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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th May 2006

No. 4149-li/1(BH)26/2005(pt.)/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award dated the 28th April 2006 (Case No. 32/1996) of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of Chief Conservator of Forest, Khurda, Bhubaneswar and its workman represented through Orissa Kendupatra Karmachari Sangha, At/P.O./District- Dhenkanal was referred for adjudication is hereby published as in the schedule below.

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 32 of 1996

The 26th April 2006

Present :

Sk. Jan Hossain, OSJS (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of Chief Conservator of
Forest (Kenduleaf), Bhubaneswar, Khurda. .. First Party—Management

AND

Their workman represented through Orissa
Kendupatra Karmachari Sangha,
At/P.O./District- Dhenkanal-759001. .. Second Party—Workman

Appearances :

Shri A.C. Kesh, Forest Ranger .. For the First party
Management

Shri J.N. Tripathy, General .. For the Second party
Secretary of the Sangha Workman

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of section 12 read with clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes for adjudication vide their Order No. 10886-li/1(B)-26/1995/LE., dated the 23rd August 1996 :—

- the workers engaged in the collection of Kendu leaves are entitled to a pair of Chappal and a Kerpal for the season ? If so, what should be the details ?”
2. “Whether it is necessary and justified to include/cover kenduleaf workers under Group Insurance Scheme ?”
 3. “Whether the demand of the Orissa Kendupatra Karmachari Sangha regarding appointment of office checkers as Range Clerk in view of their long experience service period, is legal and or justified ? If so, what should be the details of the norm at the time of selection and absorption ?”
 4. “Whether the binding labourers and mates engaged on kendu leaf collection under Chief Conservator of Forest (KL), Bhubaneswar are entitled to Mosquito nets, Blanket, Lanterns ? If so, what should be the Scheme and its details ?”

2. The brief facts of the case are that the claimants second party workman raised an industrial dispute before the Conciliation Officer. The said conciliation proceeding failed and the Conciliation Officer submitted a failure report to the Government on 6-8-1994. The Government vide its Order No. 10886, dated the 23rd August 1996 referred the matter for adjudication to this Tribunal. This Tribunal issued notices to the parties. The claimants submitted statements of claim stating that with effect from January 1973 the Kendu leaf trade came to be taken up as a total departmental activity of the Government by eliminating all private entrepreneurs from the trade. The Forest & Animal Husbandry Department has been put in charge of the production which includes collection, processing, begging and storage of Kendu leaves and matters incidental thereto and the Orissa Forest Development Corporation Ltd. remains in charge of marketing and selling activities of processed kendu leaves. The Forest Department has set up a distinct organisation with a separate head of department designated as the Chief Conservator of Forests (Kendu leaves). The Kenduleaf yielding areas in the State are divided into three circles and nineteen Divisions. The Conservator of Forests (Kenduleaf) remain in charge of each circle and a Deputy Conservator of Forests (Kenduleaf) remains in charge of each Division. Each Division is segmented to Ranges. Each Division is provided with required number of Assistant Conservators, Range Officers, Deputy Rangers, Range Clerks, Foresters, Forest Guards, Chowkidars, Peons etc. as regular employees. The Operatives in the field some of whom are loosely described as seasonal employees through employed round the year are the Head Checkers, Circle Checkers, Checkers, Binding Checkers, Binding Moharirs, Binding Mates, Office Checkers, Office Assistants, Binding Mates, Binding Coolies, Baggers, Packers, Pluckers, Bush Cutters, Phadi Coolies, unskilled labourers or general Coolies etc. At the Range level the Forest Ranger or a Deputy Ranger is kept in charge. Each Range consists of a number of Phadies i.e., collection centres, where the kendu leaves collected are delivered, processed and stored for onwards movement to the sectional godowns and then to the central godowns. The Orissa Kenduleaf Manual, 1973 lays down the broad working procedure and the duties and responsibilities of various categories of employees engaged in and for the trade. By about end of March of the year, the plucking of leaves commences which continues upto middle of June of the year depending upon topography and climate conditions of the areas. The pluckers who are both men and women enter into the fields forest areas for collection of leaves and bring the collected leaves by using their sarees or by using their own containers. On coming home, they sort out the good leaves and prepare bundles of 20 leaves each (Keris) and use their own binding materials for the same. Then they come to the nearby Phadi, deliver the same and spread the leaves systematically arranging the keris to help the leaves to dry. The Munshis attached to the Phadis sort out the acceptable leaves and direct the Pluckers to re-bundle accepted leaves to keris again. After the collected leaves are dried to the required conditions, the Binding Coolies or the Binders put the leaves to different sizes and qualities to form distinct bundles of different grades. Each bundle is counted and then pressed and bound properly and firmly. Thereafter the same are bagged in hasian cloth or tarpaulin for removal to the sectional godowns and then to the Central godowns.

