

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No 1084 CUTTACK, TUESDAY, JULY 28, 2009/SRAVANA 6, 1931

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th July 2009

No.6216—li/1(B)-67/2000-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th March 2009 in I. D. Case No. 218 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of Social Forestry Project, Bhubaneswar and their Workman Shri Ramesh Chandra Panda, was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR,
INDUSTRIAL DISPUTE CASE No.218 OF 2008

Dated the 16th March 2009

Present :

Shri P. C.. Mishra, o.s.J.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar,

Between :

The Director, .. First Party—Management
Social Forestry Orissa , Aranva Bhawan,
Chandrasekharapur, Bhubaneswar
The Supervisor, Social Forestry Project
Training Centre, At Ghatikia, P. O. Khandagiri
Bhubaneswar.

And

Shri Ramesh Chandra Panda, .. Second Party—Workman
S/o Sanatan Panda,
Vill. Jagannathpur Patna,
P. O. Gopinathpur, Via Bhubaneswar,
Dist. Khurda, Orissa.

Appearances :

For the first party management.	..	None
<hr/>		
Second party Workman himself	..	.Shri M. R. Samatray, Advocate

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 9127—li-1(B)-67/2000-L.E., dated the 6th July 2000 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-L. E., dated the 4th April 2008.

“Whether the action of the Supervisor, Social Forestry Project Training Centre, Ghatikia, Bhubaneswar in terminating the services of Shri Ramesh Chandra Panda, Mali-*cum*-Choukidar, w.e.f. 11-12-1998 by way of refusal of employment is legal or justified ? It not, to what relief Shri Panda is entitled ?”

2. The case of the workman in brief is that he was working as an unskilled labourer under the management from August 1993 on a daily wage of Rs. 25 which was subsequently enhanced to Rs. 30 per day being engaged under the establishment of Social Training Centre, Ghatikia, Bhubaneswar. The workman alleges that on the 11-12-1998, the management without any notice/notice pay and retrenchment compensation refused him employment. According to him, such refusal amounts to retrenchment and the same is illegal in view of non-compliance of Section 25-F of the Industrial Disputes Act by the management. In the circumstance, therefore, the workman has prayed for his reinstatement in service with all back wages.

3. The management filed its written statement asserting therein that the organisation of the first party is not an ‘industry’, that the workman was engaged as a daily wage labourer and not as a Mali- *cum*- Choukidar as claimed by him, that besides being in sincere to his duty, the workman was a habitual absentee, in as much as, he deliberately refrained from work quite frequently during the months of June, July and August, 1998 and that at the time of his disengagement he was offered one month’s wages in lieu of notice and compensation by Regd. post which returned unserved. The management, in the premises, has prayed to answer the reference in the negative as against the workman.

4. On the basis of the pleadings of the parties, the following issues have been framed—

ISSUES

- (i) Whether the action of the Supervisor, Social Forest Project Training Centre, Ghatikia, Bhubaneswar in terminating the services of Shri Ramesh Chandra Panda, Mali-*cum*-Choukidar w.e.f. 11-12-1998 by way of refusal of employment is legal or justified ?
- (ii) If not, what relief Shri Panda is entitled to ?

5. In the hearing of the dispute, the management did not participate for which it was set *ex parte* vide Order No. 10 dated the 23rd March 2002. The workman submitted his evidence on affidavit and proved six documents which have been marked as Exts. 1 to 6.

6. In his evidence on affidavit the workman has deposed that he being engaged as a *Mali-cum-Choukidar* under the management from August, 1993 discharged his duty continuously till 11-12-1998 on which date his services were terminated by the management. He further deposed that one Shri Nanda Kishore Sahoo, who is Junior to him is retained in service whereas he suffered termination of his service and as such, the management has violated the principle of "last come first go" Exts. 1 & 2 the experience certificates disclose that that the workman was under the employment of the management from 1993 till 1996. Exts. 3 and 4 are two other office orders showing his engagement under the management. Exts. 5 and 6 are the copies of work charts of the daily wage labourers which disclose that the workman was allotted duties under the management. The unchallenged evidence of the workman read with documentary evidence adduced on his behalf leads this tribunal to draw an inference that in spite of rendering continuous service for more than 240 days, the management refused employment to the workman on 11-12-1998 without complying with the provisions contained in Section 25-F of the Industrial Disputes Act for which its action cannot be said to be sustainable in the eye of law. Further, its action cannot be sustained in view of the fact that Junior to the workman is continuing in employment and thereby the management has violated the principle of 'last come first go' for the aforementioned reasons. Therefore, the action of the management is held to be illegal and unjustified.

7. In view of the finding as aforesaid, the workman is held entitled to reinstatement in service. He is however, not entitled to any back wages in absence of any pleadings to the effect that during the period of his unemployment, he was not gainfully employed elsewhere.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
16-3-2009
Presiding Officer
Industrial, Tribunal, Bhubaneswar

P. C. MISHRA
16-3-2009
Presiding Officer
Industrial, Tribunal, Bhubaneswar

By order of the Governor

K. C. BASKE
Under-Secretary to Government