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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 3rd December 2007

No. 12995–li/1(B)-78/2006-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th July 2007 in Industrial Dispute Case No. 14 of 2006 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of the Director, Sports and Youth Services, Orissa, Bhubaneswar and its workman Shri Santosh Kumar Gouda, was referred for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICE LABOUR COURT  
JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 14 OF 2006

Dated the 11th July 2007

*Present :*

Shri G. K. Mishra, o.s.J.s. (Jr. Br.)  
Presiding Officer  
Labour Court, Jeypore  
Dist. Koraput.

*Between :*

The Management of .. First Party—Management  
Director, Sports and Youth Services  
Orissa, Bhubaneswar  
At/P.O. Bhubaneswar  
Dist. Khurda.

Vrs.

Its Workman .. Second Party—Workman  
 Shri Santosh Kumar Gouda  
 S/o Late Laxman Gouda  
 R. C. Das Lane, Ramnagar  
 Kamapalli, Berhampur  
 At/P.O. Berhampur  
 Dist. Ganjam.

*Under Sections : 10 & 12 of the Industrial Disputes Act, 1947*

*Appearances :*

For the First Party—Management	..	Shri A. K. Patra K.V.B. Coach and Ex-Incharge, Berhampur Stadium.
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For the Second Party—Workman	..	Self
Date of Argument	..	11-7-2007
Date of Award	..	11-7-2007

1. The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 9742(5), dated the 6th November 2006 for adjudication of the following dispute :—

#### SCHEDULE

“Whether the termination of services of Shri Santosh Kumar Gouda, Ex-Roller Driver by the Director, Sports and Youth Services, Orissa, Bhubaneswar w.e.f. the 1st November 2005 by way of delation of his name from the Muster Roll is legal and/or justified ? If not, to what relief the workman is entitled to ?”

#### AWARD

2. This is a case originated on the basis of the reference sought for by the Govt. for determination of the issue regarding the genuineness of the termination effected by the Act of the Director, Sports and Youth Services, Bhubaneswar coupled with relief to be granted in consequence upon the determination.

3. The management in counter acting assertion put forth by the workman contended *inter alia* that the workman was neither disengaged nor terminated at any point of time but due to the dearth of work, his service was not required as a driver but he was engaged otherwise to work in the Youth Hostel at Gopalpur. The workman having not relied on the direction did not find proper to go and join at Gopalpur in the Youth Hostel unless a written

order was received by him. It is further contended that since the workman has voluntarily abandoned the engagement offered to the workman the allegation of the termination or disengagement as the case may be construed and accordingly the claim put forth by the workman may be considered to be unsustainable in law.

4. As a matter of fact there is no dispute regarding the engagement of the workman as a Roller Driver under the Sports Authority for doing ground work in respect to levelling of the ground. But in absence of any order requiring workman to utilise in the service as a driver of the roller and for that purpose his service was also taken for utilisation in any limit established at Gopalpur by giving oral direction to him to work in the Youth Hostel, Gopalpur. The workman without relying on oral instruction did not join till he received the written order as it is admitted by the workman. Since no written order was received in time, he did not prefer to join at Gopalpur. Therefore it can be deduced that the management did not act to disengage him except giving scope for engagement in any unit under its control. It is admitted that the workman was engaged on daily wages basis and written order is required. For such requirement only oral order is therefore sufficient for his engagement except entering their name in the Muster Roll. The workman should have complied the instruction for the requirement of the service of the management. He has himself defaulted in not joining in his duty as per the instruction. Therefore it can not be construed that he has voluntarily refrained from joining in the duty as offered. The plea for waiting for a written order for joining his duty is absolutely not required and can not be considered to be sustainable. The workman was bound to join as per the assignment offered to him. Otherwise he could have intimated to the authority for alternative remedy to be availed by him. Therefore in absence of his joining in the duty as per instruction it can not be said that he has been terminated and/or disengaged from the duty.

5. An intention appears to have shown by the management showing their approval of re-engagement of the workman in any post under the management with assurance for his engagement in future in the former post as driver consequently when vacancy will arise. The workman also accepted this proposal to do work in any capacity with the hope of his absorption in the post of driver as per his requisite qualification as well as training. As a matter of fact persons temporarily disengaged or otherwise terminated may be given preference to the post filled up in the future ignoring the late entrance. In this connection the suggestion given by the management for his absorption in the post of driver in future is accepted the workman is to abide by the proposal with the acceptance of the post as offered by the management. The management also agreed to give engagement to the workman from the 17th July 2007 with continuity of his service without any back wages. In the light of the aforesaid analysis the issue referred is answered in negative with passing of an order for remedy to the grievance of the workman basing upon the proposal of the management.

6. The reference case is disposed with an award passed in negative with a direction to the management to re-employ the workman basing upon his own proposal in any post on

daily wages without prejudice of the interest from the 17th July 2007 with further direction to absorb the workman in the post of driver by giving first preference in the post of driver whenever vacancy is filled up.

Dictated and corrected by me.

G. K. MISHRA  
11-07-2007  
Presiding Officer  
Labour Court, Jeypore

G. K. MISHRA  
11-07-2007  
Presiding Officer  
Labour Court, Jeypore

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By order of the Governor  
P. MALLICK  
Under-Secretary to Government