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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 22nd July 2009

No. 6729-1i/1(BH)-11/2001(Pt)/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 23rd March, 2009 in I.D. Case No. 271 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of the Divisional Forest Officer, Baripada Division, Baripada, District Mayurbhanj and its Workman Shri Harekrushna Samal was referred to for adjudication is hereby published as in the Schedule below :—

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 271 OF 2008

Dated the 23rd March, 2009.

*Present:*

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

*Between:*

The Divisional Forest Officer,  
Baripada, Division, Baripada,  
Dist: Mayurbhanj.

... First-Party — Management.

(And)

Shri Hare Krushna Samal,  
S/O. Late Laxmikanta Samal,  
C/o. State Labour Law Syndicate,  
Baripada, Dist.-Mayurbhanj. ... Second-Party — Workman.

*Appearances :*

Shri Laxmidhar Behera, ... For First-Party — Management.  
Range Officer.

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Shri Harekrushna Samal ... For Second-Party — Workman himself.

#### **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.1678-li/1-(BH)-11/2001/LE., dated the 6th February, 2002 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/LE., dated the 4th April, 2008.

“Whether the termination of service of Shri Harekrushna Samal, Ex-N.M.R.(Watch and Ward) with effect from 1st August, 1999 by the Divisional Forest Officer, Baripada Division, Baripada is legal and/or justified ? If not, to what relief Shri Samal is entitled to ?”.

2. The case of the Workman in brief is that he was engaged under the Management as an N.M.R. Watcher-cum-Ward worker from January, 1989 till 31st July, 1999 on a monthly wage of Rs. 350/- and suddenly on 1st August, 1999 he was retrenched from service. He alleged that though he had rendered continuous service under the Management during the aforesaid period yet the Management without giving him any notice/notice pay and retrenchment compensation terminated his service in gross violation of the provisions of Section 25-F of the I.D. Act. He stated that during the period of his employment he was never charge sheeted for any misconduct. Due to such illegal action of the Management the Workman has prayed for his reinstatement in service with back wages.

3. The Management filed its written statement stating therein *inter alia* that the Workman was never engaged under the Management continuously from 1989 till 1999 as

claimed by him. It is the specific stand of the Management that the Workman was engaged as a daily wage labourer under different schemes and he has not completed 240 days of continuous service in the calendar year preceding the date of his termination. According to the Management since the Workman was not issued with any appointment orders, the question of his retrenchment from service does not arise at all. Resisting the claim of relief, it is asserted by the Management that since the Workman is neither unemployed nor poor and at present by running a nursery he is earning huge profits, his claim is totally untenable in the eye of law.

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

#### ISSUES

- (1) Whether the termination of service of Shri Harekrushna Samal, Ex-NMR (Watch and Ward) with effect from 1st August, 1999 by the Divisional Forest Officer, Baripada Division, Baripada is legal and/or justified ?
- (2) If not, to what relief Shri Samal is entitled ?

5. In order to substantiate his claim, the Workman examined himself but did not adduce any documentary evidence. The Management, on the other hand, did not adduce either any oral or documentary evidence in the case and remained content by cross-examining W.W. No.1.

6. The Workman in his evidence has stated that though he was working as a Watchman under the Management from 1990 to 1999 continuously but the Management without any rhyme or reason terminated his service with effect from 1st August, 1999 without giving him any notice or notice pay and retrenchment compensation. He stated that he had rendered continuous service for more than 240 days in the year preceding the date of termination. He claimed his termination from service to be illegal and unjustified and prayed for his reinstatement in service with back wages and other service benefits. In cross-examination, he expressed his inability to produce any document relating to his engagement; relating to his receipt of wages from the Management & relating to his continuous engagement under the Management for more than 240 days. He also admitted in his cross-examination that neither he had received any appointment order nor termination order from the Management.

7. The evidence as laid by the Workman is only his own statement in his favour and that is not sufficient to hold that in fact he had worked for 240 days continuously preceding to the date of his termination from service. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for the period was produced by the Workman to corroborate his version. The Hon'ble Apex Court in a case between The Range Forest Officer and S.T. Hadimani, reported in 2002(93) FLR 179) have held that "Onus to prove that respondent has worked for more than 240 days is not on Management. Claimant has to lead evidence to show that he has worked for 240 days. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year."

8. Keeping in view the verdict of the Hon'ble Apex Court and the fact that the Workman has failed to establish his claim by leading cogent evidence in the proceeding that he had worked continuously for 240 days in the calendar year preceding the date of his retrenchment, it is held that the termination of his service with effect from 1st August, 1999 by the Management is either illegal or unjustified. Hence, the Workman is held not entitled to any relief in the present proceeding.

The reference is answered accordingly.

Dictated & corrected by me

P. C. Mishra, O.S.J.S. (Sr. Branch),  
23-03-2009  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

P. C. Mishra, O.S.J.S. (Sr. Branch),  
23-03-2009  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

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