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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 31st August 2009

No. 8153—li/1(BH)-10/2006 -L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st March 2009 in I. D. Case No.83 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Subarnarekha Field Machinery Division, Laxmiposhi & their Workman Shri Jairam Bhoi was referred to for adjudication is hereby published as in the Schedule below :—

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 83 OF 2006

Dated the 21st March 2009

*Present :*

Shri M. R. Tripathy,  
Presiding Officer, Labour Court,  
Bhubaneswar.

*Between :*

The Management of the .. First Party—Management  
Executive Engineer, Subarnarekha  
Field Machinery Division,  
Laxmiposi.

And

Their Workman .. Second Party—Workman  
Shri Jairam Bhoi,  
Ex-Electrician Gr. II.

*Appearances :*

For the Firsty Party—Management .. Shri P. K. Samal

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Second Party—Workman himself .. Shri Jairam Bhoi

## AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the dispute between the parties to this Court for adjudication vide Order No.11088—li/1(BH)-10/2006-LE., dated the 13/14th December 2006 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The Schedule of reference is as follows:

“Whether the termination of services of Shri Jairam Bhoi, Ex-Electrician Grade II with effect from the 31st March 2003 by the Executive Engineer, Subarnarekha Field Machinery Division, Laxmiposi, Mayurbhanj is legal and/or justified? If not, what relief Shri Bhoi is entitled to?”

3. The case of the workman may be briefly stated as follows :

The workman Shri Jairam Bhoi joined in service on the 26th September 1978 and continued to work till the 30th March 2003. He was retrenched from service with effect from the 31st March 2003. As per the direction given by the Government of Orissa, the management was required to prepare a list of surplus staff and to retrench them by following Section 25-G of the Industrial Disputes Act, 1947 but the management retained two junior employees namely Shri Basant Swain and Shri Budhia Samal while retrenching him from service on the 31st March 2003. So he filed a representation on the 18th April 2003 but no step was taken by the management to reinstate him in service. However subsequently the above said junior employees were retrenched. That apart, the retrenchment benefit was not paid to him on the date of retrenchment i. e. on the 31st March 2003. The same was paid to him after 8 to 10 months from the date of retrenchment. Moreover the Government of Orissa had directed not to retrench N.M.R./D.L.R./Work-charge employees who were appointed prior to the 12th April 1993, but the same was not kept in consideration by the management while retrenching him from service. Therefore, according to him the retrenchment is illegal and unjustified. He has not been gainfully employed anywhere else after the date of retrenchment. Hence he is entitled to be reinstated in service with full back wages.

4. The management in written statement has submitted that the workman was initially appointed as a Helper on the 26th April 1978 in the Irrigation Project, Rengali. He was transferred to Laxmiposi, Mayurbhanj on the 19th November 1988. Shri Basant Swain alleged to be junior to the workman also joined as a Helper on the 7th November 1978. So at the time of entry into the service the workman was senior to Shri Swain. Subsequently Shri Swain was promoted to the post of Wireman Grade- III on the 29th January 1981 while the workman of the present case was promoted to the said post on the 21st May 1981. The post of Wireman Grade-III is a technical post, some technical qualification are required for the said post. Therefore a selection was made from the available employees. Considering the technical qualification, educational qualification etc. Shri Swain was promoted to the post of Wireman Grade-III on the 29th January 1981. The post and nature of job of a Wireman Grade-III and Helper is different. The job of Helper is semi-skilled in nature and no qualification and experience is required for the said post. At the time of selection of Shri Swain to the promotional post he possessed higher qualification than the workman. Since Shri Swain was promoted to the post of Wireman Gr. III earlier to the workman so in the grade of Wireman Shri Swain was senior to the workman. The other employee who is also alleged to be junior to the workman namely Shri Budhia Samal is no more continuing in service and he has already been retrenched.

In view of the Order No. 20222, dated the 29th May 2001 of the Department of Water Resources, Government of Orissa, a list of surplus staff was prepared including the workman of the present case. The retrenchment notice was prepared on the 28th March 2003 and the workman was requested to attend the office of the concerned Subdivisional Officer to receive the retrenchment benefits on the 31st March 2003. The retrenchment benefit amounting to Rs. 1,57,876 was drawn in shape of Banker's Cheque and kept ready for delivery to the workman but the workman did not turn up to receive the amount. So a notice was sent to him on the 24th September 2003 to receive the amount on or before the 30th September 2003. So far all the aforesaid reasons the workman is not entitled to get any relief in this case.

5. The following issues were settled:

#### ISSUES

- (i) Whether the termination of services of Shri Jairam Bhoi, Ex-Electrician Gr. II with effect from the 31st March 2003 by the Executive Engineer, Subarnarekha Field Machinery Division, Laxmiposi, Mayurbhanj is legal and /or justified ?
- (ii) If not, what relief Shri Bhoi is entitled to ?

6. In support of his case, the workman examined himself as W. W. 1. The management examined the Executive Engineer of Jambhira Canal Division, Laxmiposi, Mayurbhanj as M. W. 1.

#### FINDINGS

7. *Issue Nos. (i) and (ii):*—Both the issues are taken up together for the sake of convenience.

