

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1090, CUTTACK, MONDAY, JULY 2, 2007/ ASADHA 11, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th June 2007

No. 7549-1i/1(B)-152/1994(Pt.)LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 26th February 2007 in I.D. Case No. 147/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s. Madhab Theatres, Randhia, Bhadrak and its workman Shri Satya Narayan Das was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 147 OF 1995

The 26th February 2007

Presents :

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

Between :

The management of .. First-party—Management
M/s. Madhab Theatres,
Randhia, Bhadrak.

And

Their workman .. Second-party—Workman
Shri Satya Narayan Das

Appearances :

Shri R. C. Mohanty .. For First-party—Management

Shri S.N. Das .. Second-party—Workman himself

AWARD

The Government of Orissa, Labour and Employment Department referred the present dispute between the management of M/s. Madhab Theatres, Randhia, Bhadrak and their workman Sri Satya Narayan Das under Notification No. 8007/LE., dated the 18th July 1985 read with Notification No. 8559/LE., dated the 27th June 1995 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :—

“Whether the action of the Management of M/s. Madhab Theatres, Randhia, Bhadrak in terminating the services of Shri Satya Narayan Das, Pointer by way of refusal of employment with effect from 10th January 1994 is legal and/or justified? If not, what relief Shri Das is entitled to?”

3. Shorn of all unnecessary details, the case of the workman in brief is as follows:—

The workman was working as Booking Clerk/Assistant as well as Pointer in the Cinema Hall of the Management since 5th April 1984. On 10th January 1994 the Management terminated the service of workman by way of refusal of employment without any valid reason and without any domestic enquiry. The workman was victimized for his trade union activities. The workman raised an industrial disputes before the Labour Department who tried for a conciliation between the Management and the workman but as because the conciliation failed , the present case was referred for adjudication by this Court.

4. In its written statement the management has contended that the workman was working as a casual employee under the management since 1st August 1988. On 24th September 1989 the management called for an explanation from the workman for his mis-conduct by way of assaulting another co-employee namely Raj Kishore Mohanty during duty hour. The workman was warned not to repeat such misconduct again. It is also contended that another explanation dated the 27th August 1985 had been called for from the workman for creating disturbance in the booking office of the Cinema Hall. Since the explanation given by the workman was found not satisfactory, the Management ordered one departmental enquiry and put the workman under suspension for violation of official orders. During enquiry the workman did not co-operate to the Enquiry Officer who ultimately found the workman guilty but the Management on humanitarian ground reinstated the workman in service as because the workman orally begged apology for his

mis-conduct. During his service period the workman was guilty of habitual mis-conduct. On 25th September 1986 the workman allowed three anti-socials to sit in the special class of the Cinema Hall although those anti-socials had cinema tickets for lower class. On 9th January 1994 the Management found that the workman had committed theft of Entertainment Tax tickets worth or Rs. 37,115/-. When the matter was detected, the workman left his scooter in the zima of the Management but the Management returned the scooter to the workman without realizing any compensation from the workman. Since the workman was only a casual worker and was guilty of habitual mis-conduct of serious nature, the Management was forced to terminate his service.

5. On the above pleadings of the parties, the following issues have been framed.

ISSUES

- (i) Whether the action of the Management of M/s. Madhab Theatres, Randhia, Bhdarak in terminating the services of Shri Satya Narayan Das, Pointer by way of refusal of employment with effect from 10th January 1994 is legal and/or justified?
- (ii) If not, what relief Shri Das is entitled to ?

6. Admittedly the workman was an employee of the Management and from the very written statement of the Management it is clear that before his termination, the workman had worked for more than 240 days during 12 months preceding the date of his termination on 10th January 1994. It is not the case of either party that the workman was working in the Cinema Hall of the Management only on the days on which work was available for him, but on the other hand, the witnesses examined on behalf of the Management M. Ws. 1 to 3 have categorically stated that the workman was working as a Pointer under the Management on regular basis. M.W. 3 in his statement has stated that he was working in the Cinema Hall of the Management since the year 1985 and that the workman was working as a Pointer. None of the witnesses of the Management have stated that the workman was working on casual basis. The evidence of W. Ws. 1 and 2 that the workman was working as Pointer under the Management since the year 1984 has not been controverted by the Management during the cross-examination of the witnesses. On the other hand, it is the case of the Management and it has also been suggested in the cross-examination that in the year 1985 the workman was guilty of mis-conduct therefore, obviously the workman was continuously on regular basis under the Management till the date of his termination from his service and consequently this is a clear case where the provisions under Section 25-F of the Industrial Disputes Act, 1947 (here-in-after referred to

as the I. D. Act.) attracts. There is absolutely no material on record that any domestic enquiry had been conducted against the workman when his service was terminated although M.Ws.1 to 3 in their evidence have stated that the workman had committed theft of Entertainment Tax Stamps in the year 1994. There is absolutely no material on record to substantiate such allegation. It is the admitted case of the management that no police case had been instituted against the workman for the alleged theft. On one hand no charge what-so-ever was framed against the workman before retrenchment of the service and there was no domestic enquiry before such retrenchment. Further, there is absolutely no material on record to show that the workman had been given any notice pay or any dues in keeping with the provisions of Section 25-F of the Industrial Disputes Act. In view of all these, it is held that the termination of the workman on 10/01/1994 by the management is illegal and unjustified and therefore, the workman is entitled to the relief of reinstatement in service.

7. Since the retrenchment of the workman was illegal, the workman is entitled to the relief of reinstatement in service. Since there is absolutely no material on record to show that since the date of his termination the workman was gainfully employed in any manner the Management is further directed to give 25% of the pay of the workman since the date of his retrenchment from service till the date of his reinstatement in service.

The reference is answered accordingly.

Dictated and corrected by me

S.K. Mohapatra
Dt. 26-02-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra
Dt. 26-02-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

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