

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2087, CUTTACK, WEDNESDAY, NOVEMBER 19, 2008/ KARTIKA 28, 1930

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th October 2008

No.11286-1i/1(BH)-79/1993/LE.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 15th October, 2008 in Industrial Disputes Case No. 54/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Mayurbhanja Medical Academy, Baripada and their workman Shri Budyut Kumar Nayak, At/P.O.-Talapada, P.S.- Badasahi, Dist- Mayurbhanj was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 54 OF 2008

The 15th October 2008

Present: Shri P. C. Mishra, O.S.J.S. (Sr. Branch)

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between: The Management of

M/s. Mayurbhanja Medical Academy,
Baripada

.. FirstParty—Management

And

Their workman Shri Budyut Kumar Nayak,
At/P.O.-Talapada,
P.S.- Badasahi,
Dist- Mayurbhanj

.. Second Party—Workman

Appearances :

None

.. For the First Party—Management

Shri B.K. Nayak

.. For the Second Party—Workman

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No.15432-li/1-(BH)-79/1993/LE., dated the 29th November 1994 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138-li/21-32/2007/LE., dated the 4th April 2008:—

“Whether the termination of services of Shri Bidyut Kumar Nayak, Junior Clerk/Assistant by the Secretary/Principal, Mayurbhanj Medical Academy, Baripada with effect from 19th December 1992 is legal and/or justified ? If not, to what relief Shri Nayak is entitled to ?”

2. Shortly stated, the case of the Second Party (hereinafter referred to as the ‘Workman’) is that he was appointed as a Junior Clerk to work under the Mayurbhanj Medical Academy (hereinafter referred to as the ‘Management’) on a consolidated sum of Rs. 400/- per month on 1st August 1991. Subsequently, the salary of the Workman was enhanced to Rs. 750/- per month as per the decision of the Governing body dated the 12th February 1992. It was mentioned in the said decision that the enhancement would take effect from 1st August 1991. It is alleged that with an ulterior motive the Principal did not pay the Workman his salary at the enhanced rate and on the other hand refused him employment in February, 1993. It is further alleged that during his employment the Workman had paid Rs. 15,000/- on 17th July 1992 to the Principal of the Management and again Rs. 3000/-, but at the time of refusal of employment the Management neither returned back the said amount nor had cleared-up his salary amounting to Rs. 21,000/- which was outstanding by then on the Management. It is pleaded that finding no other way he approached the Laour Machinery whereupon a conciliation was taken up and on failure of the conciliation was taken up and on failure of the conciliation the present reference was made. The Workman has claimed for his reinstatement in service with back wages and his arrear salary.

3. Since the Management did not appear nor filed written statement, notice was sent to it through the D.L.O., Baripada, who informed vide his letter No.4994, dated the 19th July 1996 that both the Principal & Secretary of the Management-College refused to accept the notice and accordingly as per Order No. 12, dated the 28th April 1997 the service of notice on the Management was held to be sufficient and consequently the Management was set *exparte*.

4. In the *exparte* hearing, the Workman examined himself and brought on record three documents, which have been marked as Exts. 1, 2 & 3. Referring to Ext.1, the copy of the appointment letter of the Workman, he deposed that he was working as a Junior Assistant/Clerk under the Management from 1991 to 1993. He deposed that without assigning any reason the Management terminated his service with effect from 19th December 1992 and while doing away his service it has neither given him any notice/notice pay and compensation. He has proved Ext.2, the copy of the letter of the Secretary of the Management indicating therein that the Governing Body had recommended for drawl of salary @ Rs. 750/- per month by the Workman with effect from 1st August 1991. Ext.3, the copy of the experience certificate issued in favour of the Workman, reveals that he was working as a Clerk under the Management from 1st August 1991. Lastly, he has deposed that for his illegal termination from service, he has prayed for his reinstatement in service with full back wages and continuity of service benefits.

5. Keeping in view the unchallenged testimony of the Workman, it is held that the Management is guilty of contravention of the provisions of the Industrial Disputes Act, in as much as, it has not complied the provisions of Section 25-F of the Industrial Disputes Act while effecting termination of service of the Workman.

6. In the result, therefore, the Workman is held entitled to reinstatement in service. As regards, back wages, there appears no evidence on record that the Workman was not gainfully/employed elsewhere during the period he suffered termination of service. Hence, it will be appropriate if he is awarded 50% back wages and accordingly the Workman is held entitled to 50% back wages. .

The reference is answered accordingly.

Dictated and corrected by me.

P. C. Mishra
Dt. 15-10-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar

P. C. Mishra
Dt. 15-10-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar

By order of the Governor
K.C. BASKE
Under-Secretary to Government
