

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 99 CUTTACK, WEDNESDAY, FEBRUARY 1, 2006 / MAGHA 12, 1927

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th January 2006

No. 314—li/1(B)-128/1996-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th December 2005 in Industrial Dispute Case No. 160 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Ginni Vitreous Private Limited, At Tangiapada, P.O. Niala, Via/Dist. Khurda and its workman Shri Laxmidhar Sahoo, At Khuapata, P.O. Haladia, Dist. Khurda, Orissa was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 160 OF 1996

Dated the 20th December 2005

Present :

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

Between :

The Management of .. First Party—Management
M/s Ginni Vitreous Private Limited
At Tangiapada, P.O. Niala
Via/Dist. Khurda.

And

Shri Laxmidhar Sahoo .. Second Party—Workman
At Khuapata, P.O. Haladia
Dist. Khurda, Orissa.

Appearances :

For the First Party—Management .. Shri R. N. Rath, Advocate

For the Second Party—Workman .. Shri H. Das, 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. 17108(4)-L. E., dated the 5th December 1996 for adjudication and Award.

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

“Whether the termination of services of Shri Laxmidhar Sahoo, Electrician with effect from the 30th September 1995 by the Managing Director, M/s Ginni Vitreous Private Limited, At Tangiapada, P.O. Niala, Dist. Khurda is legal and/or justified ? If not, to what relief he is entitled ?”

3. By way of this reference workman Shri Laxmidhar Sahoo has challenged the legality and justifiability of the action of the Managing Director, M/s Ginni Vitreous Private Limited (hereinafter referred to as the management) in terminating his services with effect from the 30th September 1995.

The brief facts giving rise to the present reference are that the workman was engaged as Electrician with effect from September, 1993 under the management. He continued to work as such in the establishment of the management till September, 1995. In his subsequent statement of claim the workman has specifically averred that he was engaged under the management with effect from the 7th March 1993. According to the workman, although he had rendered continuous uninterrupted service for more than two years with such sincerity, devotion and to the utmost satisfaction, but the management without any rhyme or reason illegally terminated him from service with effect from the 30th September 1995 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Despite his approach to the labour machinery no fruitful result was forthcoming. The conciliation proceeding initiated by the District Labour Officer, Khurda, 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 claimed for his reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, submitted its written statement opposing the claim of the workman *inter alia* contended that the workman was never an employee under it. He was neither appointed nor engaged by the management at any point of time. According to the management, the averments already averred by the workman in his statement of claim are all false, baseless and concocted. The workman had never worked under the management at any point of time and therefore, he is not entitled for any relief. On the above backgrounds, 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 Laxmidhar Sahoo, Electrician with effect from the 30th September 1995 by the Managing Director, M/s Ginni Vitreous Private Limited, At Tangiapada, P.O. Niala, Dist. Khurda is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?

6. The workman in support of his case has examined himself as W. W. 1 and other two witnesses namely, Shri Kapila Rana and Shri Narayan Nayak as W. Ws. 2 and 3, respectively. The workman has not relied upon any document in support of his case. On the other hand, the management has examined one Shri Jagannath Badjena and Shri Indramani Badjena as M. Ws. 1 and 2, respectively but has not relied upon any document 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.

It reveals from the evidence of the workman that he joined in the establishment of the management as an Electrician with effect from the 7th March 1993 till he was refused employment in the month of November, 1995. Before refusing employment, the management had not given any notice or notice pay and retrenchment compensation. During cross-examination he has admitted that while raising the dispute before the District Labour Officer, Khurda, Bhubaneswar he had mentioned the date of his appointment as the 7th March 1993 but in the statement of claim he has reflected the date of joining as September, 1993. He has denied his knowledge if the District Labour Officer had verified the records of the management and found that there was no such person namely, Shri Laxmidhar Sahoo working under the management. It has been suggested to him that he had never worked in the establishment of the management to which he has given a negative reply. The evidence of W. W. 2 goes to show that the workman was working as Lineman and operating the machine. It is in the evidence of W.W. 3 that the workman had worked under the management as Electrician from 1993 to 1996. During cross-examination W. W. 2 has categorically stated that although he had worked in the Pipe Factory of the management since 1992 but he cannot produce any document to that effect. He has also denied his knowledge if the workman was receiving his wages from the management. Rather he admits that his name was not there in the records of the management indicating the period of his engagement. Similarly the cross-examination of W. W. 3 clearly reveals that although the workman was working as Electrician in the factory of the management but he cannot produce any document to show that the workman was working under the management from 1993 to 1996. He has denied his knowledge if the name of the workman had been entered in the labour register. The evidence led by the management through M. Ws. 1 and 2 shows that the workman was never an employee of the management but he used to come to the factory along with the electrical contractor. In their evidence they have stated that the management had neither engaged the workman at any point of time nor terminated him from service with effect from the 30th September 1995. It is categorically stated by both the above witnesses that the workman used to receive his wages from the contractor and he had never been engaged as Electrician to work in the establishment of the management. Both the above witnesses have been cross-examined at length but nothing material and substantial has been elicited to discard their evidence and I also find no cogent reason to disbelieve the evidence given by both the above witnesses on the above context.

8. In support of their respective cases both the management and the workman have adduced evidence. From the above discussion the principal issue thus appears to be as to whether the workman had worked under the management from the 7th March 1993 till the date of his termination on the 30th September 1995. The workman has taken a stand before

this Court that he was engaged by the management as Electrician with effect from the 7th March 1993 but he was refused employment in the month of November, 1995. Before refusal of such employment the management had not given any notice or notice pay and retrenchment compensation to him. According to the workman although he had rendered continuous service for more than two years but the management without any rhyme or reason terminated him from service with effect from November, 1995 without following the mandate of Section 25-F of the Act. Therefore, he is entitled to be reinstated in service with back wages since the provisions of Section 25-F of the Act have not been complied with in the case of termination. On the other hand, the sole claim of the management before this Court that the workman was neither an employee nor was engaged by the management during the above said period as claimed by him. It is further submitted that the management had neither appointed the workman at any point of time nor terminated him from service with effect from the 30th September 1995. According to the management since the workman was never an employee and had not worked under the management for the above said period he is therefore, not entitled for any relief. The settled position of law is that the onus lies on the workman to prove that he had in fact worked under the management continuously in terms of the statutory provisions of the Act in the event of any denial of such a factum. But in the case at hand, there is no material on record to show that the workman had worked under the management for the above period as claimed by him. Admittedly the workman has not filed any document with regard to his appointment or engagement for the above period or any order to that effect. Even no proof of receipt of salary or wages for the above period has been filed by the workman. In absence of any documentary evidence to that effect the mere oral statement given by the workman cannot be regarded as sufficient evidence to come to an irresistible conclusion that he had in fact worked under the management from the 7th March 1993 till the date of his termination on the 30th September 1995.

9. After carefully examining the evidence led by the parties, I am of the considered view that the workman has not successfully proved his case relating to his claim. In that view of the matter, the workman is not entitled for any relief.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
20-12-2005
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
20-12-2005
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
D. MISHRA
Under-Secretary to Government