

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 676 CUTTACK, TUESDAY, MAY 23, 2006 / JAISTHA 2, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st May 2006

No. 3394—li/1(B)-270/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2006 in Industrial Disputes Case No. 278 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. Orissa State Financial Corporation, Cuttack and its Workman Shri Debendranath Mohanty was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 278 OF 1995

Dated the 31st March 2006

Present :

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

Between :

The Management of .. First Party—Management
M/s.Orissa State Financial Corporation
Cuttack.

And

Its Workman .. Second Party—Workman
Shri Debendranath Mohanty.

Appearances :

For the First Party—Management .. Shri B. B. Sahoo, Advocate
For the Second Party—Workman .. Shri B. K. Kar, 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. 11311(5)-L. E., dated the 25th August 1995 for adjudication and Award.

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

“Whether the termination of services of Shri Debendranath Mohanty, Senior Assistant by the employer of Orissa State Financial Corporation, Cuttack with effect from the 27th September 1982 is legal and/or justified ? If not, what relief Shri Mohanty is entitled to ?”

3. By way of this reference workman Debendranath Mohanty has challenged the legality and justifiability of the action of the employer of Orissa State Financial Corporation, Cuttack (in short the management) in terminating his services with effect from the 27th September 1982.

The fact of the case in brief as narrated in the statement of claim tend to reveal that the workman joined in the establishment of the management on the 18th June 1979 as Junior Assistant. He was promoted to the post of Senior Assistant with effect from the 18th July 1981. Subsequently he was confirmed in his service by the management. According to the workman, he had rendered continuous uninterrupted service since the date of his joining till the 25th September 1982 with much sincerity, devotion and to the utmost satisfaction of the authorities of the management. During the tenure of his service there was no allegation against him. No enquiry was also conducted against him by the management for any act of misconduct. While in employment he applied for one day casual leave i.e. the 27th September 1982 and to avail the public holidays on the 26th September and 28th September 1982 which were Sunday and public holiday respectively with permission to leave the headquarters after the office hours of the 25th September 1982 till the evening of the 28th September 1982. At the relevant time he was suffering from Bronchitis and was under the observation of Dr. P. C. Rath of S. C. B. Medical College and Hospital, Cuttack. On the 27th September 1982 he again applied casual leave from the 29th September 1982 to the 2nd October 1982 and sent the application under certificate of posting. On the 30th September 1982 he was examined by the concerned doctor who advised him bed rest. On the 1st October 1982, 6th October 1982 and the 26th October 1982 he applied for casual leave, earned leave for the period from the 3rd October 1982 to the 10th December 1982 and sent the applications through post. From reliable source he got information about his suspension by the management which had been published in daily Oriya newspaper “The Samaj”, dated the 20th October 1982. In the meantime he had already applied leave till the 10th December 1982. Thereafter he personally met the General Manager at his residence and put forth his grievances but to no effect. Rather the General Manager directed him to join at Rayagada Zonal Office as per the publication in the newspaper. He requested the General Manager to allow him to remain on leave since the 10th December 1982 as he was advised bed rest by the concerned doctor

