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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 31st January 2008

No. 988-li/1(B)-65/2001-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th January 2008 in Industrial Dispute Case No. 24 of 2001 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Orissa Drugs and Chemicals Limited, Bhubaneswar and its workmen represented through Orissa Drugs & Chemicals Employees Union, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :—

#### SCHEDULE

#### INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 24 OF 2001

Dated the 5th January 2008

*Present :*

Shri Srikanta Nayak, o.s.J.s. (Sr. Branch)  
Presiding Officer, Industrial Tribunal  
Bhubaneswar.

*Between :*

The Management of Orissa Drugs and Chemicals Limited, Bhubaneswar. .. First Party—Management

And

Their workmen, represented through Orissa Drugs & Chemicals Limited Employees Union, Bhubaneswar. .. Second Party—Workmen

*Appearances :*

For the First Party—Management . . . Shri T. K. Pradhan,  
 Authorised Representative

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For the Second Party—Workmen . . . Shri D. K. Patra,  
 General Secretary of the Union

## AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12 readwith clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute for adjudication vide their Order No. 15376—li-1(B)-65/2001-L.E., dated the 2nd November 2001 :—

“Whether the demand of the Orissa Drugs & Chemicals Employees Union regarding payment of wages during the strike period from the 8th June 2001 to the 12th June 2001 and during the lock-out period with effect from the 13th June 2001 to the 25th June 2001 is legal and/or justified ?”

2. The case of the second party (hereinafter referred to as ‘Workmen’) is that it is a registered trade union and the first party is engaged in the manufacture of Drugs formulations. All the second party members are workmen of the said industry and without giving any notice the management on the 13th June 2000 declared lockout. The management has not-complied with the provisions of the Industrial Disputes Act while declaring the lockout and prior to that the management falsely alleged that on the 8th June 2000 all the labourers were on strike and intimated such thing to the Labour Officer, who called a conciliation meeting and the meeting was scheduled to be held on the 19th June 2000. During conciliation proceeding the management declared the lockout. The Union was consistently alleging corruption against the Managing Director. In order to harass them they were not paid their salary regularly for which lot of discussions were made. So, to take revenge the management declared the lock-out without following the procedure. So, they raised a dispute which ultimately referred to this Tribunal for adjudication.

3. The case of the first party (hereinafter referred to as the “Management”) is that since the Secretary of the Union was suspended the workers at his instance slowed down the work from the 8th June 2000. So, the management repeatedly requested the workmen to work properly but the workmen staged demonstration at the gate and created law and order problems. Due to the strike the management sustained loss and the industry became a sick unit. Since the financial condition of the company was deteriorating the management declared the lockout. The Officers and Supervisors had not participated in the strike. There was a settlement between the Union and the Management and as per the settlement while working on a Sunday the worker is to get three day’s salary which he lost during the strike period. In view of the said settlement, the reference is not maintainable.

4. On the aforesaid pleadings of the parties, the following issues were framed :—

### ISSUES

- (i) Whether the demand of the Orissa Drugs and Chemicals Employees Union regarding payment of wages during the strike period from the 8th June 2001 to the 12th June 2001 and during the lockout period with effect from the 13th June 2001 to the 25th June 2001 is legal and/or justified ?
- (ii) Whether the reference is maintainable in view of the settlement ?

5. The workmen examined six witnesses in support of their case and the management examined five witnesses in support of its case.

6. *Issue No. (i)* : W. W. No. 1 deposed that on the 13th June 2000 the security of the company did not allow them to enter inside the office and the company published a notice of suspension of production and services and he came to know about the closure of the company. No payment of compensation and festivals advance was given to them and later on he came to know that the officers had received their payment from the company.

W. W. Nos. 2 to 6 have deposed to the said effect and all of them specifically stated that there was no strike in the company and they denied to have seen the letters issued by the management requesting the workers to do work properly.

On the other hand, M. W. No. 1 deposed that in the year 1986 he became a member of the Union. In the month of December, 1999 the General Secretary of the Union Shri D. K. Patra was suspended and Ext. A is the said document and Ext. B is the charge sheet. He stated that thereafter the employees adopted go-slow. So, information was sent to the District Labour Officer and Ext. C is the said letter. From the 8th June 2000 the workers had not worked properly and he had also not worked as per the decision of the Union. Ext. E series are the letters issued by the management requesting the workers to work properly. As the matter aggravated, the management informed the police and on the 13th June 2000 declared the lockout. The District Labour Officer issued notice on the 17th June 2000 to appear before him and Ext. H is the said letter.

