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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 29th August 2007

No.10131-1i/1(B)-44/2002/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 2nd June 2007 in I.D. Case No. 30/2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Director, Printing, Stationery & Publication, Orissa, Cuttack and its workman Shri Kailash Chandra Swain was referred for adjudication is hereby published as in the schedule below:—

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 30 OF 2003

The 2nd June 2007

#### *Present :*

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

#### *Between :*

The Management of of Director, Printing, Stationery & Publication, Orissa, Cuttack,	.. First-party—Management
<i>And</i>	
Its workman Sri Kailash Chandra Swain,	.. Second-party—Workman

#### *Appearances :*

Shri B.N. Majhi	.. For First-Party —Management
Shri K.C. Swain	.. Second-Party—Workman himself

## AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of Director, Printing, Stationery & Publication, Orissa, Cuttack and its workman Shri Kailash Chandra Swain, Casual Helper under Notification No. 10909/LE., dated the 16th August 2000 vide Memo No. 6042(5)/LE., dated the 19th June 2003 for adjudication by this Court.

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

“Whether the action of the Management of Director, Printing, Stationery & Publication, Orissa, Madhupatna, Cuttack-10 in terminating the services of Shri Kailash Chandra Swain, Casual Helper, with effect from 3rd August 1994 is legal and/or justified ? If not to what relief is the workman entitled to ?”

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

The workman started working as a casual Helper under the Management of Director, Printing, Stationery & Publication, Orissa, Cuttack (hereinafter referred to as the Management) since 18th August 1983. The Management terminated the services of the workman on 3rd August 1994 without following the provisions under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) read with Section 25-G of the I.D. Act. Being aggrieved by such termination of service the workman putforth his grievances before the Assistant Labour Officer-*cum*-Conciliation Officer who initiated conciliation proceeding between the workman and the Management. During the conciliation proceeding the Management agreed to reinstate the workman in his service with continuity of service from 3rd August 1994 fixing his senioritis at Sl. No. 76 in the gradation list of 133 numbers of Casual Helpers but despite such agreement the Management did not reinstate the workman and therefore, the Conciliation Officer submitted the failure report to the Government who considered failure report and in exercise of their powers under sub-section (5) of Section 12 read with Clause (C) of sub-section (1) of Section 10 of the I.D. Act referred the present case to this Court for adjudication and hence this case.

4. In its written statement the Management has contended that the reference under Section 10 of the I.D. Act is not maintainable both on the facts and law as because the function of the Management i.e. the Director, Printing, Stationery & Publication, Orissa, Cuttack relates to public welfare function by the State and therefore, the dispute between the Management and the workman can not be termed as industrial dispute. Further pleading of the Management is that the workman of this case is not a workman within the

meaning of Section 2(S) of the I.D. Act. The Management had denied the claim of the workman that he was working as Casual Helper since 18th August 1993 under the Management and has contended that the workman had been working as a Casual Helper since 3rd February 1994 being engaged temporarily on need basis. When the services of the workman was no more required he was discharged from 3rd August 1994 along with others and therefore, the question of application of Section 25-F and Section 25-G of the I.D. Act does not arise at all. In its written statement the Management has admitted about the conciliation proceeding initiated by the Assistant Labour Officer-cum-Conciliation Officer, Cuttack and has pleaded that during the said conciliation proceeding there was an agreement under which it was agreed that the workman would be reinstated in his former post with effect from 3rd August 1994 and the period from 3rd August 1994 to 6th June 2001 shall be treated as continuous service on “no work no pay” basis and that the workman would get his wages on the prevailing rate of Minimum Wages with effect from 7th June 2001 and onwards and his seniority was fixed at Sl. No. 76 of the list of 133 numbers of Casual Helpers. The Management after such agreement sent the same to the Government of Orissa, Finance Department who declined to give concurrence to the terms of settlement and therefore, the agreement reached during the conciliation proceeding could not be given effect to. In its written statement the Management has further contended that the action of the Management in terminating the services of the workman was legal and justified and has prayed to answer the reference in negative.

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

#### ISSUES

- (i) Whether the action of the Management of Director, Printing, Stationery & Publication, Orissa, Madhupatna, Cuttack-10 in terminating the services of Shri Kailash Chandra Swain, Casual Helper with effect from 3rd August 1994 is legal and/or justified ?
- (ii) If not to what relief is the workman entitled to ?

6. Admittedly the Management concern is a Government Press of the Government of Orissa. In his evidence the workman as W.W.1 has stated that during the period of his service under the Management he was being engaged in different Sections of the Government Press, Orissa, Cuttack. Thus in one hand it evident that the Management concern is a printing press engaged in production of printing materials and stationeries and on the other hand both the parties in their respective pleadings and also the workman in his evidence as W.W.1 and the witness for the Management M.W.1 have categorically

stated that the workman had been engaged under the Management as a Casual Helper. Thus it is very clear that there was employer and employee relationship between the Management and the workman and that from its very nature of work the Government Press was engaged in systematic activity carried on by co-operation between the employer and his workmen for production of printing materials and stationeries to satisfy human wants by way of catering to the needs of various Government Departments with regard to printing materials and stationeries. Therefore, there is absolutely no reason as to why the Government Press can not come within the definition of 'industry' as defined under Section 2(J) of the I.D Act. The question as to whether the Management concerned was earning profit or not is completely immaterial. Even if it is held that the Management concern i.e. Government Press was discharging sovereign function of the Government of Orissa by printing forms and stationeries for various Departments of Government it would come within the meaning of definition as defined under Section 2(J) of the I.D. Act. In this context the ratio decided by the Hon'ble Apex Court in the case of Bangalore Water Supply and Sewerage Board v. A. Rajappa reported in AIR 1978 SUPREME COURT 548 is relied on.

