

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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No. 1188 CUTTACK, WEDNESDAY, AUGUST 19, 2009/SRAVANA 28, 1931

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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 28th July 2009

No. 6892—li/1(BH)-6/1995-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th May 2009 in I. D. Case No. 98 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of the Member-Secretary, Mayurbhanj Central Co-operative Bank Limited, Baripada, District Mayurbhanj and its workman Shri Sarbeswar Nayak was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 98 OF 2008  
Dated the 29th May 2009

#### *Present :*

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

#### *Between :*

- |  |    |                         |
|--|----|-------------------------|
| 1. The Member-Secretary,<br>Cadre Committee, Mayurbhanj Central<br>Co-operative Bank Limited, Baripada,<br>Dist. Mayurbhanj. | .. | First Party—Managements |
| 2. The Managing Director,<br>Betnoti LAMPCS, Betnoti,<br>Dist. Mayurbhanj.   |    |                         |

And

Late Sarbeswar Nayak . . . Second Party—Workmen  
 substituted by his son  
 Kamalakanta Nayak & others,  
 At Bahanada, P.O. Bahanada Satnilo,  
 Via Betnoti, Dist. Mayurbhanj.

*Appearances :*

For the First Party—Management No. 1	. . .	Shri B. K. Padhi, Authorised Representative.
For the First Party—Management No. 2	. . .	Shri S. N. Jena, Authorised Representative.
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For the Second Party—Workmen	. . .	Shri S. N. Jyotishi, 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. 17415—li/1(BH)-6/1995-LE., dated the 4th December 1995 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 action of the Member-Secretary, Cadre Committee, the Mayurbhanj Central Co-operative Bank Limited, Baripada in terminating the services of Shri Sarbeswar Nayak, Branch Manager with effect from the 24th October 1989 in the guise of decaderisation is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the workman as set out in his claim statement filed before the Conciliation Officer, Baripada in brief is that he was appointed as the Secretary of Niz Sathilo Service Co-operative Society and he served as such from 1954 till formation of the LAMPSCS in the year 1977 and thereafter he was treated as the Branch Manager of Betnoti LAMPSCS owing to amalgamation of the Niz Sathilo Society with the Betnoti LAMPSCS. According to the workman his date of birth is the 5th November 1938 and the Managing Director of Betnoti LAMPSCS vide his letter, dated the 15th November 1986 reported the said fact to the Secretary, Mayurbhanj Central Co-operative Bank, Baripada. It is also pleaded that in the year 1986 the Branch Managers were caderised as per the Cadre Rule framed by the Registrar, Co-operative Societies, Orissa, Bhubaneswar and consequently the Cadre Branch Managers became the staff of the Cadre Committee of the Mayurbhanj Central Co-operative Bank Limited, Baripada. It is stated that the workman continued to work as Branch Manager till the 24th October 1989 on which date the Secretary, Cadre Cell of the Mayurbhanj Central Co-operative Bank Limited in a most whimsical manner decaderised the workman from service under the Cadre Scheme without giving him reasonable opportunity to place his defence. Challenging the aforesaid action, the workman has prayed for the relief of all his service benefits.

3. The record discloses that during pendency of the dispute the workman expired on the 23rd October 1995 and on a petition being moved by Shri Kamalakanta Nayak, son of the deceased-workman, was substituted to be the legal heir of the workman and he was allowed to conduct the case on behalf of the workman.

4. The Management No.1, i.e. Member-Secretary, Cadre Committee, the Mayurbhanj Central Co-operative Bank Limited, Baripada (for short 'M. C. C. Bank') challenging the order of reference has stated *inter alia*, that the workman being no more alive and has since been expired on the 23rd October 1995 the reference of the dispute is incompetent and is bad in law and as such the heir of the deceased- workman has no legal right to claim benefit from the M. C. C. Bank.

5. The Management No. 2, i.e. the Managing Director, Betnoti LAMPCS, Betnoti, Dist. Mayurbhanj (for short 'LAMPCS') filed written statement challenging the term of reference and also stating therein that the deceased-workman was working under the LAMPCS w.e.f the 26th March 1977 and owing to introduction of the Staff Service Rules relating to the terms of employment and service condition of the cadre employees of LAMPCS w.e.f. the 1st April 1986, all the Branch Managers and Accountants came under the Cadre Committee of the Mayurbhanj Central Co-operative Bank including the deceased-workman. It is stated that on his decaderisation, the workman was asked to place all his testimonials for the purpose of opening of his Service Book and on his failure to furnish the same he was decaderised from the Cadre Service. It is further alleged against the workman that during his tenure as Branch Manager in Betnoti LAMPCS, he was remaining absent from his duty unauthorisedly and misappropriated the Society's fund. Further, the management pleaded in its written statement that consequent upon the orders of the Conciliation Officer, dated the 9th April 1992, the workman joined his duty on the 20th June 1992 and in spite of letters and reminders to the workman to submit his certificates and to deposit the security as required under the rules of the LAMPCS, he did not comply the same but represented the management praying to get him examined through the C.D.M.O., Mayurbhanj to ascertain his age and fitness to perform duties. It is pleaded that without compliance of the orders of the management ultimately the workman died on the 23rd October 1995. Lastly it is pleaded by the LAMPCS that the workman was a dishonest person for which the management had lost confidence on him and for the reasons as aforesaid, the reference may be answered in the negative as against the workman.

