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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 12th September, 2008

No.9804-li/1(J)-20/2006/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 8th August, 2008 in Industrial Dispute Case No. 13/2006 of the Presiding Officer, Labour Court, Jeyore to whom the industrial dispute between Shri B. Krishna, Contractor, M/s. J.K. Papers Ltd., Jaykaypur, AT/P.O.- Jaykaypur, District-Rayagada and its Workman Shri Pramod Kumar Badasagar was referred for adjudication is hereby published as in the scheduled below:—

#### SCHEDULE

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

INDUSTRIAL DISPUTE CASE No. 13 OF 2006

The 8th August, 2008

*Present:* Shri G.K. Mishra, O.S. J.S. (Junior Branch),  
Presiding Officer,  
Labour Court, Jeypore,  
Koraput.

*Between:* Shri B. Krishna, Contractor,  
M/s. J.K. Papers Ltd., Jaykaypur,  
AT/P.O.- Jaykaypur,  
District-Rayagada

.. First—Party Management

*Ver.*

Its Workman,  
Shri Pramod Kumar Badasagar,  
S/o-Late K. Badasagar,  
At/P.O.-Jaykaypur,  
Dist-Rayagada

.. Second—Party Workman

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

*Appearances :*

<u>For the Management</u>	.. Self.
For the Workman	.. Self.
Date of Award	.. 08-08-2008.

1. The Government of Orissa in the Labour & Employment Department in exercise of the power 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. 9568 (5), dated the 2nd November 2006 for adjudication of the following disputes—

#### **SCHEDULE**

“Whether the termination of services of Shri Pramod Kumar Badasagar by way of refusal employment with effect from 13th December 2005 by Shri B. Krishna, Contractor of M/s. J.K. Papers Ltd., Jaykaypur, Jaykaypur, Rayagada is legal and/or justified ? If not, what relief Shri Badasagar is entitled to ?”

#### **AWARD**

2. This case has been originated out of the reference submitted by the Government before this Court for determination of an issue regarding the validity of the termination effected by the Management in respect of the Workman coupled with other ancillary relief to be granted in favour of the Workman.

3. The facts giving rise in the Workman’s case may be described hereunder that the Workman though having served under the Management since 1996 to 2005 continuously without any break but unfortunately he was terminated from the service with effect from 13th December 2005 without complying the positive norms prescribed under the Act. In this connection the Workman taking the benefits provided in his favour under the Act sought for the Court for the relief of reinstatement and full back wages against his illegal termination. The Management on the other hand denied the contention of the Workman on the score that the Workman having not worked continuously for a period of 240 days in each year of service preceeding the date of termination and simultaneously he has been remained absent voluntarily without reporting to his duty for in definite period, his service, can be considered to be automatically terminated for which he is not entitled to get the benefit under any of the provisions of the Act.

4. As a matter of fact the Workman was working under the Management since 1996 to 2005 as a daily contract labourer with payment of minimum wages fixed for the purpose. The Workman may be engaged as a daily labourer on casual basis without written appointment; still the work assigned by him in respect of the particular job in permanent

nature. The Management seems to have admitted the fixity of the status of the Workman on account of the acceptance of the engagement, for a long period without resorting to any Act of disengagement either orally or written at any point of time. Permanency of job is acknowledged. There is no matter whether he was absent from the duty for the cause not known explicitly or impliedly. The absence of duty may incur financial loss to the Workman without discontinuance of the service. The Workman in the circumstances might have incurred loss of pay for the principles of "No pay for No work". The Workman's service is assured by the Management by placing him in a job of permanent nature. The daily work entertained by the Workman if tacked on his job can be continued in service for years together as evidenced u/s 25-b-Clause-2 of the Industrial Dispute Act. There appears generally a device to keep the employee permanently in temporary employment in order to avoid continuity of service in order to so as to contravene the protection offered to the Workman under the provision of the Act. This condition of service adopted by the employer by virtue of a contract of employment is violative to the spirit of Article-23 of the Constitution. The employee has right to livelihood in consequence upon the employment secured through the employer. The right to livelihood is concomitant to the right to life enshrined under Article 21 of the Indian Constitution. The act of the employer would be an apparent to the concept of job security and would run counter to the concept of right to work in Article 41 of the Constitution. Apart from that any such contract of time nature secured through the employee is opposed to the public policy. The order of termination of service of the employee visits with civil consequences of jeopardizing not only his livelihood but also to the carrier and livelihood of dependents. A contract of service may appear on its face voluntary but it may in reality be involuntary because while entering in to the contract the employee by reason of economically helpless condition may have been faced with Hobson's choice either to starve or to submit to the exploitive terms dictated by the power full employer. By economic necessity one can be compelled to serve which may amount to forced labourer within the purview of Article-23 of Indian Constitution even if it has its origin in a contract voluntarily entered in to by a person obligated to provide Labour & Service. The reason is that is offence against human dignity to compel a person to provide Labour & Service another if has not wish to do so even though it be a beach of the contract entered into by him.

**5.** The engagement of the Workman being purely permanent in nature even though short fall in actual work entertained by him, legal protection can be given U/s 25-F of the Industrial Dispute Act. During the period the Workman remained absent, the Management did not take any step either to dis-engage him or to take legal action against him. The tacit acknowledgement of service by the Management gives a clear indication that the service of the Workman is permanent in nature for the work specified in regular forum. Whether the job is permanent in nature and closure of establishment has not been pleaded it is duty

of the employer to give notice to the employee who remained absent without intimation for taking legal action against him. The abandonment of service by mere absence from duty can not be easily inferred unless actual or imputed intention of the Workman is attributed against the Workman for voluntary relinquishment of service. In respect of the service permanent in nature the absence from duty is to be intimated to the Workman and if the Workman does not comply the notice during definite period then it is obligated on the part of the employer to make an enquiry giving proper opportunity to the Workman and to take legal action either to retrench him from the service or otherwise from the service. The Management having not taken any due course before taking action of termination can be held to be illegal. The provision referred to by the Management as contained in the standing order can not over ride the principles of natural justice. The automatic termination on account of absence of an employee as per the standing order is subject to the principles of natural justice. Whatever may be the absence from duty by the employee it is the mandate of the employer to take resort to an enquiry before taking such action of removal from the service. The Management having no complied the principles of natural justice, the act of termination is purely illegal and in operative in law, for which the Workman is entitled to reinstatement in service with back wages. This is answered accordingly.

#### **ORDER**

The Award is passed in favour of the Workman. The Management is directed to reinstate the service of the Workman as he was on daily wages basis with 20% back wages.

Dictated and Corrected by me.

G.K. Mishra, O.S. J.S. (Junior Branch),  
Dt. 08-08-2008  
Presiding Officer,  
Labour Court, Jeypore,  
Koraput.

G.K. Mishra, O.S. J.S. (Junior Branch),  
Dt. 08-08-2008  
Presiding Officer,  
Labour Court, Jeypore,  
Koraput.

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By order of the Governor

K.C. BASKE

Under-Secretary to Government