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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 7th September 2006

No. 8130—li/1(S)-12/2004(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th August 2006 in Industrial Dispute Case No. 8 of 2005 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of Lahanda Service Co-operative Society Limited, Lahanda represented by Secretary, Lahanda Co-operative Society Limited, Lahanda, P.S. Atabira, Dist. Bargarh and its Workman Shri Sukadev Paik, Ex-Salesman and Clerk at Godtiapali, P.O. Godbhaga, P.S. Attabira, Dist. Bargarh 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. 8 OF 2005

Dated the 5th August 2006

*Present :*

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

*Between :*

The Management of  
Lahanda Service Co-operative  
Society Limited, Lahanda represented by  
the Secretary, Lahanda S. C. S. Limited,  
Lahanda, P.S. Attabira, Dist. Bargarh. . . First Party—Management

And

Its Workman  
Shri Sukadev Paik,  
Ex-Salesman and Clerk  
At Godtiapali, P.O. Godbhaga  
P.S. Attabira, Dist. Bargarh. . . Second Party—Workman

*Appearances :*

For the First Party—Management	.. Shri Gangadhar Barik, Secretary, Lahanda S.C.S.
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 vide memo No. 5546(5)-L.E., dated the 2nd July 2005 for adjudication of the dispute schedule below :

“Whether the action of the management of Lahanda Service Co-operative Society Limited, Lahanda, Dist. Bargarh in terminating the services of the workman Shri Sukadev Paik with effect from the 21st March 1997 by accepting his resignation tendered about two years back i.e. on the 23rd November 1994 is legal and justified ? If not, what relief the workman Shri Paik is entitled to ?”.

2. The workman has prayed for answering the above reference in his favour with the plea that on the 1st July 1971 he joined the management as a Peon and after taking note of his satisfactory performances he was promoted to the post of Salesman and then as a Clerk, but on the 28th June 1994 he fell ill and became bedridden which continued for few months and during that period he presented an application for voluntary retirement on the 23rd November 1994. But after 4 days on the 27th November 1994 he withdrew the same and approached the Secretary to allow him to perform his duty, but the Secretary avoided him on some pretext and lastly on the 21st March 1998 vide letter No. 119 the Secretary of the Society intimated him that his Voluntary Retirement Application was accepted. As a result his services were terminated and then he approached the Labour Officer at Bargarh for conciliation which also failed and then the Government referred this matter to this Court for adjudication. By mentioning the above facts and circumstances the workman has prayed for answering the reference in his favour.

3. The Secretary of the M/s Lahanda Service Co-operative Society Limited, Bargarh has contested the above claim by stating that during his service period the workman committed several misconducts such as misappropriation of Society's Fund, Negligent in duty and shortage of stock, as a result of which several charges were framed against him and then the workman submitted his explanation admitting the charges and undertook to refund the misappropriation money with a further request to excuse him and in view of such prayer, the management did not take any stringent action against him and on the 23rd November 1994 he presented an application for voluntary retirement which was placed before the Board of Directors in their meeting held on the 13th September 1995 and after due consideration it was accepted from the 23rd November 1994, after which the decision of the Board was communicated to him, by the Peon of the Society on the 22nd September 1995. But the same could not be served on the workman due to his absence and lastly it was published in the newspaper namely “Agnisikha” on dated the 4th June 1995 wherein the workman was also requested to collect his dues from the management and in view of the above position it

is very difficult to say that the workman has withdrawn his resignation after 4 days of presentation of the same and the other pleas taken by the workman are cooked up and accordingly the reference be answered against him.

4. The workman in his rejoinder has taken the plea that the allegation of misappropriation and other omissions and commissions are false and cooked up and nowhere he has admitted the charges framed against him and the specific allegation of misappropriation of Rs. 6,000 from Shri Khetrabasi Mirdha is a false story and further according to him, the acceptance of his voluntary retirement application in spite of withdrawal is a shrewd ruse. It is also the case of the workman in his rejoinder that the delay in acceptance of his voluntary retirement application is self-explanatory to conclude that it was a plan to oust him from the institution and such cooked up allegations of the management be rejected and the reference be answered in his favour.

