showing leniency allowed him to resume his duty. In the month of September, 1994 he also remained absent but tendered apology for his absenteeism and the management again took a lenient view and allowed him to join his duty with effect from the 8th September 1994. A waring letter was issued to him and he was cautioned that if such absenteeism was repeated in future, service action would be taken. on the 4th April 1995 it was brought to the notice of the management that the workman concerned remained absent from duty with effect from the 6th February 1995 without any prior permission or sanctioned leave. By this time also he tendered apology and was allowed to join his duty with effect from the 5th April 1995 with a warning not to repeat such mistake in future. But the workman concerned was going on repeating such misconduct time and again as a result he was placed under suspension with effect rrom the 13th May 1995. A charge-sheet came to be issued against him on the 15th May 1995 but the workman concerned again tendered a written apology admitting his guilt and undertook not to repeat the same. Accordingly the order of suspension was revoked and warning was issued to the workman cautioning him not to repeat such conduct in future. But again the workman remained absent with effect from the 20th November 1995. He was asked to submit his explanation within the stipulated time and was cautioned that his failure to do so would lead a presumption that the chages are correct. He failed to submit any explanation within the stipulated time which resulted in issuing an order of simple termination with effect from the 15th January 1996. The order of termination was sent by registered post but th workman concerned deliberately avoided to receive the same. The workman in his letter, dated the 24th January 1994 admitted that such a letter was sent to him in his home address but as he was absent the letter was not served on him. According to the management, in course of his service career of 15 years he repeatedly owned his fault on several occasions and undertook not to repeat such absenteeism but infact went on repeating the same conduct every now and then. Although the workman concerned was onjoined to discharge his duties honestly and faithfully but infact he was most in sincere in his duty and failed to discharge his duties as Steno-Typist honestly, faithfully and to the satisfaction the management. The management admits in its written statement that though no formal enquiry was conducted against the workman but show cause notice was sent to him by registered post which he deliverately avoided to reply the same. According to the management, the termination being a simple termination was legal and justified and therefore, the workman concerned 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 termination of service of Shri Nirmal Charan Rout, Steno-Typist with effect from the 15th January 1996 by the management of M/s Utkal Asbestos Limited, dhenkanal is legal and justified ?
- (ii) If not, what relief Shri Rout is entitled to ?

6. The workman in support of her case has examined himself as W.W. 1 and has relied upon the xerox copies of the documents such as, appointment order, confirmation letter, termination letter, medical certificate issued by the Medical Officer-in-Charge, E. S. I. dispensary, dhenkanal and joining report marked as Exts. 1 to 5 respectively. On the other hand, the management has examined one Raghunath singh as M. w. 1 and has relied upon the series of documents including the suspension order, charge-sheet, certified Standing Order, resignation letter and draft relating to notice pay etc. marked as Exts. a to O/1 respectively 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 workman in his evidence has stated that she joined in the establishment of the management as Steno-Typist with effect from the 10th August 1982. He continued to work as such till the date of his termination on the 15th January 1996. During the tenure of his service he became permanent on the 22nd august 1984. although he had rendered continuous service since the date of his joining with much sincerity, devotion and to the utmost satisfaction of the authorities, but the management without any rhyme or reason terminated him from service with effect from the 15th January 1996, without giving any notice or notice pay and retrenchment compensation. It is in his evidence that he become ill with effect from the 20th November 1995 and remained on leave on medical ground from the 20th November 1995 to the 20th January 1996. After he was recovered from his ailment he submitted his joining report to the manaement on the 22nd January 1996 alongwith the medical certificate, but his joining report was bot accepted by the management. From there he came to know that his services were terminated with effect from the 15th January 1996 while he was on leave on medical ground. he has categorically stated that he was suffering from Amoebic Colitis and Dyscentry and was admitted to Chowdwar E. S. I. Hospital twice for the above diseases from the 20th November 1995 to 20th January 1996. he was fit to resume his duty on the 21st January 1996. accordingly he submitted his joining report which was not accepted by the management. He has further stated since the action of the management in terminating his services with effect from the 15th January 1996 was illegal and unjustified, he has now prayed for his

