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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 25th January 2006

No. 811-li/1(B)-78/1992 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2005 in Industrial Dispute Case No. 129 of 1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of Orissa Renewable Energy Development Agency, Bhubaneswar and its workman Shri Amareswar Khandual was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 129 OF 1993

Dated the 31st December 2005

*Present :*

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

*Between :*

The management of Orissa Renewable Energy Development Agency  
Bhubaneswar. .. First Party—Management

And  
Its workman .. Second Party—Workman  
Shri Amareswar Khandual.

*Appearances :*

For the First Party—Management .. Shri B. K. Dash, Advocate

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For 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 (d) 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. 18478(5)-L. E., dated the 12th August 1993 for adjudication and Award.

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

“Whether the termination of service of Shri Amareswar Khandual by the management of Orissa Renewable Energy Development Agency, Bhubaneswar with effect from the 31st January 1986 is legal and/or justified ? If not, what relief he is entitled to ?”

3. By way of this reference workman Amareswar Khandual has challenged the decision of the management of Orissa Renewable Energy Development Agency, Bhubaneswar (herein-after referred to as the management) in terminating his services with effect from the 31st January 1986.

Contextual facts depict that the workman was engaged in the establishment of the management as Peon-*cum*-Helper with effect from the 5th September 1984. He continued in his employment till the 30th January 1986. When he reported for duty on the 31st January 1986 he was refused employment. It is specifically averred by the workman in his statement of claim that he had rendered continuous uninterrupted service with effect from the date of his joining till the date of his termination on the 31st January 1986 with much sincerity, devotion and to the best satisfaction of the authorities 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 (hereinafter referred to as the Act). After such termination he approached the labour machinery but in vain. The conciliation proceeding ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While challenging the action of the management, the workman has claimed for his reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management filed its written statement opposing the claim of the workman contended *inter alia* that the workman had been engaged in the establishment of the management on contingency basis as daily wager and as and when need was felt, his service was taken on daily wage basis. According to the management, the workman was a casual worker and he was engaged as and when the work was available for him. He was not issued with any order of appointment by the management and he was not a regular employee and

had never worked for more than 240 days in terms of the statutory provisions of the Act. Therefore, with regard to the termination of the workman the provisions of retrenchment were not attracted and the management was not under obligation to comply with the provisions of Section 25-F of the Act. In such circumstances, 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 service of the second party workman by the first party management with effect from the 31st January 1986 is legal and/or justified ?
- (ii) If not, what relief relief the workman is entitled to ?

6. The workman in support of his case has examined himself as W.W. 1 and has relied upon one certificate issued by the then Administrative Officer of the management marked as Ext. 1. On the other hand, the management has examined one Ajaya Kumar Sethy as M.W. 1 and has relied upon the xerox copy of the memorandum of Association of OREDA 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 appears from the evidence of the workman that he joined in the establishment of the management with effect from the 5th September 1984 as Peon-cum-Helper. He continued in his employment till the 30th January 1986. On the 31st January 1986 he was refused employment. It is further stated by the workman that he had rendered continuous uninterrupted service with effect from the date of his joining till the date of his termination on the 31st January 1986 and had worked under the management for more than 240 days continuously in terms of the statutory provisions of the Act. But the management terminated his services without any rhyme or reason and while terminating his services had not given any notice or notice pay and retrenchment compensation. During evidence he has proved the certificate issued by the then Administrative Officer of the management indicating the date of his joining marked as Ext. 1. During cross-examination he has clearly admitted that he has not filed any document relating to his appointment under the management with effect from the 5th September 1984. He has also not filed any document with regard to the receipt of wages from the management. It is stated by him that he was not issued with any appointment order and he does not remember if he had submitted any joining report to the management on the 5th September 1984. In his