5. By taking the note of the pleadings of the parties the following issues are settled in this case for adjudication :—

### ISSUES

- (i) “Whether the action of the management of Lahanda Service Co-operative Society Limited, Lahanda, Dist. Bargarh in terminating the services of the workman Shri Sukadev Paik with effect from the 21st March 1997 by accepting his resignation tendered about two years back i.e. on the 23rd November 1994 is legal and justified ?
- (ii) To what relief the workman Shri Paik is entitled ?”

### FINDINGS

6. *Issue No. (i)* :—In order to suffice his case the workman is examined as the only witness from his side and he has also filed Exts. 1 to 4 which are xerox copies of the letters issued by the management to him. As it appears that in Ext. 1 the details of the proceeding initiated against him are mentioned and Exts. 2 and 3 are the letters issued by the Secretary of the Society intimating him to refund certain amount pertaining to the loan of consumer durables and the advance taken by him. Ext. 4 is the letter of the Secretary.

The management side has examined two witnesses and out of them, the Secretary of the Society is examined as M. W. 1 and the Peon of the Society is examined as M. W. 2. They have marked Exts. A to R to suffice their claim. The documents filed from the side of the management will be reflected in the body of the order as and when found necessary.

7. It is the admitted case of the parties that the workman was serving in the Society from the 1st July 1971 and on the 28th June 1994 he remained absent from duty and then he tendered an application for voluntary retirement. Though the management side has pleaded that the workman has misappropriated Society’s money and then a proceeding was initiated against him which was also dropped by taking the note of the admission advanced by the workman. But the workman has denied the same and challenged the action of the management in this regard. As per law, the party who asserts must prove the fact. In this case the presentation

of the voluntary retirement application is not under dispute. According to the workman he has withdrawn it, but the management side has said that at no point of time it was withdrawn and after taking note of the previous conduct of the workman it was accepted by the Board of Directors which was then intimated to the workman. On perusal of the pleadings of the parties, it is to be primarily decided as to whether the workman has withdrawn his voluntary retirement application or the action taken by the management on such application is legal.

8. The management side have filed the voluntary retirement application of the workman and in this case the same is marked as Ext. J. On perusal of the contents of the Ext. J, it is forthcoming that the workman has tendered the same on the ground of illness and in it, he has assured that he will refund the amount due on him. The plea of the management that in the body of Ext. J the workman has admitted the charges which was communicated to him vide letter No. 223, dated the 7th November 1994 (Ext. H and H/1) cannot be accepted, as in the body of Ext. J, the workman has not admitted the lapses alleged in the body of Ext. H, but he has simply mentioned that due to illness he is not in a position to explain the circumstances mentioned in it. So the plea of the workman that he has never admitted the charges sounds probable. In this connection I feel it proper to mention here that the present Secretary of the society who is examined as M. W. 1 was not attached to this Society by then, as a result, it is beyond his reach to say as to what was the position holding the filed by then and under what circumstances the workman has tendered Ext. J to the President and the Board of Directors of the Society. So the first step of the plea taken by the management that vide Ext. J the workman has pleaded his guilt which tempted them not to proceed with the charges cannot be accepted. It is simply forthcoming from the body of Ext. J that the workman has opted for voluntary retirement on the ground of illness and by then he was ready to clear up the dues.

