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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 17th February 2006

No. 1607—Ii/I (B)-117/1999-L.E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st January 2006 in Industrial Dispute Case No. 90 of 1999, the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Managing Director, Kalinga Hospital Limited, Chandrasekharpur, Bhubaneswar and its workman Miss Sunita Patra, C/o Shri Narayan Patra, At Raghunathpur, P.O. Banapur, District Khurda, Pin 752031 was referred for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 90 OF 1999
Dated the 21st January 2006

Present :

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

Between :

The Managing Director
Kalinga Hospital Limited
Chandrasekharpur, Bhubaneswar. . . First Party—Management

And

Its Workman
Miss. Sunita Patra
C/o Shri Narayan Patra
At Raghunathpur, P.O. Banapur
Dist. Khurda, Pin 752031. . . Second Party—Workman

Appearances :

For First-Party Management	. .	Shri B. N. Rath, Advoacate
For the Second-Party Workman	. .	Shri Subrat Mishra, Advocate

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c)/(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.15446(5)-LE., dated the 4th December 1999 for adjudication and Award.

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

> "Whether the termination of services of Miss Sunita Patra, Staff Nurse with effect from the 10th September 1998 by the Management of M/s. Kalinga Hospital Limited, Bhubaneswar is legal and/or justified ? If not, what relief the workman is entitled to ?"

3. By way of this reference, the workman has challenged the legality and justifiability of the decision of the management of M/s. Kalinga Hospital Limited, Bhubaneswar (hereinafter referred to as the management) in terminating her services with effect from the 11th September 1998.

The facts of the case in brief as narrated in the statement of claim tend to reveal that the workman was appointed as Staff Nurse in the establishment of the management by order dated the 1st December 1997 and infact joined in the respective post in the said establishment on the same day. One of the terms of her appointment was that she would be on probation for a period of six months which period could be extended for another three months at the discretion of the management. The appointment letter further provided that during the probation period the management shall have the right to terminate her service without notice and without assigning any reason. On satisfactory completion of the probation period she will be confirmed in her present position and after confirmation, her appointment will be subject to 90 days notice of termination or salary in lieu of such notice by either party but this could not proclude the summary termination of her engagement by the company in the unlikely event of misconduct, negligence or disobedience of orders of the superiors. The workman accepted the terms and conditions of service reflected in the letter of appointment and joined in her post with effect from the 1st December 1997 and continued in her employment till the date of her termination by the management on the 11th September 1998. According to the workman, she had completed her probation period of six months and the extended probation period for three months successgully. during the continuance of her service under the management neither any adverse remarks nor any allegation were made against her by the mangement. although she had discharged her duties with much sincerely, devotion and to the utmost satisfaction of the superiors but surprisingly the management issued a letter to her on the 11th September 1998 indicating her termination with effect from the 11th September 1998 (A.N.). It is categorically averred in the statement of claim that the management without conducting any enquiry into the allegation, if any, terminated her from service without following the mandate of Section 25-F of the Industrial Disputes act, 1947 (hereinafter referred to as the Act). According to her, the termination of service after successful completion of probation

period without reasonable cause and in absence of any allegation against her is contravention of the principles of natural justice which was *malafide*, intentional and arbitrary. After such termination finding no other way out, she approached the labour machinery but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Bhubaneswar ended in failure and the matter was ultimately referred to this Court by the government in the Labour & Employment Department for adjudication. While seeking industrial adjudication, the workman has prayed for her reinstatement in servie with back wages alongwith other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman *inter alia* contended that the workman was appointed on probation as Staff Nurse vide letter No. 1257—344/1997, dated the 27th November 1997 and was on probation for a period of six months which period was extended further for a period of three months as per the terms and conditions reflected in the appointment letter. The workman joined on the 1st December 1997. She was on probation for a period of six months which period was extended for another three months as per the terms and conditions of the appointment letter which ended on the 1st September 1998. Thereafter the management reviewed her case whether to confirm or terminate her service. But after careful consideration of the performance of the workman the management decided not to continue her services any further more and infact vide letter No. 1213—344-E-48/1998, dated the 11th September 1998 terminated her service after expiry of the probation period. It is categorically averred that the management took 11 more days to take this decision which was normal. According to the management the workman has no case to make a claim that her termination was illegal due to non-compliance of the provisions of Section 25-F of the Act. Rather the termination of services of the workman was legal and justified as per the terms and conditions of the service stipulated in the appointment letter. 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 :—