demand was submitted on 18-10-1992 to the Chief Conservator of Forests (N.L.) claiming various benefits including the demand for a pair of Chappal and Kerpel in the season to the workers engaged in collection of kendu leaves. According to the claimants, pluckers are drawn mostly from tribal and rural folds. A large number of them happen to be females. During the plucking season which is of three to four months duration they get into the fields and forest and quite often they move deep into the forest in search of suitable leaves. The fields and forest from which they pluck leaves are full of stumps, thorns and thorny shrubs, poisonous inserpants and wild animals. The uneven operational areas with protruding and sharp edged stones pose risk to their legs and feet. The hot earth during March to June during noon hours parch their bare feet. The regular employees of the Forest Department working in forests are provided with free boots, socks etc. The bare need of two pairs of Chappal in plucking season can hardly be denied by the Management. It is stated that the Chappals are essential for efficient discharge of work and for safety measures.

As regards supply of Kerpel, it stated in the statement of claim that the pluckers use their own means mainly their clothes or some other carriers/containers to carry plucked leaves. The women pluckers who carry their babies to the forest/field for collection of kendu leaves take the risk of life of their babies by using a part of their wearing sarees for the purpose of containing the plucked leaves and for carrying the same to the Phadies. It is also stated that during the Assembly proceeding held in March 1991 a meeting for it was held on 25-3-1991 wherein the Forest Minister had directed that Kerpel of size 4"x 3" should be supplied to the Pluckers. It is stated in the statement of claim that in view of the aforesaid, the reference for supply of a pair of Chappal and Kerpel for the season should be answered in favour of the workmen and a direction should be given to the Management to monetarily compensate for the articles from 1991 onwards till the Award is passed and thereafter in terms of articles of reasonably good variety for the prospective period.

In connection with the demand for Group Insurance Scheme, it is stated that the regular employees attached to the kendu leaf trade are in receipt of Various benefits of insurance for their safety and security and of their family members, but the Government deny such benefit to the claimants workmen. It is stated that a direction should be given to the Management for introduction of Group Insurance Scheme for the kendu leaf workers.

As regards the demand for appointment of Office Checkers as Range Clerks in view of their long experienced service period, it is stated that almost all the Office Checkers are Matriculate or above and they have been working since a decade or more. They maintain all records and registers, accounts, cash book etc. relating to preparatory work, collection and processing of kendu leaves and other ancilliary works. It is also stated that the engagement of Office Checkers is round the year though they are shown as seasonal staffs for the purpose of records. This amounts not only circumvention and deception of the Constitutional protection but to unfair labour practice within the meaning of section 2(ra) of the Industrial Disputes Act. The Office Checkers are recruited only under the Government as Office Checkers and after being recruited they are assigned the same duties as that of the Range Clerks. They are entitled to equal status, equal service conditions and equal emoluments as are available to the Range Clerks on the basis of equality before the law. It is said that a Scheme for regularisation may be framed and pending such Scheme, they should be granted equal pay for equal work.

It is further averred that the Binding labourers/ mates engaged in kendu leaf collection under the Management are entitled to Mosquito Nets, Blankets and Lanterns. According to them, the binding labourers commence their work in the month of April at Phadis and go over from one Phadi to another to attend the job of binding. They do not return home in the night and mostly stay at the Phadis during night. The Phadis are located within jungles exposing themselves to mosquito and insect bites. They are not supplied with any torch or lantern to combat with the darkness of the night in the forest infested by snakes, wild animals etc. The claimants have therefore prayed that the present reference may be answered in favour of the workmen and a direction should be given for supply of mosquito net and blanket once in two years and lanterns once in three years. Provision should be made for free supply lof kerosene 1 litre for each three days and lantern glasses and burning tapes should be replaced forthwith when broken or consumed, as the case may be or they may be provided money allowance of atleast Rs. 50/- per month for kerosene, lantern glass and burning tapes during the season i.e., from April end to July end and thereafter as and when needed.