reinstatement in service with back wages. During evidence he has proved the appointment letter, confirmation letter, termination letter, medical certificate and the joining report marked as Exts. 1 to 8 respectively. During cross-examination he admits that he joined in the establishment of the management on probatio for a period of one year with effect from the 10th august 1982 which period was extended for another one year but he has denied his knowledge the reason of such extension of probation period. He further admits in his cross-examination that on several occasions he remained absent and 5 to 6 warning letters regarding his unauthorised absence were issued to him by the management. In every occasion he begged apology and gave undertaking not to repeat such conduct. On the 28th august 1993 he had given a letter to the management intimating therein by promising not to remain absent without prior sanction vide Ext. A. on the 22nd May 1992 he had also given another letter to the management mentioning the similar fact vide Ext. B. On the 1st September 1994 he had also given another undertaking to the management not to commit such conduct in future vide Ext. C. alongwith the undertaking dated the 1st September 1994 he had submitted an application on the same day vide Ext. D., wherein he had requested the management to excuse him for his unauthorised absence. He does not remember for howmany days he had worked in the year 1995. similarly on the 15th March 1995 he had given anothe undertaking to the management requesting it to excuse him for his unauthorised absence vide Ext. E. On the 4th May 1995 he had also given another undertaking requesting the management to excuse him for his unauthorised absence vide Ext. F. on the 28th November 1986 he had also given another undertaking requesting the management to excuse him regarding his unauthorised absence vide Ext. G. He admits that he was placed under suspension on the 13th May 1995 vide Ext. J. he was issued with charge-sheet on the 15th May 1995 under Ext. K. The period of his absence was also reflected in the said charge-sheet vide Ext. K. The further admitted evidence is that after submission of the charge-sheet he begged apology to the management who after careful consideration of the matter lifted the suspension order and allowed him to resume his duty. But he again remained absent unauthorisedly and the management was constrained to terminate him from service with effect from the 15th January 1996. He has clearly stated that he was working as Steno-Typist and was attached to the General Manager of the management. He was also dealing with confidential files including other files. It has been suggested to him that he is not entitled to be reinstated in service with back wages to which he has negatively replied.

8. The management, on the otherhand, has led evidence through M. W. 1 and has been able to prove and establish that the workman concerned was a habitual unauthorised absence and he was terminated from service with effect from the 15th January 1996 on the sole ground of habitual unauthorised absence from duty. It is in the evidence of M. W. 1 that the concerned workman was appointed on probation for a period of one year which periodf was extended for another one year due to his unsatisfactory performance. M. W. 1 has categorically stated that the workman tendered his resignation on the gound that he was medically unfit to perform his duty vide resignation letter Ext. M. On the 20th September 1999 the managment accepted the resignation letter submitted by the workman but on he resignation letter submitted by the workman but later on he begged apology and the management after careful consideration of the matter allowed him to perform his duty. The office order regarding the acceptance of the resignation letter has been duly proved by M. w. 1 vide Ext. N. Even after receipt of the resignation letter when the workman begged apology the management on he same day took