(i) Whether the termination of services of Miss Sunita Patra, staff Nurse with effect from the 111th September 1998 by the management of M/s Kalinga Hospital Limited, Bhubaneswar is legal and/or justified?

(ii) If not, what relief the workman 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 letter and letter of termination marked as Exts. 1 and 2 respectively. On the other hand, the management has examined one Shri Hrudananda Mishra as M.w. 1 and has relied upon the xerox copies of the documents such as, appointment letter, termination letter, attendance register from the 1st December 1997 to the 10th September 1998, original cash voucher dated the 21st September 1998 and the xerox copy of the circular dated the 17th September 1998 marked as Exts. A to E 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 her evidence has clearly stated that she joined in the establishment of the management as Staff Nurse on probation from the 1st December 1997 vide appointment letter Ext. 1 on consolidated pay of Rs. 1,800 per month and continued in her employment till the 11th September 1998. She was on probation for a period of six months as per the terms and conditions of service embodied in the appointment letter which period was extended further for a period of three months. She has categorically stated that the management had neither given in writing regarding the extension of probation period for another three months nor it had explained the reasons thereof. It is further stated that she was working as Staff Nurse in both out-door and in-door of the hospital regularly and was also performing her duty on every working days as per the direction of the management. although the extension period of three months was due to be expired on the 31st August 1998 but she was allowed to continue till the 11th September 1998. It is also i her evidence that although she had rendered continuous un-interrupted service and had completed more than 240 days of service but the management without any rhyme or reason terminated her service with effect from the 11th September 1998 vide Ext. 2 without giving any notice or notice pay and retrenchment compensation. After such termination the management had also engaged fresh candidate. She has stated categorically during cross-examination that she accepted the terms and conditions of service reflected in the appointment letter Ext. 1 and joined in her duty on the 1st December 1997 and worked till the date of her termination on the 11th September 1998. It has been suggested to her that she had not worked 240 days in 12 months period preceding the date of termination and that she had only worked for 228 days and that she had not completed the probation period perfectly and that she is not entitled for any relief to which she has replied negatively. The management, on the other hand, through M. W. 1 has tried its best to establish that due to unsatisfactory performance the management was constrained to terminate the service of the workman with effect from the 11th September 1998 vide Ext. B M.W. 1 in his evidence has clearly and categorically stated that the workman accepted the terms and conditions of service reflected in the appointment letter vide Ext. 1 and joined in her respective services with effect from the 1st December 1997 as a probationer. although the management had not given the extension order in writing but she was allowed to continue as probationer for a further period of three months. It is further stated by M. w. 1 that the appointment of the workman was a contractual appointment and she was on probation for a period of six months as per the terms and conditions of service vide Ext. A which period was extended for another three months. The performance of the workman was not satisfactory and the management was constrained to terminate the service of the workman on the 11th September 1998 which was legal and justified. The management has also paid all her dues towards full and final settlement on the 21st September 1998 amounting to Rs. 1,274 vide cash voucher Ext. D. He admits during cross-examination that the management has not filed any document to show that the performance of the workman during the entire period of probation was unsatisfactory. he also admits that the management had not communicated to the workman relating to her unsatisfactory performance during the entire probation period till the date of termination. Rather she was allowed to work in the establishment of the management till the date of her termination on the 11th September 1998. It is further admitted by M. W. 1 that the

termination letter Ext. B does not indicate the unsatisfactory performance of the workman and the payment of compensation and other dues to her on the date of termination. He has categorically stated that the workman had only worked for 228 days excluding the sundays and holidays. In his evidence he ahs admitted that the management had not given any notice or notice pay and retrenchment compensation to the workman at the time of termination. It has been suggested to him that the termination of service of the workman was illegal and unjustified and that she is entitled to be reinstated in service with back wages to which he has categorically denied.

