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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 28th March 2008

No. 3792—li/1(J)-26/2006 -L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd October 2007 in I. D. Case No. 18/2006 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of District Transport Manager (Admn.), O.S.R.T.C. Berhampur and their Workman Shri G. Koteswar Reddy 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.18 OF 2006

Dated the 3rd October 2007

*Present :*

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

*Between :*

The District Transport Manager (Admn.),      .. First Party—Management  
O.S.R.T.C., Berhampur,  
At/P.O. Berhampur, Dist. Ganjam.

*Versus*

Shri G. Koteswar Reddy,      .. Second Party—Workman  
C/o Santosh Kumar Pradhan, Qr. No. D-13-E,  
Traffic Colony, Khurda Road, At/P.O. Khurda,  
Dist. Khurda.

Under Section : 10 and 12 of the Industrial Disputes Act, 1947.

*Appearances :*

For the Management	.. Shri B. K. Panda, Jr. Clerk O.S.R.T.C. Bhubaneswar.
For the Workman	.. Shri K. Ch. Mishra, Advocate Berhampur.
Date of Argument	.. 27-9-2007
Date of Award	.. 3-10-2007

The Government of Orissa in the Labour & Employment Department in exercise of the power 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. 11162 (4), dated the 16th December 2006 for adjudication of the following disputes :

## SCHEDULE

“Whether the termination of Services of Shri G. Koteswar Reddy, Ex-Treasury Sarkar by the District Transport Manager (Admn.), Orissa State Road Transport Corporation, Berhampur, w. e. f., dated the 24th September 2002 (A. N.) is legal and/or justified ? If not, to what relief the workman is entitled ? ”

## AWARD

2. This is a case seems to have been originated out of the reference submitted by the Government before this Court for determination of an issue with regard to the validity and justifiability of the order of termination entertained by the management in respect of the workman coupled with any of the relief to be granted in consequence of such determination.

3. The Synopsis of the facts presented by the workman may be described here under that the workman for meeting out his treatment while on earned leave basing upon the submission of a leave application with subsequent extension was arbitrarily terminated from the service by the management without complying the necessary or the formalities of the procedure which is challenged by the workman to be illegal and unjust.

4. The management on the other hand contended in contrary to *inter alia* that the workman having remained absent unauthorisedly. Without any leave application for a longer period of one year, his service was not required for the public interest thereby his service was terminated by the authority concerned consequent upon the failure of reply to be submitted by the workman on basis of the show cause issued to him. It is further added that the termination was validity effected infavour of the workman which should not be set aside.

5. Primarily the service of the workman was temporary in nature and continuity for ten (10) years without break which can be dubbed as permanent in the nature. The constitution of

India has guaranteed security of service to the workers. The conferment of permanent status of an employee guarantee, security to the service. In that context, the service of such employee in respect of the appointment by any agency including the State shall not be terminated with a simple notice except in accordance with procedure established by the law. Any action taken thereto can be considered to be violative of Art. 14 as well as 16 of the Indian Constitution. Reliance has been placed in a decision by our own Apex Court *O. P. Bandari Co. Ltd.*, AIR-1987 S. C.-III. If any regulation is made to the defect violating the norm of the procedure shall be considered to be capable of vicious discrimination as can be held to be naked hire and fair rule. This has been reiterated by our S.C. in *Central Inland Water Corporation Ltd., Vrs. B. Ganguli* AIR-1986 S.C.-157. The Supreme Court in approving the above decision has made it clear in *Delhi Transport Corporation Vrs. D. T. C. Mazdoor Congress* AIR-1991 S.C.-101 that the service of confirmed employee could not have been illegally terminated by any simple notice.

6. Besides above analysis, the allegation of misconduct by the management must not be incorporated arbitrarily in the standing order. Standing order providing automatic termination consequent upon unauthorised absence cannot prevail over the normal rule which requires clear opportunity to be given to the workman on hearing of the matter. The principles of natural justice must be imported into the standing order. In this connection, our S.C. emphasised in a decision in *D.K. Yadab Vrs. J.M.A. Industrial Ltd.*, 1993, AIR, ACCW-1995 that in no uncertain terms that principles of natural justice would have to be read into provision relating to automatic termination of service.