a lenient view vide letter, dated the 20th September 1993 under Ext. N/1 and allowed him to perform his duty. He has further stated that in the year 1995 the workman had only worked for 89 days for which a charge-sheet came to be issued against him indicating the details of the unauthorised absence vide charge-sheet Ext. K. Even after submission of the charge-sheet the workman begged apology and requested the management to allow him to perform his duty. Accordingly after careful consideration the management allowed the workman to perform his duty even after submission of the charge-sheet. But again the workman remained absent unauthorisedly and committed the same mistake which he had done earlier in several occasions. The management on the 2nd December 1995 called for an explanation from the workman regarding his unauthorised absence vide Ext. P, but the workman onernd did not submit any explanation to that effect. As the workman failed to submit his explanation the management terminated the services of the workman on the 15th January 1996 after complying with the provisions of Section 25-F of the Act by giving one month's notice pay. He has duly proved the termination letter, dated the 15th January 1996 alongwith the Bank Draft dated the 13th January 1996 marked as Ext. G and O/1 respectively. He has clearly and categorically stated that as per clause 19 of the Certified Standing Order such unauthorised absence amounts to voluntary abandonment of service. M. W. 1 has been cross-examined by the workman at length but nothing material and substantial has been elicited during cross-examination to discard or discredit his evidence. Rather during cross-examination he has categorically stated that one month notice pay was given to the workman which he had received. The main allegation against the workman was his frequent absence from duty unauthorisedly. He has stated clearly that the workman had only worked for 89 days during the year 1995 and the details of his absence has been reflected in the charge-sheet. It has been suggested to him that the management without considering the medical certificate and the application submitted by the workman had issued the letter of termination dated the 15th January 1996 vide Ext. O and that the management with *malafide* intention taking advantage of illness of the workman terminated the services with effect from the 15th January 1994 without giving any oportunity to which he has replied in the negative.

9. In support of their respective cases both the management and the workman concerned have adduced evidence. It is undisputed between the parties that the workman concerned was appointed as Steno-Typist with effect from the 10th August 1982 as per the appointment order vide Ext. 1. He continued to work till the date of his termination on the 15th Janaury 1996. It is also undisputed fact between the parties that the workman concerned was terminated from service on the sole ground of his unauthorised absence from duty. The evidence led by the workman before his Court is that he rendered continuous service till the date of his termiation with much sincerity, devotion and to the utmost satisfaction of the authorities, but the management terminated his services with effect from the 15th January 1996 without following the mandate of Section 25-F of the Act. According to the workman during his employment he became ill and remained absent from the 20th November 1995 to the 20th January 1996 on medical ground. During the period of illness he was admitted to Choudwar E. s. I. Hospital twice from the 20th November 1995 to the 20th January 1996. He was admitted in the choudwar E. S. I. Hospital for the treatment of Amoebic Colitis and Dyscentry. He was found fit to resume his duty from the 21st January 1996 and infact on the

22nd January 1996 submitted his joining report alongwith the Msedical Certificate vide Exts. 5 and 4 respectively, but his joining report was not accepted by the management. He thereafter came to know that his services were terminated with effect from the 15th January 1996 . It is submitted on behalf of the workman that the action of the management in terminating his services with effect from the 15th January 1996 was illegal and unjustified. On the other hand, the evidence adduced by the management goes to prove that the workman was terminated from service with effect from the 15th January 1996 on the sole ground of his habitual unauthorised absence. On several occasions he remained absence and in every occasion he tendered apology. He gave undertaking not to repeat such conduct in future. During tenure of his service the workman was issued with several warning letters for such absenteeism. In every occasion the management took a lenient view and allowed him to perform his duty. The workman concerned being a Steno-Typist was holding a post of trust and confidence and was exclusively attached to the General Manager of the management. Despite several warning letters and leniency the workman repeated in committing the same conduct which completed the management to place him under suspension with effect from the 13th May 1995. On the 15th May 1995 a charge-sheet came to be issued against him but the workman concerned tendered written apology admitting his guilt and undertook not to repeat the same conduct. during his tenure of service the workman oncerned also tendered his resignation vide Ext. N on the ground that he was medically unfit to perform his duty. The letter of resignation was also accepted by the management on the 20th September 1993 but later on the workman tendered apology and the management after careful consideration of the matter, allowed him to perform his duty. On every occasion the management took a lenient view and allowed the workman to perform his duty. Even when he apologised for his absenteeism the order of suspension was revoked and a warning was issued cautioning him not to repeat such conduct. Even after submission of the charge-sheet the workman remained absent unauthorisedly but subsequently he begged apology and requested the management to allow him to perform his duty. Despite leniently the workman remained absent unauthorisedly and committed the same conduct which he had done earlier in several occasions and therefore, the management was constrained to issue show cause with a direction to submit his explanation for such unauthorised absence but the workman concerned did not submit his explanation which resulted in terminating the services of the workman with effect from the 15th Janaury 1996. It is categorically submitted on behalf of the management that as per clause 19 of the Certified Standing Order vide Ext. 1 it amounts voluntary abandonment oif service but not termination.