8. The learned representative appearing for the management has strenuously urged that the workman has never worked for more than 240 days as a regular employee and therefore, with regard to the termination of the workman the provisions of retrenchment are not attracted and the management is not under obligation to comply with the provisions of section 25-F of the Act. The categorically submission of the learned representative is that the workman had worked for 228 days only in the establishment of the management and therefore, it was not necessary to comply with the provisions of Section 25-F of the Act as the workman was not in continuous service for not less than one year as prescribed by 25-F read with Section 25-B of the Act. The further submission of the learned representative is that the establishment of the management is not covered by the defination of 'Industry'. On the above submission it is submitted on behalf of the management that the claim already made by the workman is not tanable and she is not entitled for any relief. On the other hand, the learned counsel appearing for the workman has contended that the workman joined in the establishment of the management as Staff Nurse with effect from the 1st December 1997. She continued in her employment till the date of her termination on the 11th September 1998. according to the learned counsel although the workman had completed 240 days of service in terms of the statutory provisions of the Act the management without any rhyme or reason illegally terminated her from service with effect from the 11th September 1998 without following the mandate of Section 25-F of the Act. The further contention of the learned counsel is that the workman is covered by the definition of 'workman' and the management also is covered by the definition of 'industry' therefore, it was incumbent on the part of the management to comply with the mandatory provisions of Section 25-F of the Act while terminating the services of the workman. On the above submission, the learned counsel appearing for the workman has fairly submitted that the action of the management in terminating the services of the workman with effect from the 11th September 1998 be declared null and void and the workman may be reinstated in service with full back wages alongwith other service benefits.

9. In my foregoing paragraphs I have already discussed the evidence already adduced from both the sides. in support of their respective cases both the parties have placed both oral and documentary evidence. 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 of the Act and whether the Sundays and other holidays for which wages are paid under the law, by contract or Statute, should be treated as days on which the concerned workman actually worked under the management for the purposes of Section 25-F reads as follows :—

"25-F. Consitions precedent to retrenchment of workmen. No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice ;

(b) the workman has been paid at the time of retrenchment, compensation, which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months : and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate government by notification in the Official Gazette)".

Section 25-F defines and explains what is continuous service as follows :

"(1) a workman shall be said to be in coninuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lockout or a cossation of work which is not due to any fault on the part of the workman ;

(2) where a workman is not continuous service within the meaning of clause (J) for a period of one year or six months, he shall be deemed to be in continuous service under an employer :—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine ; and

(ii) two hundred and forty days, in any other case ;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days in the case of a workman employed below ground in the mine ; and

(ii) one hundred and twenty days, in any other case. Explanation—For the purposes of clause (2) the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by Standing Orders made under the Industrial employment (standing Orders) Act, 1946 (20 of 1946, or under any other laq applicable to the industrial establishment ;

(ii) he has been on leave with full wages, earned in the prevuious year ;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of the employment; and

(iv) in the case of a female, she has been on maternity leave; so however, that the total period of such maternity leave does not exceed twelve weeks)".

10. While considering the condition precedent to retrenchment of workmen the Hon'ble Apex Court in the case of workmen of American Express International Banking Corporation, Appellant *Vrs*. Management of American Express of International Banking Corporation Respondent reported in AIR 1986 supreme Court 458 has clearly held that :

> "Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in any industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-F of the Industrial Disputes Act. In the present case, the provisions which is of relevance is Section 25-B (2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is "actually worked under employer". This expression, according to us, can not mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. We do not think that we are entitled to so constrain the construction of the expression "actually worked under the employer". The explanation is only classificatory, as all explanations are, and can not be used to limit the expanse of the main provision. If the expression "actually worked under the employer" is capable of comprehending the days during which the workman was in employment and was paid wages—and we see no impodiment to so construe the expression—there is no reason why the expression should be limited by the explanation. To give it any other meaning then what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how Section 25-F may be frustrated as they are too obvious to be stated".