evidence he has clearly stated that he had requested the Administrative Officer to issue a certificate in his favour for his future employment. He has also not produced any document to show that after his termination the junior employees were engaged by the management. It has been suggested to him that he voluntarily abandoned the service and that he had not worked continuously since the date of his joining till the date of his termination and that he is not entitled to be reinstated in service with back wages to which he has replied in the negative. The management on the other hand, has led evidence through M.W. 1 to prove and establish that the workman was engaged as labourer on daily wage basis and no appointment order was issued to him. He was neither a regular employee of the management nor was appointed by the management as a regular employee. He (M.W. 1) has stated that the services of the workman were taken as and when required by the management on daily wage basis and the workman was paid his wages for the days he had actually worked. In his evidence M.W. 1 has challenged and disputed the certificate Ext. 1 issued by the then Administrative Officer in favour of the workman. He has categorically stated that the Chief Executive is exclusively empowered to issue such a certificate as per the bye-law of the management and such issuance of certificate as per bye-law was totally illegal. It is also in his evidence that the workman had not worked under the management continuously for more than 240 days and he is not entitled for any relief as claimed. During cross-examination he has stated that the workman had worked from 1984 to 1986 but he had not worked continuously and there is no document with the management to show that the workman had worked continuously for the above period. During evidence he has duly proved the Memorandum of Association of OREDA marked as Ext. A.

8. From the above discussion the principal issue thus appears to be as to whether the workman had completed 240 days of service in terms of the statutory provisions. The Hon'ble Appex Court in the matter between Forest Range Officer and S.P. Hadimoni reported in 2002 (94) FLR 622 Supreme Court, Uttar Pradesh Abhasevam Vikash Parisada and Kanak and another reported in 2003 (96) FLR 492 (Supreme Court) and in the matter between Rajstan State Gongonagar Mills Ltd. and State of Rajstan and another reported in 2004 (103) FLR 192 Supreme Court has consistently taken the view that :—

“It is for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 months period. The burden was upon the workman to prove that he had worked 240 days as claimed.”

Admittedly the requirement of the statute can not be disputed and it is for the workman to prove that he has in fact completed 240 days in the last preceding 12 months period. In the case at hand, both the management and the workman have adduced evidence in support of their respective cases. The stand taken by the management before this Court that the workman

had never worked continuously for more than 240 days as a regular employee, therefore, with regard to the termination of the workman the provisions of retrenchment are not attracted and the management was not under the obligation to comply with the provisions of Section 25-F of the Act. In such view of the matter, the workman is not entitled for any relief. On the other hand, the claim of the workman before this Court is that he had rendered continuous service with effect from the 5th September 1984 till the date of his termination on the 31st January 1986 but the management without any rhyme or reason terminated him from service without following the mandate of Section 25-F of the Act. According to the workman he had completed more than 240 days of continuous service in terms of the statutory provisions of the Act and therefore, he is entitled to be reinstated in service with back wages since the provisions of Section 25-F of the Act have not been complied with in the case of his termination.

9. In the case at hand, after carefully examining the evidence led by the parties it is evident that the workman has not successfully proved his case with regard to his continuous engagement for 240 days in the establishment of the management in terms of the statutory provisions of the Act. Nowhere it has been proved by the workman that he had completed 240 days of continuous service under the management in the year preceding his termination. The workman has also led no clear and cogent evidence to prove and establish the above such fact. Admittedly in order to substantiate his case the workman has relied upon the certificate issued to him by the then Administrative Officer of the management indicating the date of his engagement but the said certificate relied upon by him has been disputed by the management. Therefore, the mere filing of a certificate in the instant case cannot be regarded as sufficient evidence to come to the conclusion that the workman had, in fact worked for more than 240 days in the year preceding his termination. Besides no proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for the above period has been produced by the workman. On the whole, in absence of any documentary evidence to that effect I find no considerable force in the stand taken by the workman. On a close scrutiny and analysis of the evidence tendered by the parties I am led to hold that the workman has miserably failed to substantiate his case with regard to his continuous service having been rendered by him in the establishment of the management in terms of the statutory provisions of the Act. Therefore, the stand taken by the workman is without substance. In that view of the matter, the workman is not entitled to any relief as prayed for.

The reference is thus answered accordingly

Dictated and corrected by me.

P. K. SAHOO  
31-12-2005  
Presiding Officer  
Labour Court, Bhubaneswar

P. K. SAHOO  
31-12-2005  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor  
D. MISHRA  
Under-Secretary to Government