9. As it appears that Ext. J (Voluntary Retirement Application) was presented on the 23rd November 1994 and it was received by the Secretary on the 24th November 1994. From the body of Ext. H it is forthcoming that on the 27th June 1994 the workman had applied for leave to attend the marriage ceremony of his nephew and from that date he remained absent which according to the management was unauthorised. On perusal of Ext. B which is a letter from the President of the Society dated the 14th July 1994 it is forthcoming that the workman was not attending duty from the 28th June 1994. In Ext. D the workman was instructed to explain regarding his absence and to join his duty within 3 days of receipt of the said letter (Ext. B). As it appears the workman has received the copy of the said letter on the 15th July 1994. The Ext. A series reveals that the workman by presenting applications was availing leave. Furthermore Ext. C it is forthcoming that on the 30th July 1994 the workman had requested the President of the Society to consider his case and allow him to join his duty. From the body of Ext. C it is also forthcoming that it was placed before the President by the Secretary of the Society and the President has passed an order to place it before the Board. By taking note of the above referred exhibits it can be safely said that the workman by presenting Ext. C has prayed for favourable consideration of his explanation and to allow him to join in duty. This indicates that he was having a desire to perform his duty and by then he was not harbouring an intention to take voluntary retirement from service.

10. It is also the case of the management that he has swallowed the money after collecting it from one loanee namely Shri Khetrabasi Mirdha. According to the management, Ext. L is the application presented by Shri Khetrabasi Mirdha in relation to the above dispute. After receiving Ext. L the workman was asked to explain the circumstances under which it had taken place and even the workman had presented Ext. M explaining the circumstances resulting to the above situation. On perusal of the Ext. M it is forthcoming that the loan amount of Rs. 6,000 is a personal loan and it had nothing to do with his official position. After receiving Ext. M it was placed before the President and then vide Ext. F the workman was informed to deposit the full amount taken from Shri Khetrabasi Mirdha alongwith up-to-date interest on or before the 3rd June 1994. This aspect is also getting support from Ext. G. In view of the above position it is very difficult to say that the said amount was misappropriated by the workman. In a summary proceeding like the present one, an opinion to this extent cannot be rendered. When the Society is silent after intimating the workman vide Ext. F, it probabillis that by then they were also not of the opinion that it was misappropriation of Society's Fund. No report was lodged at the Police Station and no criminal action was taken up against the workman. Rather from the different letters exhibited in this case it can be said that the management side were chasing the workman which under this circumstances is to be adversely viewed. As from the exhibits proved in this case from the side of the management it is forthcoming that prior to presentation of the voluntary retirement application, the workman was physically fit to perform his duty, so there is no good ground to present Ext. J which is the voluntary retirement application before the management. So Ext. J was presented by the workman because of the chasing attitude of the management. In a dispute of the present type such action of the management cannot be easily swallowed.

11. It is admitted case of the management that they have not proceeded with the proceeding initiated against the workman as because the workman has admitted his guilt. Ext. N is the true copy of the resolution of the management Society on dated the 30th December 1994. From the Ext. L it is forthcoming that the Board of Directors of the management Society have requested the Assistant Registrar of the Co-operative Society to enquire the charges levelled against the workman. No document or oral evidence is produced as to what action the Assistant Registrar has taken thereafter. No good ground is shown as to why in the meeting held on the 30th December 1994, the Board of Directors of the Society did not take up the voluntary retirement application of the workman, though the same was received by the Secretary of the Society on the 24th November 1994. This aspect is not properly explained by the management. Rather the witness No. 1 of the management in his evidence has stated that he has no direct knowledge about the omissions and commissions that had taken place during the relevant period as he had joined in the Society in the month of September 2002. In his evidence M. W. 1 has also stated that in the Audit Report an amount of Rs. 1,657.70 Paise is shown as an amount of recovery from the workman and it is not mentioned as misappropriation amount. So the allegation of misappropriation cannot be accepted and it is nothing to do with the career of the workman.