11. In the case at hand it is admitted by the management that the workman had worked for 228 days excluding Sundays and holidays. The above aspect has clearly been testified by M.W.1 who in his evidence has categorically stated that the workman had worked in the establishment of the management for 228 days excluding Sundays and holidays and the management while terminating the services of the workman had not given any notice pay and retrenchment compensation to her. Therefore, in view of the above settled position of law, it is crystal clear that the workman was in the employment of the employer and had been paid wages which clearly leads me to arrive at a conclusion that she had actually worked under

the management for not less than 240 days in terms of the statutory provisions of the Act. The fact with regrd to the continuous service rendered by her in the establishment of the management also gets ample supports from the document Ext. D, the cash voucher. The above said document clearly shows that she was paid her salary and wages leave encashment (for 12 days) which clearly shows that she had infact completed 240 days of service in terms of the statutory provisions. Section 14 of the Orissa shops and Commercial Establishment Act, 1956 of Chapter IV defines and explains what is annual leave with wages. Section 14 of the said Act for the purposes of this Chapter clearly defines that :—

> "(1) every employee who has worked for a period not less than two hundred and forty days in a establishment during a year shall be allowed during the subsequent year, leave with wages for a number of days calculated at the rate of
>
> (i) if an adult, one day for every twenty days of work performed by him during the previous year;
>
> (ii) if a child, one day for every fifteen days of work performed by him during the previous year.
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> XXX XXX XXX XXX

The bare perusal of the said document Ext. D clearly reveals that the workman was paid salary and leave with wages for 12 days which means that the workman had completed 240 days of service in terms of the statutory provisions. Apart from the above fact, both the appointment letter and the termination order vide Exts. 1 and 2 respectively clearly indicate the fact of continuous service having been rendered by the workman in the establishment of the management with effect from the 1st December 1997 till the 11th September 1998. Ext. 1, the appointment letter shows that the workman joined in the establishment of the management on the 1st December 1997 and she was in the employment of the employer till the date of her termination on the 11th August 1998 (A.N.) vide Ext. 2. All these above documents, in my opinion, can be regarded as sufficient evidence to come to the conclusion that the workman had, infact, worked for 240 days in the year preceding her termination. After carefully examining the above documents, I am led to hold that the workman has successfully proved the fact with regard to her continuous service for 240 days in the establishment of the management in terms of the statutory provisions of the Act. It is also undisputed fact between the parties that at the time of termination Section 25-F of the At was not complied with. The case set up by the workman before this Court is that she had completed more than 240 days of service under the management in terms of the statutory rpovisions but the manasgement without any rhyme or reason illegally terminated her from service without following the mandate of Section 25-F of the Act. According to her, since the provisions of Section 25-F of the Act have not been complied with in the case of her termination she is entitled to be reinstated in service with back wages. The settled positions of law is that non-compliance with the provisions of Section 25-F of the Act renders the termination of service of a workman ineffective. The Hon'ble apex Court in catena of decision has consistently taken the view that :

> "The provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*".

In the case of Executive engineer, Bhubaneswar Electrical Division, GRIDCO, Vrs. Presiding Officer, Labour Court, Bhubaneswar and others reported in 2004 (103) FLR 560 of our own Hon'ble court, His Lordship has held that :

> "The retrenchment of the workman was without following the mandatory provisions of Section 25-F of the Act. Once the retrenchment was held to be illegal and unsustainable the only order that could be passed was to set aside the order of retrenchment and direct that the workman should be reinstated in service".