10. In the instant case the workman concerned has mainly relied upon the medical certificate issued by the Insurance Medical Officer-in-Charge, E. S. I. Dispensary, Dhenkanal. It is submitted on behalf of the workman that the workman was found fit to resume his duty on the 21st January 1996. The said certificate reveals that the concerned workman was needing medical treatment and attendance from the 13th January 1996 to the 20th January 1996 on medical ground. A bare perusal of the said certificate Ext. 4 clearly emerges that it has been issued by the Medical Officer-in-charge, E. s. I. Dispensary, Dhenkanal on the 20th January 1996. It is shown in the said certificate that the workman remained absent from the 13th January 1996 to the 20th Janaury 1994 on medical ground and he was found fit to resume his duty from the 21st January 1996. But the evidence goes to prove that during the relevant

period the concerned workman was admitted to Choudwar E. S. I. Hospital from the 20th November 1995 to the 20th January 1996. In his evidence the workman has clearly stated that he was suffering from Amoebic Colitis and Dyscentry and he was admitted in Choudwar E. S. I. Hospital twice for treatment of the aboe disease from the 20th November 1995 to the 20th January 1996. he was found fit to resume his duty from 21st January 1996 vide Ext. 4. Admittedly the medical certificate vide Ext. 4, has been issued by the Medical Officer-in-charge, E.S.I. dispensary, dhenkanal but workman concerned has categorically stated that at the relevant time was admitted to choudwar E.s.I. Hospital for the above said period which casts doubt in my mind. Even no document relating to his treatment at choudwar E. S. I. Hospital from 20th Novembr 1995 to the 20th January 1996 has been produced by the workman. After varefully examining the said document Ext. 4, the evidence given by the workman relating to is treatment at Choudwar E.S.I. Hospital from the 20th November 1995 to the 20th January 1996 leaves from to entertain doubt. The evidence led by the workman relating to his treatment as an out-door patient in the Choudwar E.S.I. Hospital for the above said period gets no corroboration from the document vide Ext. 4 already relied upon by the workman. In absence of any valid medical certificate, it can not be definitely said that the workman was infact admitted to the Choudwar E.S.I. Hospital twice for the treatment of Amoebic Colitis and Dyscentry from the 20th November 1995 to the 20th January 1996. Apart from the above fact the medical certificate issued by the Medical officer-in-Charge, E.S.I. Dispensary, Dhenkanal does not indicate the nature of the treatment given to the concerned workman from the 13th January 1996 to the 20th January 1996. The said document also does not reveal for what disease he was infact undergoing treatment. On careful consideration of he evidence alongwith the medical certificate Ext. 4, I find infirmity and in consistency in the evidence of the workman. On the whole, the said certificate appears not to be valid and genuine. Moreover, it only relates to the period from the 13th January 1996 to the 20th Janaury 1996 but the workman admits in his evidence that the he was undergoing treatment for the period from the 20th November 1995 to the 20th January 1996. In such premises the said certificate already relied upon by the workman can not be safely relied and acted upon. Apart from the above fact the application Ext. 5 submitted by the workman to the General Manager dated the 22nd January 1996 reveals that was suffering from Amoebic Colitis and Dyscentry for which he could nopt be ablce to attend his duties from the 3rd January 1996 to the 20th January 1996. The period of ailment shown in the application Ext. 5 does not tally with the medical certificate Ext. 4 issued by the Medical Officer-in-Charge, E.S.I. Dispensary, Dhenkanal which also leaves from to entertain doubt. The period of 66 ailment as shown in the medical certificate as well as in the application is contradictory to the statement given by the workman. in that view of the matter, the evidence given by the workman appears not be trustworthy and credible. Filing of a certificate is his own statement his favour but in view of the above discussion that can not be regarded as sufficient evidence for this Court to come to the conclusion that the workman concerned, in fact, was undergoing treatment for the period as shown and claimed either at E.s.I. Hospital, dhenkanal or not at Choudwar. In absence of any clear, cogent and reliable evidence, the evidence given by the workman on the above aspect can not be safely relied upon. Rather from the above discussion it is clearly evident that the workman concerned was a habitual unauthorised absentee although he was holding a post of trust and confidence which was highly unbecoming on his part. in that view of the matter, the stand taken by the workman to the effect that he was undergoing treatment for the above disease from the 20th November 1995 to the 20th January 1996 is without substance. In my considered opinion he had failed to maintain absolute interity, sincerity and devotion to his duty.