12. Now coming to the presentation of the Voluntary Retirement Application and acceptance of the same it is the specific plea of the management that they have not received

any withdrawal letter from the workman. The workman has specifically pleaded that on the 27th November 1994 he has withdrawn it. In the pleading it is the case of the management that the voluntary retirement application of the workman was placed before the Board of Directors meeting held on the 13th September 1995 and after due consideration it was accepted. It is also their admitted case that it was published in the newspaper namely "Agnisikha" on the 4th June 1996. The workman has come up with a plea that the delay occasioned in the above process is a good ground to conclude that it is a mere paper transaction and the management Society has shown to have accepted the voluntary retirement application in pen and paper at a belated stage to oust him from the employment. Admittedly at the relevant time no benefit was extended to the workman. From Ext. P it is also not forthcoming that the Board of Directors have resolved to extend the benefits due for an employee. Simply in a bald manner it is resolved that the President of the Society was authorised to collect the arrear dues from the workman while paying his claim. But there is no resolution specifying the benefits to be extended to the workman while accepting his voluntary retirement application. If the voluntary retirement application was received by the management Society on the 24th November 1994 there is no reason as to why it was placed on the 13th May 1995 and then it was intimated to the workman vide Ext. Q on the 22nd September 1995. According to the management, the original copy of the Ext. Q was not handed over to the workman as he was absent in his village. If this is true then there is no reason as to why it was published in "Agnisikha" on the 4th June 1996. The notice in relation to the workman is marked Ext. R in this case and on perusal of the body of the notice it is forthcoming that it is an intimation to the workman to receive back his dues from the Secretary of the Society within one month. In the body of Ext. R there is no whisper of word that the voluntary retirement application was placed in the Board meeting on the 13th September 1995 and that it was intimated to the workman on dated the 22nd September 1995 and that the workman was absent in his address as a result it could not be served and so he has to appear before the Secretary within one month. So Ext. R cannot be given importance. The present Secretary who has joined in the month of September, 2002 has come up with a plea that he has not received any withdrawal application of the workman. It is beyond his reach to receive it as by then he was not attached to the present Society. The Ex-Secretary is not examined from the side of the management to ignore the demand of the workman that he had withdrawn his voluntary retirement application on the 27th November 1994. Furthermore, prior to accepting the said application, the memory of the Board of the Directors of the Society had failed them to hear the workman personally under what circumstances he has tendered it. So opportunity of being heard was not given to the workman while accepting his voluntary retirement application. Rather from the circumstances such acceptance appears to be without just ground. So the action of the management cannot be endorsed by this Court. Rather it is held that the action of the management terminating the services of the workman from the 23rd November 1994 is not legal and justified.

13. *Issue No. (ii)*—Now it is to be decided as to what benefit or the workman is entitled to get in view of my above conclusion. Issue No. (ii) relates to this aspect. I have already arrived into a conclusion that the acceptance of voluntary retirement application is not legal and it was a simple paper transaction. As such, the subsequent termination of the workman

is not justified. In view of the above position, the workman is entitled to get his employment in the Society. With regard to the back wages it is very difficult to conclude that the workman is entitled for full back wages. But at the same time, his claim for back wages cannot be fully ignored. So after weighing the entire situation, I am of opinion that the workman should be satisfied with a consolidated amount to be paid by the management. It can be judicially noted that the co-operative societies are now running through financial problems. After weighing the entire situation, a consolidated amount of Rs. 10,000 (Rupees ten thousand) only is fixed as the back wages of the workman and the management is directed to pay the same within one month. Hence the management is also directed to reinstate the workman within one month. Hence the, following award :—

### AWARD

The reference is answered in favour of the workman and against the management on contest. The action of the management in terminating the services of the workman from the date as referred in the schedule of reference is not legal and justified. Accordingly the management is directed to reinstate the workman in service within one month. Hence with regard to the back wages, the management is directed to pay a consolidated amount of Rs. 10,000 (Rupees ten thousand) only to the workman within one month.

Dictated and corrected by me.

P. K. MOHAPATRA  
5-8-2006  
Presiding Officer  
Labour Court, Sambalpur

P. K. MOHAPATRA  
5-8-2006  
Presiding Officer  
Labour Court, Sambalpur

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