ment was filed by the first party Management in which it is alleged that the workmen are not afforded appointment in accordance with law. It is also alleged that any one can freely and at his will pluck leaves from the bush cutting area for certain time everyday, he/she may sale it in the nearest Phadi house at the rate fixed by the Government and thus, there is no relationship of "master and servant" between the workers and the Management. It is stated that insurance coverage under the Group Insurance Scheme has been adopted by the Government in case of regular staffs only. Since the workers in kendu leaf operation are purely seasonal or casual in nature, the scope of insurance coverage under the Group Insurance Scheme need to be examined by the Government. Further case of the Management is that there is no specific nomenclature of Office Checker acting as Range Clerk. It is not authenticated by any Circular or Notification of the appropriate authority. Regularisation of such workers is subject to required eligibility and criteria as per the recent Circular No. 22764, dated the 15th May 1997 of the Government in Finance Department. The wage components of the Binders and Mates are revised from time to time basing on the notifications of the Labour Department. Supply of mosquito nets, blankets and lanterns are extra obligations which are beyond the wage components.

4. The questions for determination before this Tribunal are :—

1. "Whether the workers engaged in the collection of Kendu Leaves are entitled to a pair of Chappal and a Kerpel for the season ? If so, what should be the details ?"
2. "Whether it is necessary and justified to include/cover kenduleaf workers under the Group Insurance Scheme ?"
3. "Whether the demand of the Orissa Kendupatra Karmachari Sangha regarding appointment of Officer Checkers as Range Clerk in view of their long experienced service period, is legal and or justified ? If so, what should be the details of the norm at the time of selection and absorption ?"
4. "Whether the binding labourers and mates engaged on kendu leaf collection under Chief Conservator of Forest (KL), Bhubaneswar are entitled to Mosquito nets, Blanket, Lanterns ? If so, what should be the Scheme and its details ?"

5. During hearing of the questions, the Management has examined three witnesses. Out of the witness examined M.W. No.1 is a Circle Checker (Kendu leaf), Angul Division, M.W. No.2 is the Assistant Conservator of Forests (KL), Rairakhol and M.W. No.3 is the Range Officer (Kenduleaf), Chhendipada. The Orissa Kendupatra Karmachari Sangha has examined eight witnesses and exhibited series of documents marked as Exts.1 to 22 in support of the claims advanced by the workmen. The Management in course of argument has filed a xerox copy of letter No. 53, dated the 1st January 2002 of the Government in Forest & Environment Department.

6. Section 2(s) of the Industrial Disputes Act defines "workman"as follows :—

2(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has ben dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person —

- (i) Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) ;or
- (ii) Who is employed in the police service or as an officer or other employee of a prison
or
- (iii) Who is employed mainly in a managerial or administrative capacity ; or
- (iv) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the

→ duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

7. The question as to who would answer the description of the term “workman” fell for consideration before the Apex Court in *Dharangadhara Chemical Works Ltd. Vrs. State of Saurashtra* “and others, reported in AIR 1957 SC 264, wherein the Court held :

“ The essential condition of a person being a workman within the terms of this definition is that he should be employed to do the work in that industry, that there should be, in other words, an employment of his by the employer and that there should be the relationship between the employer and him as between the employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a workman within the definition of the term as contained in the Act.”

The Supreme Court in *workmen of Dimakuchi Tea Estate Vrs. Management of Dimakuchi Tea Estate*, reported in AIR 1958 SC 353, have held thus:—

“ A little careful consideration will show, however, that the expression ‘any person’ occurring in the third part of the definition clause cannot mean anybody and everybody in this wide World. First of all, the subject matter of dispute must relate to (i) employment or non-employment or (ii) terms of employment or conditions of labour of any persons these necessarily import a limitation in the sense that a person in respect of whom the employer employee relation never existed or can never possibly exist cannot be the subject matter of a dispute between employers and workman. Secondly, the definition clause must be read in the context of the subject matter and Scheme of the Act, and consistently with the objects and other provisions of the Act. It is well settled that —

the words of a statute, when there is a doubt about their meaning are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used, and the object to be attained.”

