

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 527 CUTTACK, THURSDAY, FEBRUARY 28, 2008/FALGUNA 9, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th February 2008

No. 1723—li/1(BH-I)-6/2008 -L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th January 2008 in I. D. Case No. 35 of 1997 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of the Divisional Manager, O.F.D.C. Ltd., Karanjia (Commercial) Division, Karanjia, District Mayurbhanj and their workman Shri Atal Bihari Das represented through All Orissa Forest Karmachari Sangha, Karanjia, Mayurbhanj was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.35 OF 1997

Dated the 28th January 2008

Present :

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

Between :

The Management of the Divisional Manager, . . . First Party—Management
O. F. D. C. Ltd., Karanjia (Commercial)
Division, Karanjia, Dist. Mayurbhanj.

And

Their Workman Shri Atal Bihari Das, represented . . . Second Party—Workman
through All Orissa Forest Karmachari Sangha,
Karanjia Unit, At/P.O. Karanjia, Dist. Mayurbhanj.

Appearances :

Shri S. K. Pattanaik & Associates, Advocate . . . For the First Party —
Management.

Shri R. Acharya, Advocate . . . For the Second Party—
Workman.

AWARD

The Government of Orissa, in the Labour & Employment Department, in exercise of powers conferred upon them by 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 dispute for adjudication vide their Order No. 10706—li/1 (BH)-15/1997-L.E., dated the 25th August 1997:—

“Whether Shri Atal Bihari Das, Watcher in the office of the Divisional Manager, O.F. D.C. Ltd., Karanjia (Commercial) Division, At/P.O. Karanjia working as Clerk is entitled for wages of Junior Clerk ? If so, what will be the details ? ”

2. The case of the second party (hereinafter referred to as the ‘workman’) is that he joined on the 4th April 1986 on daily wages with the Similipal Forest Development Corporation and his service was regularised as a Forest worker. The Similipal Forest Development Corporation merged with the Orissa Forest Development Corporation and thereafter the service of the workman was designated as Watcher in the scale of pay of Rs. 750. From the date of his joining he was discharging the function of a Clerk. On the 12th November 1986 the Assistant Project Manager (R & D), Similipal Forest Development Corporation engaged the present workman in the clerical job in the Karanjia Division. Likewise in different years he was directed to perform the duties of a Junior Clerk and he also kept in-charge of Central Godown and was directed to attend the auction sale. He made several representations to the authorities to absorb him as a Clerk as he was discharging the function of a Clerk and to pay him the salary of Clerk but the authority turned a deaf ear. So, he raised an industrial dispute. After failure of conciliation, the matter was referred to this Tribunal for adjudication.

3. The case of the first party (hereinafter referred to as the ‘ Management’) is that the workman joined on daily wages and his service was regularised as a Forest worker, which was subsequently designated as Watcher. He never worked as a Clerk nor he was appointed as such. At the time of merger it was decided that the terms and conditions of the persons serving in the Similipal Project will remain the same. The qualification for the post of Clerk is Intermediate with knowledge in typing but the workman is only a Matriculate. So, he is not entitled to the post of Clerk and the officers who granted the experience certificates were not authorised to grant such certificates and the reference is not maintainable.

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

ISSUES

- (i) “ Whether Atal Bihari Das, Watcher in the office of the Divisional Manager, O.F.D.C. Ltd., Karanjia (Commercial) Division, At/P.O. Karanjia working as Clerk is entitled for wages of Junior Clerk ? if so, what will be the details ?
- (ii) Whether the reference is maintainable ?”

5. The workman examined three witnesses in support of his case and the management examined one witness in support of its case.

6. *Issue No. (i)*— W. W.1 deposed that on the 4th April 1986 he joined the service and posted at Dukura Project as a temporary employee. In the year 1990 his service was regularised and he was doing the clerical job and maintenance of accounts, registers, etc. On the 26th October 1992 he was deputed to Bangiriposhi Subdivision to complete the arrear works and Ext. 1 is the order. The Assistant Project Manager had granted him an experience certificate and Ext. 2 is the said certificate. He was also directed to attend official works and the concerned authorities granted certificates as per Exts. 3,7, 9 and 11. Under Ext. 7 the authority recommended to pay him Rs. 18 instead of Rs. 14 per day. As he was discharging the duties of a Clerk, he made representations to the authority and Exts. 12 to 15 are the representations but the authority turned down his representations.

W. W. Nos. 2 and 3 deposed that the workman was working as a Clerk but he was getting the salary of a Watcher and his work was satisfactory. All the authorities knew him as a Clerk. W. W. No. 3 also deposed to that effect and he further deposed that the workman was also maintaining registers. Exts. 1 to 7, 9 and 11 and Ext. B also reveal that the workman was working as a Clerk and different authorities have granted him certificates. Exts. 1, 8, 10, 16 and 17 and Exts. A, C and D reveal that the workman was directed to discharge the duties of a Clerk. So, the oral and documentary evidence establishes that the workman was discharging the job of a Clerk.

7. It is not disputed that the workman was appointed as a Forest worker. M. W. No. 1 deposed to that effect. Exts. F and G reveal that the workman was appointed as a Forest worker. Ext. J is the agreement which provides that the terms and conditions of service of personnel shall be the same as existing on the 30th September 1990. On that date the Similipal Forest Development Corporation was merged with the Orissa Forest Development Corporation and at that time the workman as a Forest worker as evident from the evidence of M. W. No. 1. Ext. K reveals that the Forest workers were appointed as Watchers in the pay scale of Rs. 750. The workman being a Forest worker was appointed in that post. So, the workman was appointed as a Forest worker under the Similipal Forest Development Corporation's Project and as a Watcher under the Orissa Forest Development Corporation and this fact is also not disputed by the workman. The workman was never appointed as a Junior Clerk. So, he has no right to claim such post. In the decision reported in 2006 (109) FLR (S.C.) page-1142 (S. Narayana Vrs. Md. Ahmedulla Khan and others), Their Lordships held that "a person can be said to acquire a line on a post only when he has been confirmed and made permanent on that post and not earlier". In the case in hand, the workman was never appointed as a Clerk nor his service was confirmed as a Clerk. It is true that the documentary and oral evidence reveal that the workman was asked temporarily to discharge the function of a Clerk but this is not sufficient to regularise him as a Clerk or to appoint him as a Clerk nor this gives a right to the workman to claim the post of Clerk. In the decision reported

in Vol. 85 (1998) CLT (SC) page-462 (Sanjukta Pattanaik Vrs. State), Their Lordships held that “ admittedly, she was appointed as a Clerk. While working as a Clerk the mere fact that she was kept in-charge of a Teaching post does not confer any right to appointment to any post because she was not initially appointed to a Teaching post. The provisional approval granted by the Director cannot be construed to be a ratification ”. In this case also the initial appointment of the workman was a Forest worker or a Watcher. So, even if the authorities granted certificates and directed him to discharge the function of a Clerk, he has no right to claim the post of Clerk.

M. W. No. 1 deposed that the qualification for the post of Junior Clerk is Intermediate with typing and this version of M. W. No. 1 remains unchallenged. Admittedly, the workman is a Matriculate. So, he has also no necessary qualification to act as a Clerk.

8. *Issue No. (ii)*— In view of my above finding, the reference is held to be not maintainable and consequently the workman is not entitled to any relief.

Dictated and corrected by me.

SRIKANTA NAYAK

28-1-2008

Presiding Officer
Industrial Tribunal, Bhubaneswar

SRIKANTA NAYAK

28-1-2008

Presiding Officer
Industrial Tribunal, Bhubaneswar

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