7. On the question as to whether the workman of this case was a workman within the meaning of Section 2(s) of the I.D. Act, it is seen from the evidence of both the parties that the workman had been employed as a Casual Helper in the concerned industry i.e. the Government Press or doing manual works. The term 'workman' as defined under Section 2(s) of the I.D. Act includes any person who had been engaged in such industry and who has been retrenched from service and therefore, the workman of this case who is a party in the present industrial dispute between the Management and himself is a workman within the meaning of Section 2(s) of the I.D. Act.

Therefore, the pleadings of the Management that the Management concern is not an industry within the meaning of Section 2(j) of the I.D. Act and the workman is not a workman within the meaning of Section 2(s) of the I.D. Act are not tenable in the eye of law.

8. Now that the Management concern is an industry and the workman of this case is a workman, it is to be seen as to whether the workman was in continuous service under the Management within the meaning of Section 25-B of the I.D. Act so as to claim entitlement to the benefits of Section 25-F of the I.D. Act. In this context the workman W.W.1 has deposed that he had been engaged as D.L.R. Helper under the Management since 18th August 1983 to 2nd August 1994 during which he had been engaged in different sections of the Government Press of the Management. In order to substantiate

his evidence in the matter, the workman has proved Ext.1 which is a Xerox copy of one experience certificate issued by the then Establishment Officer of the Management. Ext.1 only shows that during the period 18th August 1983 to 24th September 1988 the workman was working as a 'Contractor Helper' in the Government Press purely on temporary basis from time to time only. Notwithstanding such a certificate Ext.1, the evidence of the workman W.W.1 can not stand scrutiny in view of the document Ext.2 to which the workman himself is a party. Ext.2 is a tripartite settlement between the workman and the Management during the conciliation proceeding. The then Director of the Printing, Stationery & Publication, Orissa, Madhupatna, Cuttack and the workman and the Conciliation Officer-*cum*-Assistant Labour Officer, Cuttack are all signatories to Ext.2. The Signatures of the Director of the Management concerned has been proved as Ext.2/a and that of the workman has been proved as Ext.2/b by the workman himself and that of the Conciliation Officer has been proved as Ext.2/c. This is a document to which the workman is a party. The very first paragraph of Ext.2 shows that on 12th May 2000 the workman filed a compliant petition before the Conciliation Officer-*cum*- Assistant Labour Officer, Cuttack to the effect that he had been appointed by the Director, Printing, Stationery & Publication, Orissa, Madhupatna, Cuttack as a Casual Helper with effect from 3rd February 1994 along with others. This document in itself is a strong piece of evidence to falsify the evidence of W.W.1 that he had been working as D.L.R. Helper under the Management since 18th August 1983. The recital of paragraph 1 of Ext.2 rather assumes more importance because it shows that on his own the workman had made complaint before the Labour authorities that he had been engaged as Casual Helper with effect from 3rd February 1994. Thus the claim of the workman W.W.1 that he was working under the Management since 18th August 1983 is disbelieved. It is a case of both the parties that the workman was disengaged from service with effect from 3rd February 1994. The workman W.W.1 in his evidence has categorically deposed that the Management refused further employment to him with effect from 3rd August 1994 and thereby his service was terminated. M.W.1 in his widence has stated that the workman joined at Government Press, Madhupatna, Cuttack on 3rd February 1994 as a Casual Helper and he was retrenched from his service on 3rd August 1994. The evidence of M.W.1 that the workman joined his service at Government Press, madhupatna, Cuttack on 3rd August 1994 has been amply supported by the document Ext.2 which is a document proved by the workman himself. Now that the workman was retrenched from service on 3rd August 1994 makes it clear that the workman had never worked for 240 days in the Management concern at any time. The period between 3rd February 1994 to 3rd August 1994 is less

than 240 days and therefore, the evidence of M.W.1 that the workman had never completed 240 days of work under the Management as a Casual Helper and therefore, he is not entitled to any benefit under the I.D. Act gets support from the document Ext.2 itself. Since the workman was not in continuance service of 240 days in 12 months preceding from the date of termination of his service i.e. from 3rd August 1994, it can not be said that the workman was in continuous service within the meaning of Section 25-B of the I.D. Act and therefore, the workman is not entitled to any benefit under Section 25-F of the I.D. Act. Since the workman was only a Casual Helper who was not in continuous service the Management was not legally bound to give him any notice pay or any compensation when the Management terminated the service of the workman with effect from 3rd August 1994 and therefore, the termination of the service of the workman can not be said to be illegal or unjustified on any count. Accordingly the issue No. (i) is answered that the termination of service of the workman with effect from 3rd August 1994 was legal and justified.

In view of my answer to issue No. (i), the issue No.(ii) is answered to the effect that the workman is not entitled to any benefit whatsoever.

9. Accordingly the reference is answered as follows:—

- (i) The section of the Management of Director, Printing, Stationery & Publication, Orissa, Madhupatna, Cuttack-10 in terminating the services of Shri Kailash Chandra Swain, Casual Helper with effect from 3rd August 1994 is legal and justified and
- (ii) the workman Shri Kailash Chandra Swain is not entitled to any relief whatsoever.

Dictated and corrected by me

S.K. Mohapatra  
Dt. 02-06-2007  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

S.K. Mohapatra  
Dt. 02-06-2007  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

By order of the Governor

N.C.RAY

Under-Secretary to Government