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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 21st October, 2009

No. 9530—li/1(B)-32/1996(P) /L.E.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 29th June 2009 in I.D. Case No.64 of 2006 of the Presiding Officer; Labour Court, Bhubaneswar to whom the Industrial Dispute between the Management of the Orissa State Fishermen's Co-operative Federation Limited, Bhubaneswar and their Workman Shri Bharat Ch. Gochhayat was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 64 OF 2006

Dated the 29th June 2009

*Present :*

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

*Between :*

The Management of Orissa State .. First —Party Management  
Fishermen's Co-operative  
Federation Limited, Bhubaneswar.

And

Their Workman .. Second —Party Workman  
Shri Bharat Ch. Gochhayat

*Appearances :*

For First—Party Management .. Shri A. P. Mishra  

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Second—Party Workman himself .. Shri B. C Gochhayat

## 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 matter in dispute to this Court vide Order No. 6577—li-1(B)-32/1996 -LE., dated the 20th July 2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The case of the workman according to the statement of claim may be briefly stated as follows :

He joined as a N.M.R. workman in October 1996 and worked as such till the 19th February 2002 continuously. He was retrenched on the 20th February 2002 and at the time of retrenchment, he was getting salary of Rs.1,400 per month. It is alleged by him that some employees who were junior to him were retained in service whereas he was retrenched. As such, the management did not follow the policy of 'last come first go'. Also Section 25-F of the Industrial Disputes Act, 1947 was not complied by the management at the time of retrenchment. Therefore, his retrenchment is illegal and unjustified and he is entitled to be reinstated in service with full back wages.

After he was retrenched, he approached the labour machinery and a conciliation proceeding was initiated which ended in failure. Accordingly, the following dispute was referred to this Court for adjudication.

“Whether the action of the Managing Director, Orissa State Fishermen’s Co-operative Federation Limited, Matsya Sadan, Cuttack Road, Bhubaneswar by retrenching the workman Shri Bharat Ch. Gochhayat, Watchman with effect from the 20th February 2002 when his juniors are still in employment is illegal and/or justified ? If not, what relief is Shri Gochhayat entitled to ?”

3. The management in the written statement has admitted that the workman was engaged as a contingent worker on daily wage basis and he was retrenched on the 20th February 2002. According to the management, in view of the direction given by the Government vide Letter No. 22491, dated the 10th December 2001 the workman was retrenched from service along with some other persons after due compliance of Section 25-F (a) and (b) of the Industrial Disputes Act, 1947. The management has denied the fact that the workman was retrenched from service while employees junior to him were retained. It is further stated by the management that the workman is not entitled to get any relief in the present case.

4. The workman filed a rejoinder wherein he has almost repeated the same facts.

5. The following issues were settled.

## ISSUES

(i) Whether the action of the Managing Director, Orissa State Fishermen’s Co-op. Federation Limited, Matsya Sadan, Cuttack Road, Bhubaneswar by retrenching the workman Shri Bharat Ch. Gochhayat, Watchman with effect from the 20th February 2002 when his juniors are still in employment illegal and/or justified ?

(ii) If not, what relief is Shri Gochhayat entitled to ?

6. In support of his case, the workman examined himself as W. W. 1. He also examined another person as W. W. 2 who was also working in the management and simultaneously retrenched along with the workman. The management examined one witness who is working as Head Clerk in charge of the management.

## FINDINGS

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

Admittedly, the workman was retrenched from service on the 20th February 2002. There is also on dispute that he had worked for more than 240 days continuously during the preceding 12 calendar months from the date of retrenchment. According to the workman, the retrenchment is illegal for the following two points.

1. The Policy of “last come first go” was not followed by the management at the time of his reattachment inasmuch as, some employees who were junior to him were retained in service whereas he was retrenched.
2. Section 25-F(a) and (b) of the Industrial Dispute Act, 1947 was simultaneously not complied at the time of his reattachment.

The management has denied both the above two allegation and therefore let us now proceed to examine the above two points.

