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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 3rd December 2007

No. 13024—li/1(S)-177/1994(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 1st November 2007 in I. D. Case No. 24 of 1995 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of Sambalpuri Bastralaya Handloom Co-op. Society Ltd., Bargarh, Dist. Bargarh and its workman Shri Lalit Mohan Mohapatra, At/P.O. Ambapali, Dist. Bargarh was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER,  
LABOUR COURT, SAMBALPUR

I. D. CASE No. 24 OF 1995

Dated the 1st November 2007

*Present :*

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

*Between :*

The Management of Sambalpuri Bastralaya .. First Party—Management  
Handloom Co-op. Society Ltd., Bargarh,  
Dist. Bargarh.

And

Its Workman .. Second Party—Workman  
Shri Lalit Mohan Mohapatra,  
At/P.O. Ambapali, Dist. Bargarh.

*Appearances :*

For the First Party—Management .. Shri Halayudha Patel ,  
Authorised Representative.

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For the Second Party—Workman .. Shri Susil Kumar  
Mohapatra, Legal Heir.

## AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under section 10 and 12 of the Industrial Disputes Act, 1947 vide Memo No. 8438 (5), dated the 17th July 1995 for adjudication as scheduled below :

“Whether the termination of services of Shri Lalit Mohan Mohapatra, Ex-Store Keeper by the management of M/s Sambalpur Bastralaya Handloom Weavers’ Co-operative Society Ltd., Bargarh with effect from the 4th November 1992 is legal and/or justified ? If not, to what relief Shri Mohapatra is entitled ?”

2. The workman has filed his statement of claim after receiving the copy of the schedule of reference from the Government of Orissa. In the body of the same, he has averred that while he was serving as a Store Keeper the management terminated him from service with the allegation of misappropriation, but before imposing the major punishment, the management did not frame any charge and even their memory had failed them to conduct an enquiry in spite of the fact that there is clear cut stipulation in the Certified Stading Order to frame a charge and then to conduct an enquiry by meeting the principles of natural justice. According to him (workman ) the appeal preferred by him was also not taken up by the Board of Directors and the show cause notice issued to him prior to the order of termination is a bald one and it was acted upon without taking his explanation into account. He has also stated that in relation to the alleged misappropriation said to have been committed during the years 1980 and 1981, no criminal case is filed in any Court and finding of the A. D.T.-cum- Assistant Registrar of Co-operative Societies, Bargarh in Dispute Case No. 114 of 1985-86 decided on the 3rd July 1992 cannot be treated as a judgement of a Criminal Court and basing on the finding given by him it cannot be treated as a misconduct and accordingly such a major punishment cannot be imposed on him. To sum up, the workman has prayed for quashing the order of termination and to reinstate him in service with full back wages.

3. The Managing Director of the management has filed his written statement wherein it is specifically mentioned that during the period from the 3rd November 1980 to the 29th September 1981 the workman was in charge of stock and other properties of Bargarh Branch of the management and during that period there was stock shortage of Rs. 30,379.90 paise which was misappropriated by him. In the written statement emphasis is given to the conclusion arrived by the Assistant Director of Textile-cum-A.R.C.S., Bargarh pertaining to the shortage of stock and the liability fixed on the present workman with a further plea that in view of the above finding of a competent Court there is no reason to frame formal charge and to conduct a departmental enquiry pertaining to the stock shortage and the consequent misappropriation committed by him. It is also the case of the management that against the order of A.D.T.-cum-A.R.C.S., Bargarh they have filed an appeal before the Co-operative Tribunal, Bhubaneswar which was allowed and the present workman was directed to pay the stock shortage amount with interest. So according to the management the factum of short shortage is well proved against him in view of the findings given by the two Co-operative Courts as referred above and in such a situation there is no reason to go for a departmental enquiry and then to pass

an order. In Para. 9 of the written statement it is averred by the management that against the judgement of the learned Co-operative Tribunal a writ case is filed by the present workman bearing O.J.C. No. 966 of 1994 and the said case is still *sub judice*. By mentioning the above facts and circumstances the Managing Director of the management has prayed for answering the reference against the workman.

4. The workman has filed a rejoinder and in the body of the same allegation of misappropriation is strongly challenged. It is also the stand of the workman in his rejoinder that the proceeding before the A.D.T.-cum-A.R.C.S., Bargarh cannot be taken up as an enquiry as contemplated under the standing order of the management and even if it is accepted for the sake of argument to be an enquiry, the order of dismissal of the dispute case is to be taken up into and a part of the finding cannot be the basis of arriving into a conclusion. It is also averred in the body of the rejoinder that non-framing of charge and non-holding of enquiry affects the root of the matter and accordingly the order of termination is illegal. In Para. 8 of the rejoinder the workman has stated that the order of termination passed on the 4th November 1992 is by taking note of the alleged misappropriation of stock committed during the period from the 3rd November 1980 to the 29th September 1981 and according to him such order passed at a belated stage which has no foundation should not be allowed to stand and accordingly the termination order be dismissed and he be allowed to avail the benefits as claimed by him.

5. Admittedly during the pendency of this case the workman died and with the consent of the management his son S. K. Mohapatra is impleaded as a party in this case. As by then the material evidence was already recorded from the side of the parties so the newly impleaded workman was allowed to participate in the proceeding from the stage where it was stayed and accordingly the further proceeding of this case was taken up.

