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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 3rd December 2007

No. 13044—li-1(J)-29/2006-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th July 2007 in Industrial Dispute Case No. 2 of 2007 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of Regional Director, Regional Directorate of Education, Berhampur, District Ganjam and its workman Shri Amulya Kumar Moharana was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

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

INDUSTRIAL DISPUTE CASE No. 2 OF 2007

Dated the 25th July 2007

*Present :*

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

*Between :*

The Regional Director,  
Regional Directorate of  
Education, Sidharthanagar,  
2nd Lane, Berhampur,  
At/P.O. Berhampur, District Ganjam. . . First Party—Management

*Versus*

Its Workman .. Second Party—Workman  
 Shri Amulya Kumar Moharana,  
 S/o. Late Raghunath Moharana,  
 Kalua Street, Bijipur, Berhampur,  
 At/P.O. Berhampur, District Ganjam.

Under Sections 10 and 12 of the Industrial Disputes Act, 1947

*Appearances :*

For the Management	.. None
For the Workman	.. Self
Date of Argument	.. 18-7-2007
Date of Award	.. 25-7-2007

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. 11359(4), dated the 23rd December 2006 for adjudication of the following disputes :—

## SCHEDULE

“Whether the termination of services of Shri Amulya Kumar Moharana, Ex-Dak Peon by way of refusal of employment with effect from the 1st March 2004 by the Regional Director, Regional Directorate of Education, Berhampur, District Ganjam is legal and/ or justified ? If not, what relief the workman is entitled ?”

## AWARD

2. This present reference has been referred by the Government basing upon the dispute claim put forth by the parties for legitment determined of issue of termination of the service of the workman and the relief to be granted in accordance with the decision in favour of the workman. There being no challenged mated out by the 1st party management having not enter his appears taking part of the analysis of the issues as referred to the case was decided on merit.

3. The workman seems to have articulately expressed the factum in detriment in light of the claim statement furnished in the Court, regarding his termination from the service without

giving chance to be informed about such termination. As a matter of fact the workman was appointed on daily wages basic for 89 working days at the wage of Rs. 40 per day with entrusted of the duty of deliberation of the official letters. He is engaged for 89 days was accorded vide office letter No.3359, dated the 20th September 2003 with the enhancement wage of Rs. 60 per day during the time of his engagement. Three posts was lying vacant on the event of leave availed of by one Shri P. Ch. Mohanty. There being induction number of staffs consequent upon the vacancy occasion the service of the workman was required from time to time in order to meet the contingent situation occurred while meeting out the official necessity. There was contention placed before the conciliation officer that the workman was engaged on the leave vacancy of Shri P. Ch. Mohanty. Though the workman was engaged from time to time with the exertion of the period his service could not be required due to the paucity of fund. The contingency fund be adequately being provided could not meet the wage expenses of the workman. As the Department did not pay any heed to provide separate fund for his engagement, the situation having being uncontrollable at that time the authority was constrained to disengage the workman and in his place a Night Watchman working in the K. K. College was withdrawn and engaged in place of Shri P. Ch. Mohanty for performing his work. The explanation offered by the authority is considered to be not genuine as because the vacant posts admitted to be lying are emerged out of sanction strength for which required funds may be provided to the authority. Whether there is post lying vacant it was incumbent on the authority to regularise the post of the workman for which no sanction of funds is required instead of regularising his post the authority was at fault terminating his service. There was not such explanation which prevented to the authority to regularise the service of the workman in the vacant post. There is also no reason as to how the service one Shri Amulya Kumar Moharana engaged in the leave vacance of Shri P. Ch. Mohanty. Moreover the workman has rendered service continuously by the act of the authority for a period of 240 days in a completed year. He continuously of service has not been challenged by the first party management at any stage. Before resorting to the act of termination of such workman the authority concerned should have complied the provisions as enumerated under Section 25-F of the Industrial Disputes Act. The workman whether is a casual labourer or N. M. R. or Daily Wages labourer can be construed as a workman so as to establish the relation between the employer and employee. Once the relationship is established and continuity of service 240 days is admitted, he cannot be deprived of his right of his service without giving any opportunity of being heard or informed of about the termination. As per the Rule provided that the non-compliance of the provision would indubitably be adversed to the authority concerned. Whether there are five posts lying vacant and the Government authority having been moved to fill up the vacancy, the termination of the workman in the meantime was no justified. His service having been continued with further engagement for the interest of the authority, he could have been regularised in the same post till the approval of the filling of the vacancy was received by the authority from the higher education. The workman having not been noticed before the

termination the act of the authority is considered to be illegal and violative to the principles of natural justice and statutory rules. The termination on that score be considered to be illegal inoperative law and the workman is entitled to reinstated. The post is lying vacant and the Government has been moved for creation of sanction posts with necessary provision fund for filling of the vacancy. The authority concerned can not be sented with any financial burden if the workman is reinstated and/or abserved in the former post till his regularisation of his service to the vacant post after approval.

4. The reference is answered and award is passed accordingly in favour of the workman and the first party management is directed to reinstate the workman in his former post within one month of its award with a further direction to regularise the service giving him preference than others in the vacant post to be filled up in future.

Dictated and corrected by me.

G. K. MISHRA  
25-7-2007  
Presiding Officer  
Labour Court, Jeypore  
Koraput

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25-7-2007  
Presiding Officer  
Labour Court, Jeypore  
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By order of the Governor  
P. MALLICK  
Under-Secretary to Government