

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 392 CUTTACK, THURSDAY, FEBRUARY 14, 2008/MAGHA 25, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th January 2008

No. 834—li/1(B)-302/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd December 2007 in I. D. Case No. 312/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the O.S.R.T.C., Bhubaneswar and its workman Shri Dillip Kumar Mandal was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 312 OF 1995

Dated the 3rd December 2007

Present :

Shri S. K. Mohapatra, o.s.j.s. (Jr. Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of O.S.R.T.C.,
Bhubaneswar. . . First Party—Management

And

Its Workman . . . Second Party—Workman
Shri Dillip Kumar Mandal.

Appearances :

None	.. For First Party—Management
Shri D. K. Mandal	.. For Second Party—Workman himself

AWARD

The Government of Orissa in the Labour & Employment Department referred the present dispute between the management of O.S.R.T.C., Bhubaneswar and its workman Shri Dillip Kumar Mandal, under Notification No. 7559-L.E., dated the 27th June 1995 vide memo No. 12189(5)-L.E., dated the 7th September 1995 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“Whether the termination of services of Shri Dillip Kumar Mandal, Junior Assistant by the Chairman-*cum*-Managing Director, Orissa State Road Transport Corporation, Cuttack vide his Office Order No. 27778, dated the 11th June 1992 with effect from the afternoon of 12th June 1992 is legal and/or justified ? If not, what relief the workman is entitled to ? ”

3. Shorn of all unnecessary details, the case of the workman is as follows :

The workman was originally appointed as Junior Assistant by the Managing Director of Orissa State Road Transport Corporation Ltd., Cuttack (hereinafter referred to as the management) vide order, dated the 16th April 1991 and in response to such order the workman joined his service under the management with effect from, the 24th April 1991. While the workman was working as such under the management, he was directed to appear for a test on the 6th October 1991 as per Office Order, dated the 28th September 1991. The workman appeared in the said test and produced all documents and testimonials. Thereafter the workman continued to work under the management till the 12th June 1992 when the management served order, dated the 11th June 1992 under which the service of the workman stood terminated with effect from the afternoon of 12th June 1992. The workman raised an industrial dispute before the District Labour Officer, Cuttack who tried for a conciliation but the conciliation failed and therefore, the Conciliation Officer submitted a report to the Government under Section 12(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) and on its part the Government of Orissa made the present reference to this Court. In his statement of claim the workman has further contended that he had worked for more than 240 days under the management during the period of 12 months preceding to the date of his termination from service but in spite of that the management did not comply the provision of Section 25-F of the I. D. Act and therefore, according to the workman, his retrenchment from service was illegal. On these averments, the workman has claimed for his reinstatement in service with back wages.

4. The management has been set *ex parte* vide order dated, the 19th April 2004 . On the 1st September 2007 the management had filed a petition to recall the order, dated the 19th April 2004 and to allow the management to cross-examine the workman. By an elaborate and reasoned order, dated the 9th October 2007 this Court had allowed the management to cross-examine the workman on payment of cost of Rs. 1,000 on or before, the 15th October 2007 and it was specifically mentioned in the order that on the failure of the management to pay the cost, the case would be reverted back to its previous position. The management did not pay the cost and did not turn-up in the Court. Therefore, *ex parte* argument was heard in the instant case from the side of the workman only. The order, dated the 9th October 2007 is very elaborate in the matter.

5. The workman has examined himself as W. W. 1. In his evidence W. W. 1 has stated that he joined the management organisation on the 16th April 1991 on the basis of furnishing a physically handicapped certificate. Under Ext. 1 the workman was appointed for 89 days as Junior Assistant on the 1st August 1991. He was again appointed for 30 days under Ext. 2. On completion of 30 days of appointment under Ext. 2, the management issued another letter of appointment vide Ext. 3 for 89 days with effect from, the 16th March 1992. However on the 12th June 1992 the service of the workman was terminated vide order, dated the 11th June 1992 (Ext. 5). According to W. W. 1 the management did not comply the provision under Section 25-F of the I. D. Act before termination of his service.

6. From the documents Exts. 1 to 4 it is seen that during the period from the 13th June 1991 to the 12th June 1992 the workman has rendered service for 247 days. This is so because in the statement of claim the workman has taken a stand that he joined his service with effect from the 24th April 1991. Thus it is clear that the workman was in continuous service within the meaning of Section 25-B of the I. D. Act and therefore, the management was found to follow the provision under Section 25-F of the I. D. Act before terminating the service of the workman. In the instant case as because the management has not followed the provision under Section 25-F of the I. D. Act the retrenchment of the workman with effect from the 12th June 1992 afternoon is bad in law.

7. In view of the discussion made above it is held that the termination of service of the workman Shri Dillip Kumar Mandal, Junior Assistant by the Chairman-*cum*-Managing Director, Orissa State Road Transport Corporation Ltd., Cuttack vide his Office Order No. 27778, dated the 11th June 1992 with effect from the afternoon of the 12th June 1992 is illegal and is not justified and therefore the workman is entitled to the relief of reinstatement in service. Since the workman has not rendered any service to the management after his termination from service, there is no order as to payment of back wages.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. MOHAPATRA
3-12-2007
Presiding Officer
Labour Court
Bhubaneswar.

S. K. MOHAPATRA
3-12-2007
Presiding Officer
Labour Court
Bhubaneswar.

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