According to the workman his retrenchment from service with effect from the 31st March 2003 is illegal and unjustified because Sections 25-F & 25-G of the Industrial Disputes Act, 1947 were not followed by the management at the time of retrenchment. On the other hand, it is stated by the management that Section 25-F of the Industrial Disputes Act, 1947 was duly complied and Section 25-G of the Industrial Disputes Act, 1947 was duly followed and therefore, the retrenchment of the workman was not illegal and unjustified.

8. So let us now proceed to examine as to if these two sections of the Industrial Disputes Act, 1947 were duly followed by the management at the time of retrenchment of the workman or not.

9. The workman in his deposition has stated that the management had not given him one month's notice before termination of his service. However, the management had given him one month's salary in lieu of notice and had also given him a sum of Rs. 1,57,876 towards compensation and other dues. So admittedly one month's salary in lieu of notice and compensation as provided in Section 25-F(a) and (b) of the Industrial Disputes Act, 1947 was paid to him by the management. But in the statement of claim as well as in the written argument it is stated by the workman that the retrenchment benefit was not paid to him simultaneously at the time of retrenchment. This is denied by the management. According to the management the retrenchment benefit as provided in Section 25-F of the Industrial Disputes Act, 1947 was made ready before the date of retrenchment and the workman was also instructed to receive the same but he deliberately did not receive the same on the 31st March 2003 for which another notice was issued to him on the 24th September 2003 to receive the amount on or before the 30th September 2003.

10. In this regard the workman has relied on a decision reported in 2001 (89) FLR 356 in the case of Sain Steel Product V. Naipal Singh and others. Perused the said decision. The facts and circumstances of the present case is quite different from the facts and circumstances of the said case. In the cited case a letter was sent to the workman wherein he was asked to collect whatever was due to him but the said letter did not spell out that the amount included the amount as contemplated under Section 25-F of the Industrial Disputes Act, 1947. So under that circumstance it was held by the Apex Court that the sentence written in the letter was not really an offer in terms of Section 25-F of the Industrial Disputes Act, 1947. But in the present case in the letter of offer marked as Ext. B the workman has been given an instruction to receive his dues such as one month's pay in lieu of one month's notice, as admissible under Clauses (a) and (b) of Section 25-F of the Industrial Disputes Act, 1947. Ext. D is the calculation sheet which reveals that one month's pay of Rs. 5,655, compensation of Rs. 70,688 and gratuity of Rs. 81,563 was calculated for payment to the workman. In the written statement the management has stated that the amount due to the workman i. e. a sum of Rs. 1,57,876 was kept in shape of Banker's Cheque bearing No. BC. 00024836985, dated the 31st March 2003. The management has filed a copy of notice sent to the workman bearing No. 783, dated the 24th September 2003 marked as Ext. E wherein he was instructed to receive the amount on or before the 30th September 2003. From the above materials it is clear that the amount due to the workman was calculated and kept ready before the date of retrenchment for payment to the workman. The said fact was also duly intimated to the workman. But for some reason he did not receive the same for which another letter was issued to him in the month of September, 2003 whereafter he received the amount. Under the circumstances stated above, it would not be appropriate to say that the management had not taken any step to comply Section 25-F of the Industrial Disputes Act, 1947 before the retrenchment.

11. The workman in his statement of claim has stated that two persons namely Shri Basant Kumar Swain and Shri Budhia Samal who were junior to him were retained in service at the time of his retrenchment and thus the management had violated Section 25-G of the Industrial Disputes Act, 1947. The management in the written statement has explained as to how the workman is junior to Shri Swain. According to the management at the time of entry into the service the workman was senior to Shri Swain in the grade of Helper. Subsequently on the basis of qualification and experience etc. Shri Swain was selected and promoted to the post of Wireman Gr. III on the 29th January 1981 whereas the workman was promoted to the post of Wireman Gr. III on the 21st May 1981 i.e. almost about 4 months after the date of promotion of Shri Swain. Therefore in the Grade of Wireman Gr. III Shri Swain was senior to the workman. While giving evidence M. W. 1 has also stated that a common seniority list was maintained by the Engineer-in-Chief, Orissa and according to the said list the workman was junior in Wireman Grade II to other employees. The workman has not filed any material to prove that in the Grade of Wireman Grade II he was senior to other employees or that he was not the junior most employee according to the seniority list maintained by the Engineer-in-Chief, Orissa. The other employees alleged to be junior to the workman namely Shri Budhia Samal is not in service and he has already been retrenched. It is not known when

Shri Budhia Samal was retrenched. Let us for the sake of argument say that Shri Budhia Samal was retrenched from service after the retrenchment of the workman but the retrenchment of the many employees including the workman was made in view of the decision taken by the Government of Orissa vide Order No. 20222, dated the 29th May 2001 of the Department of Water Resources, Bhubaneswar. Moreover Shri Budhia Samal has already been retrenched from service in this meanwhile. So I find no justification to pass an order for reinstatement of the workman in service or for payment of any amount towards back wages.

12. Hence Ordered:

The termination of services of Shri Jairam Bhoi, Ex-Electrician Gr.-II with effect from the 31st March 2003 by the Executive Engineer, Subarnarekha Field Machinery Division, Laxmiposi, Mayurbhanj is legal and justified. The workman Shri Bhoi is not entitled to get any relief in this case.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY  
21-3-2009  
Presiding Officer  
Labour Court, Bhubaneswar

M. R. TRIPATHY  
21-3-2009  
Presiding Officer  
Labour Court, Bhubaneswar

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