7. In the rule prescribed by the management regulating the service condition of the workman u/s 110 clause 3 of O.S.R.T.C. regulation Act, 1978 that no employee shall proceed on leave without obtaining in writing a permission to avail himself of the leave pending formal sanction or sanction of leave applied by him from the immediate superior authority as the case may be. These not doing so will be guilty of misconduct and besides being considered as absence without leave will be rendered themselves for appropriate disciplinary action. It stipulates that for any authorised absence, a disciplinary action shall be initiated against the workman. It has been categorically manifested that unauthorised absence is considered to be a misconduct. Where the regulations states that absence without cause is a misconduct, employer should enquire into the question whether there was acceptable cause for the absence. Reliance has been placed in a decision rendered in *M. Krishan Raju Vrs. The Electrical Corporation of India*, 1995 clause 1 ALD-478. In case of misconduct as alleged, it is the duty incumbent on the management to frame charges. In order to prove charges, an enquiry officer shall be appointed who will examine the materials on record and to submit report before the disciplinary authority. On the basis of that report, penalty may be imposed after giving show cause to the workman. The proving of charge must relate the determination under which circumstances, the workman was compelled to proceed on leave and why he

over stayed the leave and whether any just and reasonable cause for over staying leave and whether any medical certificate was available to support his illness. The above consideration must be taken into view while proving the misconduct. The obligation on part of the workman will arise to adduce evidence supporting his cause. Unless due opportunity to give the just and reasonable cause can not be established. The worker has been conferred with a right to life. As per 21 of the Indian Constitution, the right to life is of no meaning, if there is no security to service. The right to livelihood includes the right to work. There is no guarantee to provide right of work due to the scarcity of financial resources where the right to work is provided protection should be given for its continuity. If any workman is deprived of his right to work, he will definitely succumb to starvation. Before depriving any person from the right to work, some essential formalities must be maintained without which action would be declared unfair, unjust and unreasonable. Therefore, it mandates that action taken for termination from any service should not be arbitrary and capricious even though discretionary authority is conferred on the employer to terminate the service. The principles of natural justice is concomitant to the concept of fair and just and reasonable principle. If a decision is taken without any principle or without any rule, it is unacceptable and such decision is antithesis to the rule of law. Discretion means sound discretion guided by law and it must be governed by rule not humor. It must not be arbitrary vague and fanciful just fair and reasonable decision attributes rule of law. In this sense rule of law may be said to be shown enemy of capricious action. Therefore, our constitution does not envisage unfairness or unreasonableness. If the employer has been conferred with unfettered discretions to terminate or not the service of the workman, the power must be exercised fairly and reasonably in accordance with the prescribed norms befitting to the natural justice. Therefore, the standing order must be read into principles of natural justice while taking any decision of terminating the service of the workman.

8. In this instant case, the disciplinary authority after giving show cause straight way terminated the service of the workman without giving opportunity of being heard on the matter of absence. He has also directly violated the norms of the standing order. The proceeding should have been initiated against the workman. If the workman failed to reply a proceeding could have been initiated *ex parte* through an appointment of an enquiry officer who could have examined all the materials available against him. In absence of such enquiry, the action taken hastily is considered to be arbitrary, unjust and unreasonable.

9. The management appears to have not intended to frame charges basing upon the incurring of non-satisfaction on the representation submitted by the workman nor the enquiry officer was appointed to finally assert the truth of the allegations levelled against the workman. Had there been proceeding, the workman could have obtained an opportunity to counter the allegation by producing necessary documents supporting to it including the Medical Certificate showing the nature of illness and its treatment. The non-observation of incurring satisfaction does not *suo motu* lead to the imposition of penalty unless determination of allegation is finally arrived at a truth. Rule of Law requires adoption of natural justice. Arbitrary

shown by the authority is equivalent to the violation of rule of law. The automatic termination of service as per the standing order will not any way got precedent over the natural justice which is the foundation of the rule of law. The disciplinary authority has not taken any materials into his own consideration and did not take any endeavour to direct the workman to submit the necessary documents in support of his illness. The disciplinary authority should be circumspect over the matter carefully and diligently before imposing any penalty. The authority concerned having not followed the principles of natural justice and fair play, the order passed by him without recouring to any principles of natural justice is considered to be unjust, unfair and unreasonable. The sickness being not required prior notification permission may not be possible to be obtained from the authority. The sequence of the illness can be considered by taking facts and circumstances of the case. The management's action being considered to be hasty and arbitrating with sole motive to deprive the right to work is considered to be illegal and inoperative in law which is liable to be set aside.

10. Besides, the punishment imposed on the workman is strikingly disproportionate and quite shocking. It is not in proportionate to the offence committed by the workman. The absence from leave is quite minor in nature. Therefore, the Court can consider the imposition of punishment considering to the unjust for minor offence. Such a punishment of termination is unwarranted. Therefore, it is to be set aside.

#### ORDER

The reference is answered accordingly. The management is directed to reinstate the workman within six months and paid the half back wages within the period otherwise the part to take shelter of the appropriate authority for getting full back wages.

Dictated and corrected by me.

G. K. MISHRA  
3-10-2007  
Presiding Officer  
Labour Court, Jeypore

G. K. MISHRA  
3-10-2007  
Presiding Officer  
Labour Court, eypore

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