for his illness. On the 22nd November 1982 he received a letter from the Managing Director indicating his termination from service with effect from the 27th September 1982. It is categorically averred in the statement of claim that the management while terminating his services had not given any notice or notice pay and retrenchment compensation to him which was according to him illegal, unjustified and against the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). It is further averred in the statement of claim that on the 24th November 1982 he made a representation to the Managing Director ventilating his grievances but to no avail. Thereafter he was mentally imbalanced and was brought to Dr. Gopal Chandra Kar on the 25th November 1982 by his family members for treatment. He was under treatment of Dr. Gopal Chandra Kar from the 25th November 1982 till the 31st October 1993. After he was fully cured he made an appeal before the Board of Directors through the Managing Director but all his efforts in this respect bore no fruit. Thereafter he raised a dispute before the District Labour Officer, Cuttack on the 2nd April 1994 for conciliation but the conciliation proceeding initiated by the District Labour Officer, Cuttack ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. The further case of the workman is that his sister Basanti Prava Mohanty considering his ill-health made a representation to the Chief Secretary, Government of Orissa. Accordingly the Chief Secretary, Government of Orissa sent the petition to the Industries Department for taking necessary action at this end. The Principal Secretary, Industry Department who was the *ex officio* Chairman of the management directed the Managing Director to place the matter before the Board of Directors. On the 21st July 1995 the matter was placed before the Board of Directors but by that time the matter had already been referred to this Court for adjudication. According to the workman, the action of the management in terminating his services with effect from the 27th September 1982 was illegal, unjustified and against the mandate of Section 25-F of the Act. While seeking industrial adjudication, the workman has prayed for his reinstatement in service with full back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, filed its written statement opposing the claim of the concerned workman *inter alia* contended that the dispute as raised is not maintainable in its present form since it has been raised at much belated stage i.e. after lapse of 12 years and that the second party is not a workman within the meaning of Section 2(s) of the Act. According to the management, the concerned workman while working in the Disbursement Section had given a false report regarding the completion of the body building of a bus which was highly unbecoming on the part of a workman. Such act of misconduct was also highly detrimental to the interest of the Corporation. He was immediately transferred to Rayagada Zonal Office vide office order No. 6016, dated the 25th September 1982. It is categorically averred in the written statement that the concerned workman had neither received the transfer order nor joined at Rayagada Zonal Office. Rather he absconded without any intimation to the authority. He did not turn up for joining his duties with effect from the 27th September 1982. In spite of the personal contact as the workman refused to accept the letter of transfer, he was placed under suspension with effect from the 29th September 1982. The order of suspension was also communicated to the workman in his residential address at Kalyaninagar, but he refused to accept the same. The said order was thereafter sent by registered post but

returned unserved. His headquarters was fixed at Rayagada during the suspension period. Even though he was very much aware of the order of transfer as well as the suspension order, he did not join at Rayagada rather sent leave application for the period from the 28th September 1982 to the 2nd October 1982 and then from the 4th October 1982 to the 23rd October 1982 by post which were received in the office of the Corporation on the 6th October 1982 and the 11th October 1982, respectively. The ground mentioned in the leave application was for urgent and personal work only. It is further averred in the written statement that as the concerned workman deliberately avoided service of any order of the Corporation even though he was staying in his Kalyaninagar address, the management was constrained to publish a notice in the daily Oriya newspaper "The Samaj", dated the 20th October 1982 directing him to join at Rayagada Zonal Office and to submit his explanation within 10 days thereof failing which it would be deemed that he had nothing to say and the services would be terminated as per Regulation 17 of the O. S. F. C. Staff Regulation, 1975. In spite of that notice the workman had neither reported at Rayagada Zonal Office nor submitted any explanation to that effect but continued to remain absent without any intimation which *ipso facto* established his abandonment of service. Finding no other alternative, the management by its order, dated the 16th November 1982 terminated the services of the workman with effect from the 27th September 1982. Long after 12 years the workman raised the present dispute before the District Labour Officer, Cuttack on the 2nd April 1994. According to the management, the reference is otherwise not maintainable in the eye of law since the workman concerned has never raised any dispute regarding his termination before the management and as such there is no existence of any industrial dispute within the meaning of Section 2(k) of the Act. It is further categorically averred in the written statement that the workman was not suffering from any disease. He had voluntarily abandoned the service and after receiving the order of termination he remained silent for years together and long after 12 years with a motive to have some illegal gain, manufactured some documents to make out a fabricated and concocted story of his illness and finally raised a dispute before the District Labour Officer, Cuttack on the 2nd April 1994. The further case of the management is that after obtaining the legal opinion on the legality and justifiability of the action taken by the Corporation, the matter was placed before the 278th Board Meeting. The Board approved the action of the Managing Director and turned down the representation of the workman. According to the management, the termination of services of the workman concerned with effect from the 27th September 1982 was legal and justified. In that view of the matter the workman concerned is not entitled for any relief. On the above background, 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 services of Shri Debendranath Mohanty, Senior Assistant by the employer of Orissa State Financial Corporation, Cuttack with effect from the 27th September 1982 is legal and/or justified ?
- (ii) If not, what relief Shri Mohanty is entitled to ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the documents such as, gradation list of O.S.F.C. employees, out-door ticket of S.C.B. Medical College and Hospital, Cuttack, dated the 27th September 1982, advise of the concerned doctor along with prescription of medicine, receipt of under certificate of posting, clinical report, postal receipt along with A. D., postal receipt, out-door tickets of S.C.B. Medical College and Hospital, dated the 15th October 1982 and the 29th October 1982, some portion of the daily newspaper "The Samaj", dated the 20th October 1982, letter of termination, xerox copy of the representation, certificate of Dr. Gopal Chandra Kar and the xerox copy of the appeal memo marked as Exts. 1 to 14, respectively. On the other hand, the management has examined one Sidhartha Mohanty as M. W. 1 and has relied upon the xerox copy of the letters of Hon'ble Speaker, Judhisthir Das addressed to Dr. Gopal Chandra Kar, xerox copy of the O.S.F.C. Staff Regulation, 1975, xerox copy of the letter, dated the 29th September 1982 of the Managing Director, report of the Peon, M. K. Das, xerox copy of the letter, dated the 25th September 1982 of the Deputy General Manager (Disb.), xerox copy of the postal cover, xerox copies of the leave applications, dated the 28th September 1982 and 4th October 1982 marked as Exts. A to K, respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute at hand both the above issues are taken up together.