While considering a similar question regarding non-compliance of Section 25-F of the Act the Hon'ble Apex Court in the case of Deep Chandra Vrs. State of Uttar Pradesh and another reported in 2001(88) FLR 508 (Supreme Court) has held that :

> "The service of an employee who had put in more than 240 days in a year can not be put to an end without followed the procedure prescribed under Section 25-F of the Industrial Disputes Act". By holding so the Hon'ble apex Court set aside the order of the Hon'ble High court and directed the reinstatement of the employee".

In the case of General Manager, Haryana Road ways Vrs. Rudhan singh reported in 2005(7) SDR 434 the Hon'ble apex Court has clearly held that :

> "The requirements of Section 25-F of the Act would be satisfied if a workman has worked for 240 days in a period of 12 months and it is not necessary that he should have been in the service of employer for complete one year".

In such view of the matter the provisions of Section 25-F of the Act are clearly applicable to the case of the hand and as neither any notice or wages in lieu of the period of notice nor any retrenchment compensation was paid to the workman her termination of service, in my considered opinion, has to be held to be invalid. While considering the similar question regarding non-compliance of Section 25-F of the Act the Hon'ble Apex Court in the case of management of Konark State Road Transport Corporation, Bangalore Vrs. M. Boraih and another and Karnatak state Road Transport corporation, Bangalore Vrs. Sheikh Abdul Khoder and others reported in AIR 1983 Supreme Court 1320 has clearly held that :

> "As retrenchment has defined in Section 2 (oo) covers every case of termination of service except those which have been embodied in the definition, discharge from employment or termination of service of a probationer would also amount to retrenchment. As such, where while discharging a probationer requirements of Section 25-F has not been complied with the same was void".

In view of the above n legal [position, the termination having been made in violation of the mandatory provisions of Section 25-F of the Act is, in my opinion, void ab-initio and the decision taken by the management in this respect in terminating the services of the workman was illegal, unjustified and against the mandate of Section 25-F of the Act.

12. The learned representative for the managementhad drawn my attention further to the fact that in pursuance ofClause No. 3 of the terms and conditions of the letter of the appointment issued to the workman vide letter No. 344/97—1257, dated the 1st December 1997 under

Ext. A the management terminated the services of the workman with effect from the 11th September 1998 (A.N.) vide Ext. 2. According to him such termination of service in pursuance of clause No. 3 of the terms and conditions of service stipulated in the appointment letter vide Ext. A was legal and justified. Besides she has been paid all her legal dues on the 21st September 1998 towards full and final settlement. Therefore, she is not tnitled for any relief. The terms and conditions of service refelcted in the appointment letter Ext. 1 clearly as follows :

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3. You will be on probation for a period of six months provided that at the discretion of the Company the period of probation may be extended by further period of Three months. During this period including any extension thereof the company will have the right to terminate your service without assigning any reason, in such an eventually you will not be entitled to receive any notice or salary in lieu of notice. similarly, during the period of your probation you will have the right to resign from the company's service without notice. On satisfactory completuion of the probatuionery period you will be confirmed in your present position."

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The perusal of the appointment letter Ext. 1 clearly emerges that the workman was appointed on probation and as per the terms and conditions of service vide clause No. 3 of the appointment letter she was on probation for a period of six months which period was extended for another three months. Admittedly the workman had completed the probation period as per the terms and conditions of service stipulated in Ext. 1. Even after completion of probation period of six months and three months as stipulated in clause No. 3 of the appointment till the date of her termination on the 11th September 1998 (A.N.). But there is no material on record to prove and establish that any adverse report had either been submitted to the management or communicated to the workman with regard to her performance during the entire probation period. No cogent material is also forthcoming to establish that the performance of the workman during the entire period of probation was found unsatisfactory. It is contended by the representative of the management that the management could have the right to terminate the services of the workman without assigning any reason during the period of probation. But no where it has been elicited that the performance of the workman was found unsatisfactory and that for that reason alone she was terminated from service during the priod of probation. Surprisingly in the case at hand, the management terminated the services of the workman after successful completion of the probation period of six months and three months respectively. Even she was in emplyment for a further period of 11 days and the management also allowed her to continue in employment till the date of termination on the 11th September 1998. Therefore, the terms and conditions of service as reflected in clause No. 3 of the letter of the appointment are not at all applicable to the workman in the case at hand. In that view of the matter, the submission already led by the learned representative of the management is without substance and therefore the termination of service of the workman, in my opinion, was not legal and justified. Rather it has been fully established that the workman had successfully completed her probation period of six months and three months respectively as per the terms and conditions stipulated in the appointment letter vide Ext. 1 but the management even after completion of the probation period had neither made any effort nor

