

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 418 CUTTACK, THURSDAY, FEBRUARY 14, 2008/MAGHA 25, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 31st January 2008

No. 1067—li/1(BH)-53/1996 -L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th October 2007 in I. D. Case No. 171 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Makidia Tassar Weavers' Co-operative Society Ltd., Balasore and its workman Shri Brundaban Chandra Das was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.171 OF 1996

Dated the 11th October 2007

Present :

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

Between :

The Management of Makidia Tassar Weavers .. First Party—Management
Co-operative Society Ltd.,
Balasore.

And

Its Workman Shri Brundaban Chandra Das .. Second Party—Workman

Appearances :

None .. For First Management

Shri B.C. Das .. For Second Part—
Workman, himself

AWARD

The Government of Orissa, in the Labour & Employment Department referred the present dispute between the Management of Makidia Tassar Weavers' Co-operative Society Ltd., Balasore and its workman Shri Brundaban Chandra Das , under Notification No.7559-L.E., dated the 27th June 1995 vide memo No. 17526 (5)-L.E., dated the 12th December 1996 for adjudication by this Court.

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

“Whether the action of the management of M/s Makidia Tassar Weavers' Co-operative Society Ltd., Makidia, Balasore in terminating the services of Shri Brundaban Chandra Das, Secretary-*cum*-Accountant with effect from the 3rd July 1995 is legal and/or justified ? If not, what relief Shri Das is entitled to ? ”

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

The workman joined in Makidia Tassar Weavers' Co-operative Society Limited., Balasore (hereinafter referred to as the management Society) as a Secretary-*cum*-Accountant with effect from the 2nd January 1984 and continued to serve in the said post till the 2nd May 1995 when he was arbitrarily relieved of his duty unlawfully and with a *mala fide* intention. The workman has drawn his last pay at Rs. 800 per month inclusive of all allowances. The management Society is engaged the procurement of Tassar, Silk and Cotton yarns for the Weaver members of the Society for weaving and collects the finished products. The management Society had directed the workman to pledge his land worth of Rs. 10, 000 as security although there was absolutely no provision for that and the former Secretary-*cum*-Accountant had not been required to give such security. The management Society knowing very well that it was an arbitrary condition only orally insisted the workman for giving such security. It was alleged against the workman by the management that he had disposed of landed property which he had kept as security with the management. During his entire service period the workman had worked with utmost honesty and sincerity. In spite of that the management had falsely alleged that the management had lost confidence in him and passed a relieve order on the 11th June 1995 whereby the service of the workman had been terminated with retrospective effect from the 5th June 1995 . The workman raised an industrial dispute before the Assistant Labour Officer, Balasore which failed and finally the same culminated in the present reference to this Court.

4. The management was set *ex parte* vide order, dated the 20th August 2007. By that time the workman had already examined himself as W.W. 1 and the management had cross-examined him. Therefore even though it is an *ex parte* judgment, it is pertinent to mention the case of the management in very brief.

The brief case of the management is that the second party was not a workman as the work of Secretary of a Co-operative Society is managerial in nature which included safe custody of cash of the Society, maintenance of various books, accounts and records of the

Society, maintenance of proper records of the meeting of the Society and supervision of work of the employees of the Society. Besides that the workman was also a member of the management Society. The workman had applied to quit the position of Secretary of the management Society on health grounds. Therefore, an advertisement had been issued for selection of a Secretary by way of a notice, dated the 28th March 1982. The second party had pledged a land worth of Rs.10,000 as security in favour of the management Society on the 24th February 1984 but he sold the said land without intimating the matter to the management. Therefore in the annual general meeting of the management Society had been expressed that the management had lost its faith on the second party. After the second party handed over charge of his seat to the President of the Society, it was ascertained that he had misappropriated an amount of Rs. 52,374 as found in the audit report. A proceeding under Section 68 of the Orissa Co-operative Societies Act, 1962 was initiated against the second party. Further contention of the management is that the second party being not a workman, the dispute between the management Society and the second party should have been decided by the Co-operative Tribunal.

5. Before deciding the present case, it is very much pertinent to determine as whether the management Society is an Industry or not within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I. D. Act) and as to whether the second party was a workman or not within the meaning of Section 2(s) of the I. D. Act. It is not disputed that the management Society was engaged in supplying Tassar, Silk Yarns to its members and weavers and was selling those after taking the finished products from its members. For running the Society, the management was hiring the services of the different people like Secretary-*cum*-Accountant, Salesmen and Managers in different Societies. Ext. 1 is the xerox copy of the letter of appointment of the second party under which the second party was appointed as Secretary-*cum*-Accountant on a salary basis. Therefore it is clear that the management Society was engaged in systematic activity by hiring people on payment of wages. Therefore the management Society is definitely an Industry within the meaning of Section 2 (j) of the I.D. Act. Furthermore, the second party as Secretary of the management Society had been entrusted the work of keeping cash of the Society and maintenance of accounts books of the Society. These are all clerical work. There is nothing in the cross-examination of the second party W. W.1 to show that he had been entrusted with any work of managerial nature. In the written statement of the management does not reveal that as Secretary the second party had to perform any managerial work. Therefore, the second party was definitely a workman within the meaning of Section 2(s) of the I. D. Act . Therefore, the dispute arising out of the termination of service of the second party in the facts and circumstances of the present case is an industrial dispute and can be tried by the Labour Court which has jurisdiction to decide such case. Thus it is obvious that this Court does not lack any jurisdiction to try the present case.

6. The workman W.W.1 in his evidence has stated that he was working as Secretary-cum-Accountant of the management Society since 2nd January 1984 to 2nd May 1995 when he was directed to hand over charge of his seat to the President of the Society. Further evidence of the workman W.W. 1 is that on the 12th June 1995 when he went to office he found that there was a copy of Resolution in the Notice Board wherein it had been mentioned that the service of the workman had been terminated. W.W. 1 in his evidence has further stated that he had not been noticed or had been given any notice pay prior to termination of his service. The management Society had also not given any compensation to him. W.W. 1 has proved his appointment letter Ext. 1 and the Resolution of the Society under which his service stood terminated as Ext. 2. During cross-examination nothing has been elicited to discard that the workman had mortgaged a piece of land as Fidelity Bond and that its family partition the said land fell to the share of another brother and that the workman had assured to the President of the Society to mortgage another land as Fidelity Bond.

7. Such evidence of the workman makes it clear that the management Society had not followed the mandatory provisions of Section 25-F of the I. D. Act before retrenchment of the service of the workman and therefore, such retrenchment of the service of the workman is bad in law. Consequently it is held that the service of the workman had been terminated by the management Society with effect from the 3rd July 1995 was illegal and unjustified . It has to be mentioned at this stage that the management Society did not frame any charge against the workman and did not conduct any domestic enquiry into any such charge .

8. As regards the relief, it is seen that the workman has already reached the age of superannuation. He had about 12 years of service left when he was illegally retrenched from service. Therefore the management Society is to give a lump sum of Rs. 25,000 (Rupees twenty-five thousand) only to the workman towards compensation and back wages.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. MOHAPATRA
11-10-2007
Presiding Officer
Labour Court, Bhubaneswar

S. K. MOHAPATRA
11-10-2007
Presiding Officer
Labour Court, Bhubaneswar

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