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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 20th November 2008

No. 11890—li/1(B)-146/1996(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th November 2008 in Industrial Dispute Case No. 138 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Bhubaneswar Municipal Corporation, Bhubaneswar and their workman Shri Gurubari Behera was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 138 OF 2008

Dated the 10th November 2008

*Present :*

Shri PURNA CHANDRA MISHRA, o.s.j.s. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Executive Officer, .. First Party—Management  
Bhubaneswar Municipal Corporation,  
Bhubaneswar.

*Versus*

Shri Gurubari Behera, .. Second Party—Workman  
At Puba Sasan,  
P.O. Kausalyaganga,  
Dist. Puri.

*Appearances :*

For the First Party—Management .. None

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For the Second Party—Workman himself .. Shri Gurubari Behera

## 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. 6205—li/1(B)-146/1996-L.E., dated the 26th May 1997, 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-L.E., dated the 4th April 2008 :—

“Whether the action of the Executive Officer, Bhubaneswar Municipal Corporation, Bhubaneswar in terminating the services of Shri Gurubari Behera by way of refusal of employment with effect from the 1st November 1992 is legal and/or justified ? If not, to what relief Shri Behera is entitled ?”

2. Briefly stated, the case of the second party (hereinafter referred to as the ‘workman’) is that he was working as an N. M. R./D. L. R. under the first party (hereinafter referred to as the ‘Management’) being engaged in its ‘Jatree Nivas’, Cuttack Road, Bhubaneswar on a monthly salary of Rs. 750. It is stated that he rendered continuous employment under the management from the 23rd November 1987 to the 30th September 1992 and thereafter also till the 1st November 1992 when he was refused employment. Such action of the management, it is pleaded, is neither legal nor justified as because the management had not complied the provisions of the Industrial Disputes Act. It is alleged that the management has appointed new persons after refusing employment to the workman and thereby violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act. The workman has therefore, claimed for his reinstatement in service with seniority and full back wages.

3. Despite notice, the management neither appeared nor filed its written statement. So, it was set *ex parte* vide Order No. 12, dated the 9th February 2001. The workman filed evidence in the shape of an affidavit and has brought on record two documents which have been marked as Exts. 1 and 2.

4. In his evidence the workman deposed about his continuous engagement under the management for the period from the 27th November 1987 to the 1st November 1992 on a monthly salary of Rs. 750 and as to the refusal of his employment by the management thereafter. Further it is in his evidence that after refusing him employment, new persons were appointed in his place and in place of other retrenched workers. In absence of any evidence to the contrary, it is held that the management retrenched the workman by way of refusal of employment with effect from the 1st November 1992 without following the procedures laid down under Section 25-F of the Industrial Disputes Act and further it violated the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, which speak the procedure for retrenchment and re-employment of retrenched workman respectively. On the basis of the

unchallenged evidence of the workman, therefore, it is held that the action of the management in terminating the services of the workman by way of refusal of employment with effect from the 1st November 1992 is neither legal nor justified.

5. In view of the finding as aforesaid, the workman is held entitled to reinstatement in service. As regards back wages, in absence of any evidence on record that from the date of retrenchment till now the workman is not gainfully employed elsewhere, he is held not entitled to any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA  
10-11-2008  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

P. C. MISHRA  
10-11-2008  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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