The workman in his evidence has stated that he joined in the establishment of the management as Junior Assistant with effect from the 13th June 1979. He was promoted to the post of Senior Assistant on the 18th July 1981 and subsequently his service was confirmed by the management. He continued in his employment till the 15th September 1982 without any interruption and hindrance. There was also no allegation against him during the tenure of his service. Neither any charge was framed nor any enquiry was conducted against him by the management for any misconduct. While in employment he applied for casual leave for one day i.e. the 27th September 1982 and to avail public holiday i. e. the 26th September 1982 and the 28th September 1982 with permission to leave the headquarters after the office hour of the 25th September 1982 till the evening of the 28th September 1982. At that time he was suffering from bronchitis and was under the observation of Dr. P. C. Rath of S.C.B. Medical College and Hospital on the 27th September 1982 vide out door ticket of the Hospital dated the 27th September 1982 Ext. 2. On the 27th September 1982 he again applied for casual leave from the 29th September 1982 to the 2nd October 1982 and sent the application under certificate of posting vide Ext. 3. After clinical examination vide Ext. 4, he was advised by the concerned doctor to take bed rest. The report has been marked as Ext. 4/a. On the 1st October 1982 he again applied for casual leave from the 3rd October 1982 to the 6th October 1982 and sent the application under certificate of posting vide Ext. 5. Again on the 6th October 1982 and the 26th October 1982 he applied for earned leave from the 7th October 1982 to the 26th October 1982 and from the 27th October 1982 to 10th December 1982 and sent the application by registered post with A. D. vide Exts. 6 and 7 respectively. He was also advised bed rest for two months vide Exts. 8 and 9 the out-door tickets, dated the 15th October 1982 and the 29th October 1982, respectively. In the meantime

he got information relating to his suspension which had been published in daily Oriya newspaper "The Samaj", dated the 20th October 1982 vide Ext. 10. Thereafter he personally met the General Manager, who instructed him to join at Rayagada Zonal Office. He has categorically stated that the management had not made any correspondence with him relating to his suspension and transfer to Rayagada. Although he was placed under suspension no charge was framed against him by the management. Neither any proceeding was initiated nor any enquiry was conducted against him by the management. In his evidence the workman has further stated that on the 22nd November 1982 he received a letter vide Ext. 11, dated the 16th/17th November 1982 from the Managing Director with regard to his termination with effect from the 27th September 1982. He has categorically stated that while terminating his service the management had not given any notice, or notice pay and retrenchment compensation to him. On the 24th November 1982 he made a representation vide Ext. 12, but the management turned a deaf ear and did not consider his grievances. On the 25th November 1982 he was mentally imbalanced and was brought to Dr. Gopal Chandra Kar by his family members for treatment. He was under treatment of Dr. Gopal Chandra Kar from the 25th November 1982 to the 31st October 1993. In this connection he has proved the certificate issued to him by Dr. Gopal Chandra Kar, which has marked as Ext. 13.