(Maxwell, Interpretation of Statutes, 9th Edition. P. 55).

In the case of *Dharangadhara Chemical Works Ltd. Vrs. State of Saurashtra* and other (supra), it has been observed that the *prima facie* test for determination of the relationship between the master and servant is the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do his work. The nature and extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. Their Lordships noticed in the aforesaid judgement the contentions advanced before them on the basis of two features existing in the case. The two features were that those persons concerned were doing piece work and that they were employing their own labour and were paying for it to do the job. Their Lordships negated the aforesaid two contentions observing that neither of these two circumstances is decisive of the question. It was advanced before their Lordship that the person concerned in that concern was under no obligation to work for fixed hours or days and were to be paid wages not per day or hours but for the quantity of salt actually produced and passed, at a certain rate and as such, there was absence of employer-employee relationship between them. This contention was not accepted on the principles that there was abundant authority that a person can be a workman even though he was paid not per day but by the job. The contention that the persons concerned were engaging other workers to do the work and they were paying wages also did not satisfy their Lordships and such contention was not accepted on the ground that the broad distinction between a workman and an independent contractor lies in the fact that the former agrees himself to work, the latter agrees to get other persons to work. The person who agrees himself to work and does so work thus becomes a ‘workman’ within the meaning of Industrial Disputes Act. He does not cease to be a workman merely because he gets other persons

and those other persons are controlled and paid by him. The fact that he has taken assistance of others does not make him a contractor and not a workman.

In the aforesaid case the question that was being considered was as to whether the agarias working in the Salt Works at Kuda in the Rann of Cutch were 'workmen' within the meaning of the Industrial Disputes Act. The abandoned company was a lessee of the Salt Works and had held a licence for manufacturing salt. The company employed a Salt Superintendent who was in charge of the salt works and supervises the work and the manufacture of salt carried on there. The salt in that area was being manufactured from rain water. The operation was seasonal and commenced sometime in October at the close of the monsoon. Each agaria is allotted a patta and in general the same patta is allotted to the same agaria year after year. At that time of such allotment the company pays some amount to the agarias to meet the initial expenses. After getting the pattas the agarias level the land and sink wells in them. Thereafter the density of the water is examined by the Salt Superintendent of the company. The pans are prepared by the agarias according to certain standard. They are tested by the Salt Superintendent. When salt crystals begin to form in the pans they are again tested by the Salt Superintendent and only when they are of a particular quality, the work of collecting salt is allowed to be commenced. After collection of salt they are loaded in the railway wagons and transported to the depots for storage. Again the salt is tested at depots. If it is found to be of right quality the agarias are paid their dues at the rate of As. 5-6 per maund. The rejected salt belongs to the company and the agarias can neither remove the salt, manufactured by them nor sell the same. At the end of the season accounts are made and the agarias are paid their dues. The agarias return to their villages and take-up agricultural works. Considering the nature of job performed by the agarias, their Lordships held in the case that the agarias are professional labourers. They themselves personally work alongwith the members of their families in production of salt and would, therefore, be 'workmen'. The fact that they are free to engage others to assist them and pay for them would not, in view of the above authorities, affect their status as workmen.

In the light of the above stated analysis the case of the second party workmen would be examined to find out as to if there exists employer-employee relationship between them.

8. W.W. No.1, Shri J.N. Tripathy is the General Secretary of Orissa Kendupatra Karmachari Sangha, a registered Trade Union under the Indian Trade Union Act. He is conversant with the facts of the case based on records. He has deposed that the workers engaged in the trade are rural workers. The pluckers use to collect kendu leaves from the forest area during summer for about three months. They leave their houses at dawn to the forest and come back from the forest at 12 Noon. They use a part of their wearing apparels for carrying kendu leaves from the forest to their destination. The pluckers most of whom are females return home almost half-naked. In the home they sort-out the leaves and prepare keries (small bundles) each containing 20 leaves. In the afternoon they carry the bundles to the Phadi house for depositing the same. He has also stated that the Binders are skilled labourers. Their job is to bind kendu leaves in the Phadi house situated at different places at a distance of 7 to 8 K.Ms. from one another. The binding works starts from the last part of April and continues till the end of January next year. The binders use to lead nomadi life as they are required to move from one Phadi house to another in the Division. Generally Phadi houses are situated in the outskirts of the village and it goes to the forest area. The Management declined to cross-examine the witness.

