

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2274 CUTTACK, WEDNESDAY, NOVEMBER 21, 2007/KARTIKA 30, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th November 2007

No. 12205—li/1(S) -7/2004 -L. E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th September 2007 in I. D. Case No. 17 of 2005 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of (1) Joint Director, M/s Eastern Minerals and Alloys Pvt. Ltd., Bamnipal Ferro Alloys Plant, Baliparbat, District Keonjhar, (2) Management of TISCO, Ferro Alloys Plant, Bamnipal, Keonjhar, District Keonjhar and its Workman Shri Durga Tudu, S/o Mari Tudu, P. O. Bamnipal, District Keonjhar-758026 was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
SAMBALPUR

INDUSTRIAL DISPUTE CASE No.17 OF 2005

Dated the 20th September 2007

Present :

Shri P. K. Mahapatro, LL. B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

- | | | |
|--|----|-------------------------|
| The Management of | .. | First Party—Managements |
| 1. The Joint Director,
M/s Eastern Minerals and Alloys Pvt. Ltd.
Bamnipal Ferro Alloys Plant,
Baliparbat, Keonjhar. | | |
| 2. The Management of TISCO,
Ferro Alloys Plant, Bamnipal,
Keonjhar, Dist. Keonjhar. | | |

And

Its Workman	..	Second Party—Workman
Shri Durga Tudu, S/o Mari Tudu, P. O. Bamnipal, Dist. Keonjhar-758026		

Appearances :

For the First Party — Management No.1	..	None
For the First Party— Management No.2	..	Md. Habibur Raheman, Advocate
<hr/>		
For the Second Party — Workman	..	Shri B.S. Pati Authorised Representative

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 vide memo No. 8353 (5)/L.E., dated the 28th September 2005 for adjudication scheduled below :

“Whether the action of the management of M/s Eastern Minerals and Alloys (P) Ltd., Bamnipal Ferro Alloys Plant, Baliparbat, Keonjhar in terminating of the services of Shri Durga Tudu, Heavy Vehicles Driver with effect from the 13th August 2001 is legal and/or justified ? If not, what relief is Shri Tudu entitled to ?”

2. The workman has filed a statement of claim wherein he has averred that in the year 1992 he joined under the management No.1 as a Helper on temporary basis and then in the year 1995 his services were regularised and without any good reason it was terminated on the 13th August 2001 and while doing so, management No. 1 has not issued any written order . What is more surprising is that prior to terminating the workman no notice was served on him and even no charge sheet was filed and domestic enquiry was conducted against him. So without any disciplinary proceeding the extreme punishment was imposed on him though from the year 1992 he was serving under the management No. 1 without any break. It is the specific case of the workman that at the time of termination management No. 1 did not give the statutory benefits and even the other requirements of the Industrial Disputes Act (hereinafter referred as the Act) were also not complied by it. To sum of according to the workman the action of management No.1 in terminating him by way of refusal of employment with effect from the 13th August 2001 is illegal and he is entitled for reinstatement in service with full back wages.

3. Though the main grievance of the workman is against the Managing Director of M/s. Eastern Minerals & Alloys Pvt. Ltd. but the said company did not appear, as a result , vide order dated the 15th November 2006 it was set *ex parte*. As it appears, on the motion of the workman TATA Iron and Steel Company Limited is impleaded as a party (hereinafter referred as the Management No.2) and the said company has challenged the stand of the workman by stating that it has no connection with the workman as because there is no relationship of ‘Employer’ and ‘Employee’ between them and the claim advanced by the workman has no relation with it. In the written statement management No.2 has taken the plea that in the claim statement the workman has stated against management No.1 and not against it, as a result, the reference can not be answered against it (Management No.2) . In Para. II it is specifically stated that management No.2 is not the principal employer so far the present workman is concerned, as a result the case is to be dismissed against it. So the crux of the issues raised by the management No.2 is that it has no link with the workman in any manner and it is no part of its duty to oblige him (workman).

4. By taking note of the pleadings of the parties, the following issues are settled for adjudication.

ISSUES

(i) “Whether the action of the management of M/s. Eastern Minerals and Alloys (P) Ltd., Bamnipal Ferro Alloys Plant, Baliparbat, Keonjhar in terminating the services of

Shri Durga Tudu , Heavy Vehicles Driver with effect from the 13th March 2001 is legal and justified ?

(ii) Whether the Management No.2 is liable in any manner for the above action of Management No.1.

(iii) If not, to what relief Shri Tudu is entitled ?”

5. During the course of hearing the workman is examined as the only witness from his side and marked Exts. A to C to substantiate his plea. Management No.2 has examined one Junior Assistant of its establishment as the only Witness. Exts. 1 and 2 are marked from the side of the management No.2 to substantiate the plea taken in the written statement. Management No.1 is set *ex parte*, as a result, no witness is examined from its side.

FINDINGS

6. *Issue Nos. (i), (ii) and (iii) :—* All the above issues are taken up together as those are inter linked. It is the specific case of the workman that employment was refused to him by management No.1 without any reason and without complying the mandatory requirements of the statute, as a result , he is entitled to be reinstated in service with full back wages. His entire pleading (claim statement) relates to management No.1 . There is no whisper of word in the claim statement against the Management No.2. In his evidence there is also no allegation against the management No.2 .So there are dearth of materials against the management No.2 to fix the liability on it. To make the position more clear it can be mentioned here that the prayer of the workman to reinstate him in service with full back wages and continuity of service can not be complied by management No.2 as the said organisation neither refused employment to him nor it acted in any manner by violating the provisions of law. So the entire evidence adduced by the workman relates to management No.1. As such without going deep into the matter it can be safely said that management No.2 has no liability .So far the present claim of the workman is concerned. The judicial pronouncements filed by the parties are distinguishable to the fact of this case. In the case at hand the duty of this court is to verify the action of the management No.1 in terminating the services of the workman with effect from the date stipulated in the schedule of reference and this court is not duty bound to take note of the liability of management No.2 regarding payment of arrear dues. If the workman so desires then he can come up with a fresh case for computation of the arrear claim and in that event the court will determine the liability of TISCO. Now I will decide to what extent management No.1 is responsible so far the schedule of reference is concerned.

7. The said party has not appeared in this case. No written statement is filed by it. As it appears the said management is set *ex parte*. The workman has proved documents to justify his claims. He has also adduced oral evidence to fortify it. As no evidence is laid from the side of the management No.1. So the *ex parte* evidence of the workman is sufficient to bestow the liability on management No.1. No good ground is shown as to why the above evidence of the workman will be disbelieved. Hence, it can be safely said that the employment was refused to the workman from the 13th August 2001 without any good ground and without complying the statutory requirements, As per law in such situation the only remedy is to reinstate the workman in service with full back wages and continuity of service. The workman is entitled to get it factually and legally. Hence the following award.

AWARD

The reference is answered on *ex parte* basis against management No. 1 and dismissed against the management No.2. The action of the management of M/s. Eastern Minerals and Alloys Plant, Baliparbat, Keonjhar in terminating the services of Shri Durga Tudu, Heavy Vehicles Driver with effect from the 13th August 2001 is held to be illegal and unjustified and the workman is

entitled to be reinstated in service with full back wages. The management No. 1 is directed to reinstate the workman in service with full back wages within two months from the date of publication of the Award in the *Orissa Gazette*.

Dictated and corrected by me.

P. K. MAHAPATRO
20-9-2007
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRO
20-9-2007
Presiding Officer
Labour Court, Sambalpur

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