8. It further reveals from the evidence of the workman that after he was fully cured he made an appeal vide Ext. 14 to the Board of Directors through the Managing Director against the order of illegal termination. Since no action was taken in this respect he raised a dispute before the District Labour Officer on the 2nd April 1994 for conciliation. But the conciliation proceeding initiated by the District Labour Officer, Cuttack ended in failure on the 21st September 1994 and the matter was ultimately referred to this Court for adjudication. He has categorically stated that the management without any rhyme or reason had illegally terminated him from service with effect from the 27th September 1982 vide Ext. 11 without following the mandate of Section 25-F of the Act. During cross-examination he clearly admits that his service was governed under O.S.F.C. Staff Regulation, 1975 and he was working as Senior Assistant coming under the category of Class B. By that time his scale of pay was Rs. 525 to Rs. 975 and he was receiving his salary of Rs. 1,400 and some odd per month in the year 1982. He further admits in his cross-examination that during the tenure of service he was working in the Disbursement Section and basing on his report the loan was being sanctioned and released in favour of the loanee. But he has denied the suggestion of giving a false report regarding the body building of a bus in which loan amount was released and that due to giving of such false report he was transferred to Rayagada Zonal Office. He has also denied the suggestion of remaining absent from duty voluntarily with effect from the 27th September when he came to know about his transfer and suspension which was on process. It is also in his cross-examination that he had applied for leave on his personal ground due to some urgent work but on the 27th September 1982 he had applied on the ground of ill health. He has clearly stated in his cross-examination that he came to know about his transfer to Rayagada from the notice published in daily Oriya newspaper "The Samaj", dated the 20th December 1982 vide Ext. 10, but he did not join at Rayagada Zonal Office and his services were terminated vide Ext. 11 with effect from the 27th September 1982. It is admitted by him that

he accepted the termination order and for the first time he raised the dispute before the District Labour Officer, Cuttack in the year 1994. It is also in his cross-examination that he was treated as an out door patient under Dr. P. C. Rath but he has not filed any cash memo showing the purchase of medicine for his treatment. He has clearly admitted that he was under the treatment of Dr. Gopal Chandra Kar from the 25th November 1982 to 31st October 1993. Although he has filed a certificate to that effect but he has not filed any document relating to his treatment such as prescription, cash memo showing the purchase of medicine or any test report. He has further clearly stated that he brought the certificate vide Ext. 13 from the concerned doctor from his Cuttack residential clinic at Purighat. He has admitted that the Hon'ble Speaker Shri Judhisthir Das had requested Dr. Gopal Chandra Kar for necessary treatment for his early recovery. It has been suggested to him that he obtained the medical certificate Ext. 13 on the recommendation of the Speaker vide Exts. A and B and that he was not under the treatment of Dr. Gopal Chandra Kar and that he remained absent voluntarily when he came to know about his transfer from Cuttack to Rayagada and that the Office Peon had been to his house for causing service of transfer and suspension orders and that he refused to accept the same and that both the orders were sent through registered post which were returned unserved and that he managed to return both the orders by influencing the postal authorities and that he is not entitled to any relief to which he has replied in the negative to all the suggestions put to him by the management.

9. The perusal of the evidence of M. W. 1 emerges that the services of the concerned workman were governed under the O.S.F.C. Staff Regulation, 1975 and the workman being the Senior Assistant used to inspect the progress of work of the industrial concern to whom O.S.F.C. used to sanction the loan and to make a report to the management. Basing on his report periodical disbursement was being done and as such the workman was holding a responsible post in the establishment of the management. But in two occasions it was detected that the workman concerned had given false and fabricated reports regarding the completion of body building of the bus. Immediately he was transferred to Rayagada Zonal Office on the 25th September 1982. The workman had neither received the transfer order nor joined at Rayagada Zonal Office rather he absconded without any intimation to the authority. Thereafter he was placed under suspension with effect from the 29th September 1982. The transfer order and the suspension order were sent to the workman through the Peon in his declared address but the orders were not served on him due to his absence. On the 20th October 1982 the notice was published in the daily Oriya newspaper "The Samaj". Even after publication of the notice, the workman did not join at Rayagada Zonal Office. In the said notice the workman was directed to submit his explanation within 15 days after joining at Rayagada Zonal Office failing which his services would be terminated as Regulation 17 of the O.S.F.C. Staff Regulation. But the workman had neither joined at Rayagada Zonal Office nor submitted any explanation to that effect. The services of the workman were therefore terminated by order, dated the 16th/17th November 1982 as per the Regulation 17 of the O.S.F.C. Staff Regulation.