11. Clause 17 of the Certified Standing Order relates the procedure with regard to the leave. But in the instant case the concerned workman has not at all followed the procedure while remaining on leave. Sub-Clause (iv) of clause 17 clearly stipulates that :

“A workman remaining absent beyond the period of leave granted shall be deemed to have lost lien of his appointment unless he (i) returns within 8 days of the expiry of his leave and (ii) explains to the satisfaction of the authority granting the leave the reason of his inability to return in time. Whenever such absence exceeds 8 days, the workman shall be presumed to have abandoned his job and to have left the services of the company of his own accord with effect from the first date of such absence”.

Clause 19 of the said certified Standing Order relates to abandonment of service. It clearly provides that :

“No workman shall be allowed to absent himself from work without the previous sanction of the authority competent to grant him leave. Whenever during a period of 12 months if any employee remains absent from his duty on e occasions without intimation or permission from the management he shall be given a notice by the later and in the event of such employee repeating such conduct thereafter shall forfeit his lien in his service and his name will be removed from the rolls of the Company. Besides absence from duty without permission shall also be treated as misconduct and dealt with accordingly. When the unauthorised absence in respect of an employed person exceeds 8 consecutive days excluding any intervening declared holidays, the said employed person shall be deemed for all purposes to have voluntarily abandoned his employment whereafter his name will be removed from the Company’s rolls”.

In the present case the perusal of the medical certificate and the application clearly emerges that he was on leave without previous sanction of the authority. Nowhere it has been elicited that workman had applied for leave from the 20th November 1995 to the 20th January 1996 and that the above leave period had been sanctioned by the competent authority.

since the action of the management is in terms of the certified Standing Order, the termination from service in such circumstances, is not a punishment for misconduct but only a recognition of the realities of the situation which does not violate the principles of natural justice. In a judgement reported in 2005(5) Supreme Court Cases 337 in the matter between Vivekananda Sethi and chairman, J. & K. Bank Limited, and others, the Hon’ble Apexc Court has consistently taken the view that :

“The principles of natural justice are required to be complied with having regard to the fact situation obtaining therein. It can not be put in a strait jacket formula. It can not be applied in a vacuum without reference to the relevant facts and circumstances of the case. The principles of natural justice, it is trite, is no unruly horse. When facts are admitted, an enquiry would be an empty formality. Even the principle of estoppel will apply”.

In the case at hand, the management had already called for an explanation from the workman regarding his unauthorised absence vide Ext. P, dated the 2nd December 1995 but the workman concerned did not submit any explanation to that effect. Accordingly the management terminated the services of the workman with effect from the 15th January 1996 after complying with the provisions of Section 25-F of the Act by giving the month's [ay vide Ext. Q alongwith Bank Draft dated the 13th January 1996 of Rs. 2,552 vide Ext. Q/1. Therefore, in my considered view, the enwuiry in the instant case was not necessitated since the concerned workman had offered no explanation for his absence from duty. In such circumstances the submission already led by the learned counsel appearing for the workman to the effect that in absence of any enquiry the termination was illegal and unjustified is without substance.

12. After carefully examining the evidence tendered by the parties, the documents relied upon by them and keeping in view the settled position of law I am of the considered view that the workman concerned has not succeeded in proving his own case. in that view of the matter, the workman 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

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

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