any endeavour to confirm the workman in her present position as per clause No. 3 of the letter of appointment vide Ext. 1. The settled position of law is that the period of probation if at all to be extended, the same should be done during the validity of the probationary period and, after the period of probation was over without a stigma or adverse report or unsatisfactory performance, the period of probation deemed to have been completed satisfactorily. It is therefore crystal clear that the workman concerned had completed her probation period successfully and satisfactorily but the management without any rhyme or reason terminated her from service without complying with the mandatory rpovisions of Section 25-F of the Act. Apart from the above fact the termination order vide Ext. B does not disclose the reasons of termination of services of the workman. Even if the termination order founded on the ground that the probationer had failed in the performance of her duties still then she is entitled to certain protection and her services can not be terminated arbitrarily nor can her services be terminated in a punitive manner without complying with the principles of natural justice. In the case of V. P. Ahuja *Vrs*. State of Punjab and others reported in AIR 2000 Supreme court 1080 the Hon'ble Apex court has clearly held that :

> "A probationer, or a temporary servant, is also entitled to certain protection and his services can not be terminated arbitrarily, nor can those services be terminated in a punitive manner without complying with the principles of natural justice. The termination order founded on the ground that the probationer had failed in the performance of his duties administratively and technically. Ex-facie, is stigmatic. such an order which, on the face of it, is stigmatic, could not have been passed without holding a regular enquiry and giving an opportunity of hearing to the probationer. Plea that, probationer can not claim any right on post as his services could be terminated at any time during the period of probation without any notice, as set out in the appointment letter, can not be contenanced."

In the present case, the management has not placed any clear, cogent and reliable evidence with regard to the unsatisfactory performance of the workman during the period of probation. Nowhere it has been elicited that any adverse report had been communicated to the workman. The management has also failed to produce any document in the present case to that effect. In absence of any evidence both oral and documentary to that effect it can not bedefinitely said that the performance of the workman was found unsatisfactory. That apart the management without holding any enquiry and giving an oppotunity of hearing to the workman terminated her from service which was in my opinion, illegal and unjustified and it has been done arbitrarily without complying with the prinicples of natural justice.

13. The other aspect already raised by the learned representative of the management to the effect that the establishment of the management is not covered by the defination of 'industry' has not at all been substantiated by the management during evidence. Therefore, the submission led by the learned representative of the management appears not sound, and I also find no considerable force in his submission. On the whole 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 opinion that the termination of services of the workman with effect from the 11th September 1998 (A.N.) by the management was illegal, unjustified and against the mandate of section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement.

14. The perusal of the schedule of reference clearly reveals that the termination of the workman has been effected from the 11th September 1998 (A.N.) and since then the management has not availed the services of the workman. No cogent material is also forthcoming to establish that the workman concerned has not been gainfully employed elesewhere since the date of her termination. In such circumstances, the workman is entitled for reinstatement in service, but on the facts and circumstances of this case, as the workman has not worked with effect from the date of her termination, she is not entitled for any back wages. Both the above issues are answered accordingly.

15. Hence it is ordered :

ORDER

That the termination of services of Miss Sunita Patra, Staff Nurse with effect from the 11th September 1998 (a.n.) by the management of M/s Kalinga Hospital Limited, Bhubaneswar is neither legal nor justified. In such view of the matter, the workman concerned is entitled to the relief of reinstatement in service but without any back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
21-1-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
21-1-2006
Presiding Officer
Labour Court, Bhubaneswar

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