10. It is categorically stated by M. W. 1 that the termination order had been sent in the permanent address of the workman but the same returned unserved with the postal remark "addressee left without instruction". M. W. 1 has further stated in his evidence that during the

absconding period the workman had only sent two leave applications on the 29th September 1982 for the period from the 29th September 1982 to 2nd October 1982 and another application on the 4th October 1982 for the period from the 4th October 1982 to 23rd October 1982 respectively showing his personal urgent work. Except the above two applications no other application was received by the management. The categorical evidence of the M. W. 1 is that there is appeal provision under the O.S.F.C. Staff Regulation but the workman had not preferred any appeal to that effect, rather raised the present dispute long after 12 years. Under Regulation 7 of O.S.F.C. Staff Regulation, 1975 the workman comes under the category of Supervisory and Ministerial staff and therefore, the second party is not a workman as per the O.S.F.C. Staff Regulation. During evidence he has duly proved the documents already relied upon by the management marked as Exts. A to K respectively. During cross-examination he has clearly stated that on the basis of the allegation made by the loanee, K. N. Rath, show-cause notice was issued to the workman. The D.G.M. (Disbursement) issued the show-cause to the workman on the 25th September 1982 vide Ext. E. He admits in his cross-examination that the workman was working on the 25th September 1982 on which date transfer order was issued to him. He further admits that relating to the allegation made by the aforesaid loanee, enquiry had been conducted by the management against the workman. He has denied the suggestion of submitting leave application by the workman on the 25th September 1982 at the end of the office hour rather he was categorically stated that the workman had not submitted any application on the 25th September 1982. It has further been suggested to him that the workman is entitled to the relief as prayed for to which he has categorically denied.

11. The learned counsel appearing for the management has strenuously urged that the dispute under reference is not maintainable in its present form since it has been raised at much belated stage i.e. after lapse of 12 years and the second party is not a workman within the meaning of Section 2(s) of the Act. On the above submission it is submitted by the learned counsel for the management that the workman is not entitled for any relief. In this connection the perusal of the case record clearly emerges that no specific issue to determine as to whether the second party is a workman or not, has been framed in this case. Since no specific issue has been framed to that effect, the submission already led by the learned counsel appearing for the management on the above aspect is without substance. As regards the maintainability of the present reference is concerned the evidence led by the management clearly emerges that the workman while working in the disbursement section had given certain false and fabricated reports regarding the completion and progress of the body building of a bus which was highly unbecoming on the part of the workman. Since the act of misconduct was detrimental to the interest of the Corporation he was immediately transferred to Rayagada Zonal Office vide office order No. 6016, dated the 25th September 1982 but the workman avoided the said order. He had neither received the transfer order nor joined at Rayagada Zonal Office rather absconded without any intimation to the authority. Thereafter he was placed under suspension with effect from the 29th September 1982. Despite personal contact both the orders were not served on him and the result was that the notice was published in the daily Oriya newspaper "The Samaj", dated the 20th October 1982. It further reveals from the evidence already led by the management that even though the workman was very much aware of the

order of transfer as well as the suspension order but he did not join at Rayagada Zonal Office rather sent leave applications on the 28th September 1982 and 4th October 1982, respectively for the period from the 29th September 1982 to the 2nd October 1982 and from the 4th October 1982 to the 23rd October 1982 which were received in the office of the management on the 6th October 1982 and the 11th October 1982, respectively. The grounds mentioned therein was for urgent personal work. As the workman deliberately avoided service of any order of the Corporation even though he was staying in Kalyani Nagar address the management was constrained to publish a notice in the daily Oriya newspaper "The Samaj", dated the 20th October 1982 wherein he was directed to join at Rayagada Zonal Office and to submit his explanation within 15 days after joining at Rayagada failing which the services would be terminated as per the Regulation 17 of O.S.F.C. Staff Regulation. Even after publication of the notice, the workman had neither joined at Rayagada nor made any correspondence with the management to consider his case rather he remained silent on this issue. Thereafter he was terminated from service by the office order, dated the 16th/17th November 1982. It is categorically stated by M. W.1 that on the basis of the allegation made by the loanee, K. M. Rath, show-cause notice as well as the transfer order was issued to the workman on the 25th September 1982 on which date he was working in the establishment of the management. It is further stated by M. W. 1 that except the leave applications, dated the 28th September 1982 and 4th October 1982 the management had not received any other application from the workman. The management had also not received any application on the 25th September 1982. After carefully examining the evidence of the management it is clearly evident that on the basis of the allegation the workman was transferred to Rayagada Zonal Office but he had neither joined at Rayagada nor made any correspondence with the management to consider his case. He rather remained silent on this issue. He was placed under suspension but the order could not be served on him and ultimately a notice was published in the daily Oriya newspaper "The Samaj". Even after publication of the notice in the said news paper, dated the 20th October 1982 the workman did not join at Rayagada although he was directed in the said notice to join at Rayagada and to submit his explanation within 15 days after his joining failing which the services would be terminated. But the workman had neither joined at Rayagada nor submitted any application to that effect as a result his services were terminated by the management with effect from the 27th September 1982.

