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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 14th December 2007

No. 13515-li/1(J)-28/2005-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th June 2007 in Industrial Dispute Case No. 6 of 2005 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of Umerkote R.C.M.S. Ltd., Umerkote and its Workman Shri Jaladhar Jena 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. 6 OF 2005

Dated the 30th June 2007

*Present :*

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

*Between :*

The Secretary .. First Party—Management  
R. C. M. S. Ltd.  
At/P.O. Umerkote  
District Nawarangpur.

*Versus*

Its Workman .. Second Party—Workman  
Shri Jaladhar Jena  
R. E. O. Road  
At/P.O. Umerkote  
District Nawarangpur.

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

*Appearances :*

For the Management	..	None
For the Workman	..	Self
Date of Argument	..	25-6-2007
Date of Award	..	30-6-2007

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. 9237(4), dated the 29th October 2005 for adjudication of the following disputes :—

## SCHEDULE

“Whether the termination of services of Shri Jaladhar Jena, Salesman with effect from the 14th February 1989 by the Management of Umerkote R.C.M.S., Umerkote, District Nawarangpur is legal and/or justified ? If not, to what relief Shri Jena is entitled ?”

## AWARD

2. This case has been referred to by the Government consequent upon the non-settlement effected between the parties at the very threshold of raising dispute for determination of the disputed issue regarding the validity of the termination exercised by the authority during the course of the employment of the claimant, coupled with the necessary remedy to be effected or granted in the light of such determination.

3. The termination of the workman was ensured abruptly by the management opposite party under whose control the workman was discharging his duty for alongated period without serving any due notice with the reflection of plausible reasons thereof, though several steps seems to have been undertaken drawing attention of the petitioner through several consequent letters evidencing their intention instructing petitioner to deposit the purported amount as pointed out by the audit report vide Order No. 36 clause (2), dated the 22nd September 1988, Order No. 362, dated the 23rd September 1988 vide Letter No. 367, dated the 27th September 1988 being entering a letter vide memo No. 363, dated the 26th September 1988 putting him under suspension giving a chance to receive subsistence allowance vide memo No. 363, dated the 26th September 1988 without carrying out the same till the retrenchment of the petitioner. The petitioner is reported to have misappropriate a sum of Rs. 13,766.80 ps. as shown in the audit report which was not communicated at any point of time drawing his attention during the course of his employment. But all of a sudden the failure of depositing the fraud amount as shown by the petitioner entitled his termination followed by letter vide memo No. 516, dated the 14th February 1989. It is trite to mention herewith that the direction giving by the authority to deposit the fraud amount accrued of different stages not as a whole but for a fragmented period was not in harmony with the misappropriation

alleged to have been detected by the audit authority as he was at the stage of ignorance. However a combination of such order was reflected finally in his Letter No. 516, dated the 14th February 1989. Prior to that the authority had resorted to a step of putting the petitioner under suspension for the failure of the petitioner deposit the fraud amount. The act of suspension might have resulted in taking disciplinary proceeding against the petitioner for the misconduct shows during his employment by suspending a person responsible cannot be directly attached with the petitioner. The genuineness of the audit report should have to be adjusted by taking into the act of the petitioner. Suspension may have the result of disobedience of the order, that does not link with the further misconduct shown to have been committed in respect of misappropriation as alleged. No criminal case has been instituted against the petitioner for such offence. In absence of such report for pecuniary loss other course waived have been taken for fixing responsibility which may enjoin the authority to report to any enquiry whether of preliminary or otherwise as deemed fit either by standing order or circular issued by the department or as per the rules regulating the conduct of the workman. Unless proper opportunity is given to any employee it will act as an infringement of the natural justice which is the hallmark of the Rule of Law regulating the democratic set up of a country, otherwise there will be chaos in the administration resulting in the resentment comply the workman's militates the very purpose of the Industrial Development. The purpose of enquiry is to bring a harmony between the cordial relation between the employer and employee securing safety and security into the industry. As such Section 25-F has been incorporated in a democratic way in the statute in order to here the grievance meted out by the workman and serenity of autonomous sphere can be well maintained in the premises of the industry for the betterment of the industry and welfare of the workman.

4. There appears no semblance of intention by the authority to give a chance to the petitioner to have his say on the matter of termination before relieving him from duty from that industry. Failing of duty to deposit the ordered amount cannot be resulted in securing high punishment of termination which is not in conformity with the law. The authority has been enjoined by the statute either to pay compensation at the time of the termination or to give sufficient notice of one month before such termination in order to solicit grievance of the petitioner. Even if any compensation amount is paid by the employer, the petitioner's right to challenge the illegal termination cannot be absolved. Still he has every right to seek shelter of the court to assail legality of the termination. Either of the course seems to have been undertaken by the authority to satisfy the true provision as enumerated under Section 25-F of the Industrial Disputes Act, 1947. The sudden termination in the light of the failure of depositing amount does not purely attract the power envisaged under the standing order or the rules incorporating the Industrial Disputes Act. Whether punishment is awarded in light of termination by serving of notice on the opposite party is mandatory or not the authority cannot be absolved from the such duties. The act entertained by the authority is purely arbitrarily and emerged, out of whim and caprices which has got no importance in imposing punishment. The authority's arbitrariness is curtailed by the present provision enshrined in the well laid. In absence of complying any such mandatory provision, the act of authority in terminating the petitioner is consolation to by the authority for determination is settled in favour of the petitioner.

5. The illegally termination paved the way for the petitioner to have the right to reinstatement coupled with the compensation as required under the law. As it has been relevant from the documents on record that the order of subsistence allowance has been ordered to be paid but no allowance has been paid till the termination. Therefore the workman is also entitled to the back wages due on the authority. The retrenchment seems to have been effected on illegal foundation not for any extraordinary circumstances beyond the control of the authority. In the circumstances the right of reinstatement in the service taking into account of his previous service cannot be easily ruled out, along with the compensation as deemed proper under the law. Hence the ancillary relief as required to be obtained by the petitioner is hereby determined for the reference of the Government.

6. Regarding being had of the above facts and circumstances, I feel proper to pass award in favour of the petitioner.

Dictated and corrected by me.

G. K. MISHRA  
30-6-2007  
Presiding Officer  
Labour Court, Jeypore, Koraput

G. K. MISHRA  
30-6-2007  
Presiding Officer  
Labour Court, Jeypore, Koraput

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