W.W.No.2, Shri Bipin Nag, a Binding Mate in Singhbahali Range (K.L.) under Bolangir Division has stated that his native place is about 160 K.Ms. away from work place. He comes to the work place along with 24 Binders. They come with their family members to the place of work. It takes about one month and twenty days in one kendu leaf Phadi to complete the binding work. After completion of the work in one Phadi, he along with other Binders move to another Phadi for taking up the binding works. The witness was not cross-examined by the Management.

W.W.No.3, Shri Kabiraj Sabar, a Binder of Kendu leaf under Khaliapali Range of Bolangir Division gave statement similar to that of W.W.No.2. He was also not cross-examined by the Management.

W.W.No.6, Smt. Anjali Dehuri, a Plucker has stated that 30 to 40 persons of her village out of whom 5 to 6 are males and the rest are females use to pluck kendu leaves. They all belong to Scheduled tribe/Scheduled caste. For plucking kendu leaves they cover 3 to 4 K.Ms. of Kendu leaf grown area. The kendu leaves are plucked during summer season starting from the month of Chiatra. She has further stated that they leave home early in the morning and return in the afternoon at about 2 to 3 P.M. after plucking kendu leaves. No cross-examination was done.

W.W.No.7, Smt.Hira Dehuri, a Plucker has spoken to the effect that from her childhood days she is plucking kendu leaves. In those days private companies were dealing with kendu leaves. She proved her kendu leaf plucking card, Ext.14 issued by the Management.

M.W.No.1, Shri Balia Sahu in his evidence has deposed that kendu leaf collection is the monopoly of the State Government and kendu leaves cannot be sold in the open market by anybody.

M.W.No.2, Shri Lalitendu Jena has said that the kenduleaf pluckers are not recruited by the department. Whoever comes and supplies kendu leaves in the Phadi is granted with a plucker's card by the Department. The Department has absolutely no control over the pluckers and as such, there is no definiteness of collection of kendu leaves by the pluckers. In cross-examination his evidence is that the pluckers who supply kendu leaves are issued with wage cards for the season to facilitate payment of their dues. The pluckers go for plucking in the early morning and return by 10 A.M.

From the evidence, as aforesaid, it emerges that the Pluckers and Binders are mostly residents of the nearby villages. The Pluckers have to choose the leaves which are for manufacturing of Bidis and acceptable at the Phadighars. Leaves are delivered by the Pluckers at Phadighars. The Pluckers use to work admittedly for six to eight hours a day while they claim that they work for 12 hours a day. According to the Management, the Pluckers are paid the price of leaves at the prevailing rate. It further emerges that the Pluckers do not pluck leaves from the bushes of their lands but pluck leaves from the area of the Government. It is necessary to state the contentions raised on behalf of the Management at this stage. According to it, the pluckers and Binders are not their employees because the Pluckers are paid the price of the leaves they deliver at the Phadighars and not wages. No attendance register or wage register is maintained in respect of the Pluckers and Binders. The Management has no control over them and so also no working hours are fixed for them. The workmen have no obligation to report to work everyday. No appointment order is issued by the Management. No disciplinary control over the Pluckers and Binders is exercised by the Management. They can go for other work and there is no obligation to work only in the area. According to the Management, in the facts and circumstances, the Pluckers and Binders are not 'workmen' of the Management. Admittedly, the Pluckers are not owners of the leaves. They are required to pluck leaves from the buses which exist on the land which do not belong to them and deliver the plucked leaves at the specified Phadighars. In the facts and circumstances, I am of the considered opinion that there is no question of sale of leaves by the Pluckers to the kendu leaf organisation. I may say that it is the sale of their labour for wages and not sale of leaves plucked by them. The same may lead to the conclusion that relationship of employer-employee has come into being.