12. On the other hand, the learned counsel appearing for the workman has contended that on the 25th September 1982 the workman applied for one day casual leave i.e. the 27th September 1982 and to avail the public holidays i.e. on the 26th September 1982 and the 28th September 1982. At the relevant time he was suffering from Bronchitis and was under the observation of Dr. P. C. Rath, S. C. B. Medical College and Hospital, Cuttack on the 27th September 1982. On the 27th September 1982 he again applied for casual leave from the 29th September 1982 to the 2nd October 1982. On the 30th September 1982 he was examined by the concerned doctor who advised bed rest. Accordingly on the 1st October 1982, the 5th October 1982 and 26th October 1982 he had applied for casual leave and earned leave till the 10th December 1982. The doctor also advised bed rest for two months. Thereafter he came to know about his suspension from the daily Oriya newspaper "The Samaj", dated the 20th October 1982. He thereafter met personally the General Manager

who directed him to join at Rayagada as per the notice published in the said Oriya newspaper. The learned counsel for the workman has further urged that although he was placed under suspension neither any charge was framed nor any enquiry was conducted against him. It is further submitted on behalf of the workman that on the 22nd November 1982 he received a letter from the Managing Director, dated the 16th/17th November 1982 wherein the fact of termination had been reflected but the management while terminating the services of the workman had not given any notice nor notice pay and retrenchment compensation. The management had rather illegally and arbitrarily terminated his services without complying with the mandatory provisions of Section 25-F of the Act. On the 24th November 1982 the workman made a representation to the Managing Director ventilating his grievances but to no effect. On the 25th November 1982 he was mentally imbalanced and was brought to Dr. Gopal Chandra Kar by the family members for treatment. Thereafter he was under the treatment of Dr. Gopal Chandra Kar from the 25th November 1982 to the 31st October 1993 and in this connection he was issued with a certificate vide Ext. 13 by the concerned doctor indicating his illness from the 25th November 1982 to the 31st October 1993. After he was fully cured he made an appeal before the Board of Directors through Managing Director but as no action was taken he was constrained to raise the dispute before the District Labour Officer, Cuttack on the 2nd April 1994. According to the learned counsel the delay in raising the dispute has been properly explained and the reference is maintainable in its present form. Therefore the workman is entitled to the relief as prayed for. The submission already led by the learned counsel for the workman has been vehemently challenged by the learned counsel appearing for the management. On perusal of the evidence of the workman it is seen that on the 25th September 1982 he had performed his duty as usual and on that date he applied for one day casual leave i.e. the 27th September 1982 and to avail public holidays on the 26th September 1982 and the 28th September 1982. At that time he was suffering from Brochitis and was under observation of Dr. P. C. Rath of S. C. B. Medical College and Hospital, Cuttack on the 27th September 1982. But the management has categorically denied to have received such application. The workman has also not furnished the copy of the said application before this Court to come to an irresistible conclusion that he had in fact applied casual leave on the 25th September 1982 for one day i.e. the 28th September 1982 and to avail the public holidays on the 26th September 1982 and the 28th September 1982 with permission to leave the headquarters after the office hour of the 25th September 1982 till the evening of the 28th September 1982. Therefore, the evidence given by the workman in this respect appears not to be trust worthy and credible. The management has led evidence through M. W. 1 that the management had only received two leave applications vide Exts. G and N and except the above leave applications the management had not received any other leave application from the workman. It is stated by the workman that he had sent the leave application on the 1st October 1982 for the period from the 3rd October 1982 to the 6th October 1982, on the 6th October 1982 for the period from the 27th October 1982 to the 10th December 1982 but these applications were not received by the management. In absence of any proof to that effect it can not be definitely said that he had sent the above applications to the management. In this respect the evidence given by the workman inspires no confidence. On the 27th September 1982 he again applied for casual leave from the 29th September 1982 to the 2nd October 1982. But the perusal of the leave application Ext. G clearly emerges that although he had applied earned leave from the 29th September 1982 to the 2nd October