6. The substituted legal heir of the deceased workman has filed a rejoinder to the written statements of the management stating therein specifically that since 1954 till formation of the LAMPCS and even thereafter his father (workman) continued to work under the management till the 24th October 1989 and he had submitted all his testimonials indicating his educational qualification, date of birth, etc. while entering into service of the Society which was later on communicated to the M.C.C. Bank by the Managing Director, Betnoti LAMPCS vide letter, dated the 15th November 1986 . It is averred in the rejoinder that decaderisation of service of his father without affording him a reasonable opportunity to defend his case is illegal as well as unjustified.

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

#### ISSUES

- (i) “Whether the action of the Member-Secretary, Cadre Committee, the Mayurbhanj Central Co-operative Bank Limited, Baripada in terminating the services of Shri Sarbeswar Nayak, Branch Manager with effect from the 24th October 1989 in the guise of decaderisation is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?”

8. To substantiate its stand, both the Managements have examined one witness each from their side. The witness examined on behalf of M.C.C. Bank (Management No.1) filed and proved documents which have been marked Exts. A to N and the witness examined on behalf of LAMPCS (Management No.2) has filed and proved a single document which has been marked Ext. P. On behalf of the deceased-workman, his substituted legal heir Kamalakanta Nayak submitted his evidence on affidavit but did not produce any documentary evidence in the case.

9. The crux of the issue involved in the present dispute is whether the action of the M.C.C. Bank in decaderising the services of the workman w.e.f. the 24th October 1989 is legal and justified and in the event it is held to be negative then to what relief the workman will be held entitled.

It is not in dispute that the workman was under the employment of the Management since 1954 till 1989. M.W.No.2 has stated regarding this in his chief examination. In his evidence that after formation of the Cadre Rules in the year 1986, the workman was asked to furnish certificates showing his date of birth, educational qualification, etc. in order to open his Service Book and as the workman despite several opportunity did not submit the same the Cadre Committee of the M.C.C. Bank (Management No.1) decaderised the services of the workman on the 24th October 1989 vide its letter No.2081. Referring to Ext. P he deposed that prior to his decaderisation on the 24th October 1989 the workman had tendered resignation expressing his intention that on account of his illness he was not able to serve any more under the management and praying therein to release his outstanding dues. The record does not reveal that any action was taken on the representation of the workman, i. e., Ext. P. In absence of evidence on record that the grievance of the workman was duly considered and accordingly the resignation submitted by the workman was accepted, it cannot be said that he was not at all in the employment of the management till the 24th October 1989, i.e., the date of the decaderisation from service. It is the specific case of the management of M.C.C.Bank that despite letters and reminders the workman did not submit the required certificates to ascertain his age, qualification, etc. for which as per the Resolution, dated the 20th September 1989, Ext. K, the Cadre Committee decided to decaderise the services of

the workman and accordingly the Secretary, Cadre Cell vide his Order, dated the 24th October 1989, Ext.1 communicated the decision of the Cadre Committee to the workman. In this connection, the representation of the workman, dated the 22nd July 1988 may be referred to wherein he had intimated the management about non-availability of such certificates with him and further praying therein to allow him some time produce the same. It is not out of place to mention here that the workman was in the employment of the management since 1954 and obviously at the initial stage of his entering into service he would have submitted all his testimonials. After utilising his service for a substantial period, i.e. more than 30 years, it is found quite unreasonable to ask the workman to again place all his testimonials showing proof of his age, qualification, etc. further, in the event of failure on the part of the workman to produce the same, the management was not precluded from sending the workman for medical examination to ascertain his age. The record discloses that at no point of time the management had ever attempted for sending any requisition to the concerned C.D.M.O. with intimation to the workman for his clinical examination to ascertain the age. The management being the authority to maintain all the personal records of the workman, it is not appropriate to compel the workman to produce all his testimonials, as is being required while entering into a job, at the fag end of his service career.

Another important aspect which needs discussion in the present context is that the procedures described in Clause 21 of the Staff Service Rules marked Ext. A appear to have been completely ignored by the Authority while dealing with the case of the workman, inasmuch as, no charge-sheet was drawn up against the workman for disobedience of any lawful orders of the Authority and no enquiry into the matter was conducted. In this connection, the decision reported in 2009(120) FLR-608 (State Bank of India and others Vrs. Ranjit Kumar Chakraborty and another) may be referred to wherein their Lordships of the Hon'ble Supreme Court have observed that "it is now settled principle that wherever the Rule is silent the principles of natural justice shall be read in it. A hearing should be given to a person who is being punished with a major penalty. Therefore, the principle of natural justice has to be read in this Rule ." Now coming to the instant dispute on the face of Ext. F., i. e. the representation submitted by the workman, it was incumbent upon the management to enquire into motive of the workman before imposing punishment on him but instead, vide letter, dated the 13th October 1988 addressed to the workman marked Ext. G the management expressed its intention to draw a disciplinary action in the event he failed to produce the required certificates. It is no doubt true that Cadre Committee is empowered enough to impose penalty on an employee in a case of proved misconduct but at the same time the committee is required to adhere to the principle of natural justice while doing so. It is therefore clear that despite alternative methods available to ascertain the requirements for opening of the Service Book of the workman, the management had neither taken recourse to it nor afforded reasonable opportunity to the workman to place his defence before imposition of the penalty of decaderisation of his service. In the circumstances, therefore, the action of the Management cannot be held to be either legal or justified.

10. The workman being no more alive to avail the benefit of the Award, a lump sum compensation of Rs. 50,000 (Rupees Fifty Thousand only) is awarded in favour of his legal heirs, which should be paid by the Management within a period of two months from the date of publication of the Award in the Official Gazette.

The reference is disposed of accordingly.

Dictated and corrected by me.

P. C. MISHRA  
29-5-2009  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

P. C. MISHRA  
29-5-2009  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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