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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 14th November 2006

No. 10024—li/1(BH)-11/2002 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th September 2006 in Industrial Dispute Case No. 2/2004 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of D. F. O., Athamallick Division, Angul, District Angul and its workman Shri Bansidhar Sahu, son of Late Jaya Sahu, Athamallick, District Angul 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 2004

Dated the 5th September 2006

*Present :*

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

*Between :*

The Management of .. First Party—Management  
D. F. O., Athamallick Division  
Angul, Dist. Angul.

And

Its Workman .. Second Party—Workman  
Shri Bansidhar Sahu  
S/o Late Jaya Sahu  
Athamallick, Dist. Angul.

*Appearances :*

For the First Party—Management	..	Shri K. K. Satapathy, A. C. F., Athamallick.
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For the Second Party—Workman	..	Himself

## AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 vide Memo No. 46(5)-L.E., dated the 2nd January 2004 for adjudication of case as Schedule below :

“Whether the action of the D. F. O., Athamallick Division, Dist. Angul in refusing employment to Shri Bansidhar Sahu, Watcher with effect from the 7th February 2001 is legal and/or justified ? If not, what relief is Shri Sahu entitled to ?”

2. The case of the workman is that he was working under D.F.O, Athamallick Division, Athamallick as a Peon and Night Watchman with a monthly salary of Rs. 650 and from the 26th December 2000 to the 6th February 2001 he took leave as he was sick and on the 7th February 2001 the Range Officer disengaged him from service and his juniors have been engaged in his place. According to the workman, he was removed from service without any good cause and he may be reinstated in service with full back wages.

3. The management side has contested the above claim by stating that the workman was engaged as Watcher on daily wage basis and as he is a casual worker, so his present claim cannot be accepted. It is also the case of the management that the workman was engaged on daily wage basis from October, 1993 to October, 1995 but he was not being engaged continuously and again he was engaged from April, 1996 to May, 2000 and then from August, 2000 to December, 2000 with the same terms and conditions which he had accepted and in 2001, January when he was required to be employed further, he was found absent, as a result, his present claim cannot be entertained. It is the case of the management that such employees are being engaged by taking note of the availability of fund and the present workman during his engagement period was engaged for 15 to 20 days a month on daily wage basis. By mentioning the above facts and circumstances the Divisional Forest Officer of Athamallick Division has prayed for answering the reference against the workman.

4. The workman has filed his rejoinder by stating that he was in continuous service from 1992 up till the 6th February 2001 and on the 7th February 2001 employment was refused to him and then his juniors have been adjusted in his place. He has stated that the mandatory requirements of Industrial Disputes Act (hereinafter referred as the Act) are not complied while removing him from service and accordingly he may be reinstated in service with full back wages.

5. By taking note of the pleadings of the parties, the following issues have been framed for adjudication :—

### ISSUES

- (i) “Whether the action of the D. F. O., Athamallick Division, Dist. Angul in refusing employment to Shri Bansidhar Sahu, Watcher with effect from the 7th February 2001 is legal and/or justified ?
- (ii) To what relief the workman Shri Sahu is entitled to ?”

6. *Issue Nos. (i) and (ii)* :—The above two issues are taken up together as those are interlinked. It is the admitted case of the parties that the workman was in employment under the jurisdiction of the D. F. O. of Athamallick Division as a Watcher on daily wage basis. The workman has claimed that he was in continuous service from 1992 up till the 6th February 2001, but according to the management he was in employment from October, 1993 to October, 1995, from April, 1996 to May, 2000 and again from August, 2000 to December, 2000. So after taking note of the pleadings of the parties what emerges is that the workman was in employment for more than 6 years, but according to the management in each month he was being engaged from 15 to 20 days. The workman has claimed that he was being engaged for the entire month. It is the admitted case of the parties that he was engaged as a temporary workman and it is purely on contractual basis. But according to the Act, a temporary workman would also be entitled to the claim of benefits available in it. The casual workers are also entitled to get it and what is relevant is the relationship of employer and employee for requisite month of time. To sum up the nature of employment is irrelevant to extend the benefits available in the statute.

7. Admittedly while refusing employment to the workman no benefit was extended to him. As per law the management should have issued a notice in writing giving one month time to him for retrenchment or wages for that period should be paid to him. The payment of compensation equivalent to 15 days average pay for every year of completed service or any part thereof in excess of 6 months should have been paid to him, but nothing is paid to the workman and the said lacuna of the management is sufficient to reinstate the workman in service.

8. According to the management, the workman was being employed for 15 to 20 days a year. As per law the workman has to suffice that he was in continuous service for not less than one year under the D. F. O., Athamallick Division, but was retrenched from service and during that period of 12 months he had served for not less than 240 days. The management has admitted in the written statement that he was in employment from October, 1993 to October, 1995 and again from April, 1996 to May, 2000. In his evidence the A. C. F. who has appeared for the D. F. O. has stated that he cannot say that the workman was working for 30 days in every month. But he has admitted that he was in employment from October, 1993 to

October, 1995 and again from April, 1996 to May, 2000. The same is sufficient to conclude that the workman was in employment for more than 240 days during the period of 12 months and that at the time of refusal of employment he was not given any benefits as provided in law. So the retrenchment of the workman is illegal and he is to be reinstated in service.

9. Admittedly, the workman has not performed his duty after he was retrenched from service. Though he is entitled for back wages, but by taking note of the peculiar circumstances of this case, I am of opinion to limit the back wages, to a certain extent. Accordingly, the back wages is limited to Rs. 10,000 (Rupees ten thousand) only. The above issues are answered accordingly. Hence the following Award :—

#### AWARD

The reference is answered on contest in favour of workman and against the management. The action of the D. F. O., Athamallick Division, Dist. Angul in refusing employment to Shri Bansidhar Sahu, Watcher with effect from the 7th February 2001 is held to be illegal and unjustified. The D. F. O., Athamallick Division, Angul is directed to reinstate the workman in service within three months hence. The D. F. O. is further directed to pay Rs. 10,000 (Rupees ten thousand) only to the workman as back wages within three months hence.

Dictated and corrected by me.

P. K. MAHAPATRA  
5-9-2006  
Presiding Officer  
Labour Court, Sambalpur

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Presiding Officer  
Labour Court, Sambalpur

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