6. The following issues have been settled in this case for appreciation of the claim advanced by the parties:—

#### ISSUES

- (i) “Whether the termination of services of the workman by the management with effect from the 4th November 1992 is legal and/or justified ?
- (ii) “If not, to what relief the workman is entitled ?”

7. During course of trial the original workman is examined as Witness No. 1 from his side and from the side of the management Achyutananda Mishra, Accounts Officer of the management is examined as the only witness. To add to this Exts. A to G are marked from the side of the workman and Exts. 1 to 5 are proved from the side of the management.

8. Before going to deal with the issues settled in this case it would be better to first of all mention some important facts which are not challenged by the parties of this case. They are —

- (i) The workman was working as a Store Keeper and vide Order No.3180/1992-93, dated the 4th November 1992 of the Managing Director of the management he

was terminated from services on the charge of misappropriation of the Society's stock and while imposing the above major punishment on him (workman) there was no filing of charge sheet, framing of charge and holding of enquiry.

- (ii) That as per the Certified Standing Order of the management framing of charge sheet and holding of Departmental enquiry is a condition precedent before taking a disciplinary action against any employee.
- (iii) That the allegation of misappropriation relates to the period from the 3rd November 1980 to the 29th September 1981 and the termination order was passed on the 4th November 1992 which is after lapse of more than a decade.
- (iv) In the show cause notice issued by the management (Ext. C) stock shortage to the tune of Rs. 30,379.90 paise from the period from the 3rd November 1980 to the 29th September 1981 is shown as the amount of misappropriation and by taking note of the same, he was called upon to explain within 24 hours as to why he should not be dismissed from service.
- (v) The appeal filed by the workman against the order of dismissal was also dismissed by the management.

9. *Issue Nos. (i) and (ii)* :—Both the issues are taken up together as those are interlinked. Admittedly in this case the punishment was imposed on the workman without any enquiry. As per law an enquiry is a must where the question of punishment is involved. Where the punishment was imposed on an employee for his alleged 'misconduct' without holding an enquiry, the punishment so imposed is bad in the eye of law. A person must be given an opportunity to prove his innocence before he can be punished. But in order to meet the above lacuna the management has come up with a plea that the stock shortage during the incumbency of the workman as Sales In-Charge is also found correct by a competent Co-operative Court, namely the A.D.T.-cum-A.R.C.S., Bargarh in Dispute Case No. 114 of 1985-86 and in view of the said finding there is no reason to conduct an enquiry. In this connection it is the submission of the workman that inconsonance with the provisions of Orissa Co-operative Societies Act, the A.D.T.-cum-A.R.C.S., Bargarh functions as a quasi-judicial body and his only duty is to decide the dispute in between the Co-operative Society and the other side and the pros and cons of that finding cannot be equated as an enquiry as visualised under the Industrial Disputes Act. I will now scrutinise the merit of the above submissions.

10. I took judicial note of the copy of the judgement passed by the learned Assistant Registrar of the Co-operative Societies, Bargarh (Ext. 4). Admittedly in that Dispute case no oral evidence was led by the parties and the entire observation was based on the documents which are produced by the parties. The conclusion of the learned Assistant Registrar is very bald in nature. In view of the above background the finding of the learned Assistant Registrar cannot substitute the domestic enquiry. As per the settled principles of law a domestic enquiry is not an empty formality and it must be conducted on the rules of fair play and natural justice. The delinquent employee must have an adequate opportunity of producing his own witnesses

for examination as well as tendering documentary evidence in his own defence. An enquiry cannot be said to be properly conducted when the delinquent employee is not allowed to lead evidence in his support. In law, no evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing the truthfulness by way of cross-examination. As such, basing on the finding of the learned Assistant Registrar of Co-operative Societies the punishment cannot be imposed on the workman. As a result by taking note of the above lacuna it can be safely said that the punishment so imposed is bad in the eye of law. Without adverting to deal with the other minor lacunas available in this case, I am of view that the punishment is not tenable in law and accordingly it is to be quashed with the conclusion that reasonable opportunity was not given to the workman to prove his innocence prior to imposing the punishment.

11. The workman has prayed for reinstatement in service with full back wages. The original workman expired on the 3rd December 2002 and then one of his son is impleaded as a party in this case. He was terminated on the 4th November 1992. So far the back wages are concerned, the workman has prayed for full back wages. Admittedly during the above referred period the workman has not rendered any service to the management and even allegations of misappropriation subsequent to the period from the 3rd November 1980 to the 29th September 1981 are put forth against him by the management. By taking the note of the entire situation, the back wages of the deceased workman is limited to Rs. 50,000 in lump sum. The said amount is to be given to the legal heirs of the deceased workman within two months of publication of the Award in the Gazette. Hence the following Award :

#### AWARD

The reference is answered on contest in favour of the workman. The termination of services of late Lalit Mohan Mohapatra, Ex-Store Keeper by the management of M/s Sambalpuri Bastralaya Handloom Weavers' Co-operative Society Ltd., Bargarh with effect from the 4th November 1992 is held to be illegal and unjustified. The impleaded party Shri Susil Kumar Mohapatra who is the son of the deceased workman late Lalit Mohan Mohapatra is entitled to get the lump sum amount of Rs. 50,000 (Rupees fifty thousand ) only on behalf of all his brothers. The management is directed to pay the amount of Rs. 50,000 to him within two months from the date of publication of the Award in the Gazette.

Dictated and corrected by me.

P. K. MAHAPATRO  
1-11-2007  
Presiding Officer  
Labour Court, Sambalpur

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Presiding Officer  
Labour Court, Sambalpur

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

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