

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1191, CUTTACK, FRIDAY, JULY 20, 2007/ ASADHA 29, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th June 2007

No.8156-1i/1-(BH)-62/1993(pt)/L.E.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 12th March 2007 in I.D. Case No. 207/1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of S.D.O. Basudevpur Irrigation Division, Basudevpur and its workman Shri Krupasindhu Nayak was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 207 of 1994

Dated the 12th March 2007

Present:

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

Between:

The Management of the S.D.O.
Basudevpur Irrigation Division,
Basudevpur. ... First-Party—Management

And

Its Workman
Shri Krupasindhu Nayak ... Second-Party—Workman

Appearances :

None ... For First-Party—Management

Shri N. K. Mishra, Advocate. ... For Second-Party—Workman

AWARD

The Government of Orissa, Labour & employment Department referred the present dispute between the Management of the S.D.O., Basudevpur Irrigation Division, Basudevpur and their workman Shri Krupasindhu Nayak under Notification No. 14679/LE. dated the 21st October 1991 vide Memo No. 15349(5)/LE., dated the 28th November 1994 for adjudication by this Court.

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

“ Whether the action of the S.D.O. Basudevpur Irrigation Sub-Division, Basudevpur in denying employment to Shri Krupasindhu Nayak, Daily Labour with effect from 31st July 1989 is legal and/or justified ? If not, what relief Shri Nayak is entitled to ?”

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

The workman was engaged under the S.D.O. Irrigation Sub-Division, Basudevpur who illegally and without any just reason retrenched the workman from service by way of refusal of work. The workman had worked under the S.D.O. Basudevpur Irrigation Sub-Division from 1st May 1988 to 30th July 1989 without any break. During his period of employment the workman was working as a D.L.R. at Charabatia Switch Gate and was getting Rs.345/- per month as wages. The workman had completed more than 240 days of continuous service prior to his retrenchment by way of refusal of employment. The Management did not follow the procedure laid down under sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) while terminating the service of the workman. When the workman was retrenched from his service there were more than 100 employees under the Management and therefore, the provisions under section 25-N of the I.D. Act had also been violated. On these averments the workman raised an industrial dispute for which the Conciliation Officer started a conciliation proceeding which ended in failure and therefore, the present reference to this Court for adjudication.

4. The Management has been set *ex-parte* vide order dated the 8th May 2000.

5. The workman filed affidavit evidence in support of his claim. In the affidavit evidence it has been deposed by the workman that he had been engaged as D.L.R. by the Management on 1st May 1988 and continued to work under the Management without any break till 30th July 1989. According to the workman during such period he was engaged at Charabatia Switch Gate. Save and except such oral evidence of the workman there is no documentary proof to sustain the claim of the workman that he had been employed by the Management with effect from 1st May 1988 or that he had worked continuously under the Management till 30th July 1989. It is the trite law that onus lies heavily on the workman to prove that he was in continuous service under the Management as defined under section 25-B of the I.D. Act. In the instant case the bald oral evidence of the workman can not by itself

held to be sacrosanct. In the absence of documentary proof, it can not be said that the workman has discharged the heavy onus by giving proper proof of continuous work of 240 days in terms of Section 25-B of the I.D. Act. The workman has proved xerox copy of Award in I.D. Case No. 37/94 passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar and xerox copy of one representation dated the 7th April 1993 made by the workman to the District Labour Officer and Exts.3 and 4 are the xerox copies of conciliation notice and failure report respectively. None of these documentary evidence is of any help to the workman for reasons more than one. the xerox copy of the Award vide Ext.1 by no stretch of imagination can be read as an evidence in this case. The present workman was not a party in the I.D. Case No. 37/94 before the Presiding Officer, Industrial Tribunal, Bhubaneswar. This apart, the Court of Industrial Tribunal, Bhubaneswar is not a Court of records so as to bind this Court in any way by its decision, when the present workman was not a party to the case decided by the Presiding Officer, Industrial Tribunal, Bhubaneswar. More over there is no relevancy of Ext.1 to the present case. Thus there is no evidence worth the name to sustain the claim of the workman that he had worked for more than 240 days under the Management so as to be entitled to the benefit of Section 25-F of the I.D. Act. Therefore, in the facts and circumstances of the case retrenchment of the workman from his service can not be held to be illegal and consequently the workman is not entitled to any benefit whatsoever under the I.D. Act.

The reference is answered accordingly.

Dictated and corrected by me.

S.K. Mohapatra
12-3-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra
12-3-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government