Question Nos. 1 & 4 :—

9. These question are considered together for the sake of convenience.

So far as these questions are concerned, the General Secretary of Kenduleaf Karmachari Sangha as W.W.No.1 has stated that the Pluckers use to collect kendu leaves from the forest area during Summer for about three months. They leave the house at down time to the forest and return to their house at 12 Noon with around 2200 to 2500 leaves. No containers are provided to them for carrying the plucked leaves from the forest to their homes. They use a part of their wearing apparel for carrying kendu leaves from the forest to their destination. In home they sort-out the leaves and prepare keries each containing 20 leaves. Then in the afternoon they carry bundles to the Phadi

the same. He has deposed that the tea leaf pluckers are provided with basket container and foot wear to pluck the tea leaves in the difficult mountains where tea gardens are raised. He further deposed that in the forest there are full of thorns and without foot wear the Pluckers got injured most of the times. When they return home the Sun almost come to the middle of the sky and earth becomes intolerably hot. They use to tie the kendu leaves in their foot to protect themselves from the hit. He has added that supply of foot wear to such workers is not a matter or luxury but a bare necessity to accelerate their deficiency. He has also added that the statute provides for supply of foot wear as a safety measure. One pair of rubber slipper to each worker engaged in plucking of kendu leaf would cost to the Management about Rs. 25/- and a piece of Kerpel of size 1 Mtr. x 1 Mtr. would cost about Rs. 12/-. He has also stated that in connection with the demand there was a discussion of the Union with the Forest Minister where the Minister agreed to supply kerpel. The witness proved the minutes of such discussion marked Exts.1. He has further stated that the job of Binders, who are skilled labourers is to bind the dried leaves in Phadi houses situated at different places at a distance of 7 to 8 K.Ms. from one another at the outskirts of the village and it goes to the forest area. The Binding works starts from the last part of April and continues till the end of January next year. One binding party generally consists of 30 Binders. They are not provided with any residential accommodation and for that they use to stay in the varandah of the Phadi house in the open space by making shade of tarpaulin for their protection. They use to come with their family members. At times the Government use to provide blankets and lanterns to one binding party. The Union is processing for providing one lantern for atleast three binders in three years ; one blanket to each Binder in two years and Mosquito net to each binder in two years.

W.W.No.2 has deposed that the Binders use to work for about seven months on a year. During the process of binding the Binders use to leave under tarpaulin. They should be provided with one lantern every year. One mosquito net and one blanket in every two years. The Management should also make provision for supply for kerosene.

W.W.No.3 has said that they come for binding work with their family and use to stay near the Phadi house. They use to suffer from Malaria fever by mosquito bite for want of mosquito net. The Binders should be provided with lantern, Blanket and Mosquito net.

W.W.No.4 has said that they leave home early in the morning and return in the afternoon after plucking kendu leaves. They cover jungle path in stony road. In the jungle they face much difficulties while covering the jungle path and for bringing kendu leaves. She has also said that they earn Rs. 20/ to Rs. 22/- by plucking kendu leaves. With this meagre earning they are unable to purchase Chappale.

W.W.No.7 has deposed that during private company days they were getting incentives in the shape of bathing soap, Gudakhu, Ribbon and Kantamada paisa in lieu of foot wear. For non-supply of Chappal they get injury in their foot. They should be provided with a container to bring kendu leaves to the phadi House. There is no cross examination to this witness. The statement of the witnesses recorded on oath remained unchallenged though opportunity was given to the Management. In view of the statements of the witnesses, it is established that supply of articles claimed is essential. In the meeting held in the chamber of Minister on 25-3-1991 with the Kendupatra Karmachari Sangha it was agreed that instruction would be issued for supply of Kerpel to the Pluckers. The Government in the Forest & Environment Department vide their letter No. 2826, dated the 13th February 2004 have decided to supply a pair of Chappal to each kenduleaf pluckers to mitigate the sufferings of the kenduleaf pluckers especially during hot summer season when they go to pluck leaves in bare foot. Under such circumstances, I think in the interest of the industry and above categories of employees, the Department should make provision for supply of Chappal and Kerpel to each plucker in the season and one lantern for atleast three binders in three years; one blankt to each Binder in five years and mosquito net to each Binder in five years, those who are attending the binding works regularly. The Government should also bear the cost of kerosene and burning tapes when broken or consumed.