M. W. Nos. 2 to 4 supported the evidence of M. W. No. 1 and all of them categorically deposed that as the workers resorted to strike, on the 13th June 2000 lockout was declared which continued till the 25th June 2000.

7. Section 2(q) of the Industrial Disputes Act defines “strike” as follows :

“Strike” means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal or a refusal under a common understanding or any number of persons who are or have been so employed to continue to work or to accept employment”.

The evidence of M. W. Nos. 1 to 4 reveals that the workers slowed down the work deliberately which affected the production. Their evidence receive support from the documents. Ext. E series are the letters which show that the management repeatedly requested the Union not to resort to strike and to do work properly. Ext. 11 is a letter issued by the management to the District Labour Officer which also reveals that the management intimated him that the workers were on strike. All these documents clearly show that the workers resorted to strike without giving any notice. The existence of Ext. E series is not seriously disputed by the

workmen. W. W. Nos. 1 to 6 deposed that they had not seen such letters. This admission shows that they had not denied the existence of such letters. So, the oral and documentary evidence reveal that the workers resorted to strike. Whether the strike is legal or illegal, the workers are not entitled to get their salary for that period. In the decision reported in 1990(II)LLJ(S.C.) Page-39 (Bank of India Vrs. T. S. Kelawala and others), their Lordships held that "A legal strike may not invite disciplinary proceedings but an illegal strike may do so, it being a misconduct. However, whether the strike is legal or illegal, the workers are liable to loss wages for the period of strike".

8. It is not disputed that the management declared the lockout from the 13th June 2000 onwards which continued till the 25th June 2000. Admittedly, no prior notice of lockout was given to the workmen. Section 24(3) of the Industrial Disputes Act reads as follows :—

24(3) "A lockout declared in consequence of an illegal strike or strike declared in consequence of an illegal lockout shall not be deemed to be illegal".

It is already held that the workers were on strike and there was no necessity to issue a notice. It is contended that while the conciliation proceeding was going on, the declaration of lockout is illegal. Ext. 12 is the letter issued by the District Labour Officer asking the parties to attend a meeting on 19th June 2000. This letter is dated the 17th June 2000. This shows that the District labour Officer called for a conciliation meeting after the declaration of the lockout. So, there is no material to hold that the lockout was declared during the conciliation proceeding. Since the lock-out was declared due to the act of the workmen, they are not entitled to their wages for that period.

Issue No. (i) is answered accordingly.

9. *Issue No. (ii)*: M. W. Nos. 1 to 3 deposed that there was an agreement between the Management and the Union and it was decided that the workmen would work on Sunday and get three day's salary for the period of strike and Ext. J is the said settlement. W. W. Nos. 1 to 6 only denied the existence of such settlement but Ext. J itself shows that there was an agreement and some workers also worked as per the terms of the settlement as is evident from Ext. L, the copy of the payment statement. Since there was a valid agreement between the Union and the Management, the same is binding. In the decision reported in 2005(105) FLR-842 (Bombay) (Maharashtra General Kamgar Union Vrs. Pix Transmission Limited) their Lordships held that "if a settlement is arrived at during the course of conciliation proceeding under sub-section (3) of Section 18, then the same should be binding on all the parties" and in the decision reported in 2006(110)FLR-15(S.C.) (Transmission Corporation, A.P. Limited and others Vrs. P. Ramachandra Rao and another), their Lordships held that "if the settlement had been arrived at by a vast majority of concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference made under the Act merely because a small number of workers were not parties to it or refused to accept it."

In the case in hand, Ext. L reveals that the workers accepted the settlement and they also received payment by working on Sundays. Since there is a valid settlement, the reference is not maintainable.

Issue No. (ii) is answered accordingly.

10. In view of my discussions made above, it is held that the demand of the second party Union for payment of wages during the strike as well as lockSout period is neither legal nor justified.

The reference is answered accordingly.

Dictated and corrected by me.

SRIKANTA NAYAK  
5-1-2008  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

SRIKANTA NAYAK  
5-1-2008  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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