1982 it was due to his urgent work. The document Ext. G nowhere indicates that at the relevant time he was suffering from any disease. Similarly the leave application Ext. M for the period from the 4th October 1982 to the 23rd October 1982 nowhere discloses that he was suffering from any disease. Rather it has been clearly mentioned in the said leave application Ext. M that he applied the above leave on the ground of urgent personal work. Both the above documents clearly show that he was not ailing due to any disease. That apart the above leave applications vide Exts. G and M have not been disputed by the workman. Therefore, the ground stated therein remains uncontroverted. In such premises the evidence given by the workman does not inspire confidence and the submission already led by the learned counsel in this respect is without substance. It is categorically stated by the workman that on the 26th October 1982 he applied for earned leave for 45 days from the 27th October 1982 to the 10th December 1982 but the management has categorically denied to have received the said leave application from the workman. So far as the other leave applications are concerned, M. W.1 has categorically stated in his evidence that except the leave applications vide Exts. G and M the management had not received any other leave application from the workman. Therefore, the evidence given by the workman to the effect that he had sent leave applications to the management on different dates leaves room to entertain doubt. Even assuming the fact that he was under the treatment of Dr. P.C. Rath but no such certificate has been furnished by the workman to that effect. Even the workman had not made any effort or any endeavour to examine the said doctor rather he has clearly admitted that he has not filed any cash memo showing the purchase of medicine for his treatment. Apart from the above fact despite the paper publication vide Ext. 10 the workman had neither joined at Rayagada Zonal Office nor made any correspondence with it to consider his case. Such conduct of the workman clearly establishes that he had voluntarily abandoned the services by violating the orders of the management. The evidence of the workman further reveals that he was under the treatment of Dr. Gopal Chandra Kar from the 25th November 1982 to the 31st October 1993 and in this connection he has obtained a certificate from him showing his illness from the 25th November 1982 till the issuance of the certificate on the 31st October 1993. The workman in his evidence has clearly and categorically stated that he brought the certificate from the concerned doctor vide Ext. 13 from his Cuttack residential clinic at Purighat. But the perusal of the said certificate Ext. 13 clearly emerges that the concerned doctor had issued the certificate while he was Assistant Professor and Head of Department of Psychiatry, M.K.C.G. Medical College, Berhampur. The said certificate Ext. 13 does not disclose the nature of treatment and the prescription of medicines to be consumed for the aforesaid disease. The workman has also admitted that although he has filed the certificate Ext. 13 from the concerned doctor showing his treatment for the abovesaid period but he has not filed any document relating to his treatment. A bare perusal of the said document Ext. 13 reveals that the concerned doctor has simply issued the certificate to the workman as per the request of his family members and area M.L.A. The said certificate also nowhere indicates that it has been issued at Cuttack residential clinic. In this respect the workman in his evidence has admitted that he was under the treatment of Dr. Gopal Chandra Kar at his residential clinic situated at Purighat from the 25th November 1982 to the 31st October 1993, but the certificate Ext. 13 clearly indicates that it has been issued from Gajapatnagar residence, Berhampur.

On the facts and circumstances of the case, I am of the view that the said certificate has been procured for the purpose of this case in order to substantiate the delay in raising the dispute after lapse of 12 years. The settled position of law is that :

“No formula of universal application can be laid down so far as delay in seeking the reference is concerned but it would depend on facts of each individual case.”

In the instant case the workman has not successfully and satisfactorily proved the delay in filing the dispute after lapse of 12 years. Even no effort or any endeavour has been made by the workman to examine the said doctor who has in fact issued the certificate. The non-examination of the said doctor leaves room to entertain doubt regarding the actual treatment given to the workman during the above period. In such premises there is considerable force in the submission already led by the learned counsel appearing for the management. On a careful consideration of the evidence available in record and the documents relied upon by the parties, I am of the considered view that the workman has not succeeded in proving the case with regard to illegal termination of services with effect from the 27th September 1982. In that view of the matter, the termination of services of the concerned workman with effect from the 27th September 1982 was legal and justified and therefore, the workman is not entitled for any relief. Both the above issues are answered accordingly.

13. Hence it is ordered—

That the termination of services of Shri Debendranath Mohanty, Senior Assistant by the employer of Orissa State Financial Corporation, Cuttack with effect from the 27th September 1982 is legal and justified. The workman Shri Mohanty is therefore, not entitled to get any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
31-3-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
31-3-2006
Presiding Officer
Labour Court, Bhubaneswar

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