Question No. 2:

10. This issue relates to includes/cover the Kenduleaf workers under the Group Insurance

The statement of claims that the regular employees of the Department working in the kenduleaf trade are in receipt of various benefits of insuring and ensuring their own safety and security as also their dependants. The Management in its reply has stated that the workers in kenduleaf operation are purely seasonal/casual in nature and therefore, the scope of their coverage under the Group Insurance Scheme needs to be examined by the Government. I have already held that the Pluckers are workmen and there is employer-employee relationship between the first party and the workers. The plucking operation continues for a certain period of time during kenduleaf season. As such, they are also to be taken as seasonal workers. Under such circumstances, I would hold that the benefits available to the seasonal staff should also be made available to the Pluckers who are entitled to the same.

Question No. 3:

11. This issue relates to the appointment of Office Checker as Range Clerk in view of their long experience of service. As per the statement of claim, the Office Checkers are Matriculate and above. They maintain all records and register statutory or otherwise, Accounts, Cash Book etc., relating to preparatory work of collection and processing of kendu leaves including all ancillary works. The Management in its reply has stated that the daily wage workers engaged in clerical job in the Range Office have been called as such by the Management. Regularisation of such workers is subject to required eligibility and criteria as per the Finance Department Circular No. 22764, dated the 15th May 1997. The evidence available on this score is to be looked into.

W.W.No.4, Office Assistant, Parjang Kenduleaf Range office has said that the post of Office Checker has been re-designated as Office Assistant. He uses to do office work such as maintenance of different files, accounts book, drafting of letters. His educational qualification is Intermediate. They are getting wage at the rate of minimum wages declared by the Government from time to time whereas those appointed from the list obtained from the R.D.C. are getting scale of pay with D.A. etc. as prescribed. He has further said they claim for regularisation in the post of Junior Clerk rank from the date of post was filled-up from the list obtained from the R.D.C. in the year 1991.

W.W.No.5, Office Assistant of the office of A.C.F., Kenduleaf, Kamakshyanagar has deposed that he is working as Office Assistant in the office of the A.C.F., Kenduleaf since 1986 and getting his wages as per the minimum wages prescribed by the Government. The post of Office Assistant was previously known as Office Checker. The witness has added that he has passed matriculation and gained experience as Clerk. They have claimed for regularisation of their services on the basis of long experience in the Department. According to him, they are doing the same work as of the Junior Clerks appointed in the year 1992. The statement made by the witnesses on oath went unchallenged.

M.W.No.2, Assistant Conservator of Forests, Rairakhol (K.L.) denied the suggestion that the Office Checkers/Office Assistants possess the required qualification for managing the office work at par with the Junior Clerk in the Department.

M.W.No.3, Range Officer (Kenduleaf), Chendipada has said that one daily wage office worker in his office is to assist him in his office work. He uses to keep letters and copy out the letters drafted by him. According to him, a daily wage office worker can not be equated with the regular Office Assistant/ Junior Clerk as the former does not perform the work of a Junior Clerk. In cross-examination he has stated that the Office Assistant receives letters and also does the issue and despatch work. A suggestion was given to him that a daily wage Office Assistant does all the office work which he denied. Ext.7 is the letter of Conservator of Forests (KL), Cuttack Circle. It reveals that the Office Assistant is engaged for the whole year on daily wage basis @ Rs. 35/- per day. The nature of work done by the Office Assistant is normally different from that of the Office Checker. A perusal of Ext.12 shows that Office Assistants in Keonjhar (K.L.) Division are now working on daily wage basis @ Rs. 70/- per day.

From the aforesaid materials, it is clear that the Office Assistants are engaged for the whole year on daily wage basis. Regularisation/recruitment to the post in the subordinate staff cadre has to

the prescribed recruitment procedure. There is no circular of the Government to that effect. Find there is no merit in the contention that the Management has committed unfair labour practice by not recruiting the Office Assistants and appointing other persons. The workmen have failed to establish that appointment of some other persons was in violative of any of the statutory or contractual obligation. Therefore, even if the workmen are eligible to be called for the interview, in the absence of any material to show that the failure on the part of the Management to call the workmen for interview has caused any prejudice.

12. On the basis of my findings arrived at as above, the reference is answered accordingly.

Directed & corrected by me

Sk. JAN HOSSAIN,
26-4-2006,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Sk. JAN HOSSAIN,
26-4-2006,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

N.C. RAY
Under-Secretary to Government