8. As per the conciliation report annexed with the reference the workman had alleged before the District Labour Officer, Khurda, Bhubaneswar that Shri Shankar Jali, Manguila Behera , Satru Paruram, Kulu Behera and Tuku Majhi who were junior to him were retained in service whereas he was retrenched from service by the management. But while giving evidence, he changed his version and said that Shri Aumara Kumar Dikshit , Gopal Mohanta , Manoranjan Pattnaik, Ramakanta Behera, and Mahendra Kumar Budeka who were junior to him, were retained in service whereas he was retrenched. He has not said a word regarding Shankar Jali , Mangula Behera , Satru Paruram, Kulu Behera , Tuku Majhi, etc. in his testimony and completely ignore the said fact for the reasons best known to him. As he has not started anything about Shankar Jali, Mangala Behera , Satru Paruram, Kulu Behera , Tuku Majhi in his testimony, so I find no justification to examine and find out as to if they were junior to him or retained in service when he was retrenched. As because in his testimony he has specifically stated that Aumara Kumar Dikshit, Gopal Mohanta , Manoranjan Pattnaik, Ramakanta Behera are junior to him and were retained in service by the management at the time of his retrenchment; So let us now find out as to if they were actually retained in service and if so, whether the management had committed any illegality by doing so or not.

9. M. W. 1 during the time of his examination filed xerox copies of the Service Books of Shri Mahendra Kumar Badhai, Aumara Kumar Dikshit, Gopal Krishna Mohanta , Manoranjan Pattnaik, Ramakanta Behera etc, marked as Exts. E to J respectively. As it appear from those documents Shri Mahendra Kumar Badhai was appointed as Marketing Officer. Shri Aumara Kumar Dikshit was appointed as Assistant Manager. Shri Gopal Krushna Mohanty was appointed as Marketing Officer. Shri Manoranjan Pattnaik was appointed as Sales Assistant and Shri Ramakanta Behera was appointed as Junior Stenographer. The workman himself and his witness W. W. 2 have admitted this fact during the time of their cross-examination. Thus it is clear that all the above named persons were either appointed in the cadre of officer or in Class-III Cadre. Non of them were appointed as contigent N. M. R worker which belongs to Class IV Cader. M. W. 1 has catagorically stated that after the workman was retrenched , no one was appointed in the said post. During the time of his cross-examination, the workman suggested to him that one Bijoy Sahoo who was appointed in his place after his retrechment to which M. W. 1 has given a negative reply. The workman has not filed any document to prove that one Bijoy Sahoo was appointed in his place after his retrenchment. Moreover, this is matter beyond the pleading of the workman. So I find no merit in the alegation made by the workman that some employees who were Junior to him were retained in service by the management at the time of his retrenchment on the 20th February 2002.

10. The next point raised by the workman is that Section 25-F of the Industrial Disputes Act, 1947 was not simultaneously complied at the time of his retrenchment. W. W. 2 has also supported to him. According to both of them, the notice pay and retrenchment compensation amount was

paid to them much after the date of retrenchment, i.e. after initiation of the present case, but I find no merit in the aforesaid allegation made by them. The conciliation report reveals that at the time of raising dispute before the District Labour Officer, Khurda, Bhubaneswar, the workman had said to him that the management had paid one month's wage in lieu of notice, retrenchment compensation, arrear wages, etc. at the time of retrenchment (see para. 2 under the heading 'allegation of the workman'). In order to prove that Section 25-F of the Industrial Disputes Act, 1947 was simultaneously complied, the management has filed the relevant document marked as Ext. A. As per Ext. A one month's salary in lieu of one month's notice amounting to Rs. 1,400, compensation at the rate of 15 days' of wages for every completed year of service amounting to Rs. 4,200, arrear wages up to the 31st January 2002 amounting to Rs. 4,200 and current wages from the 1st February 2002 to the 20th February 2002 amounting to Rs. 1,000, thus in total Rs. 10,800 was prepared and offered on 18th February 2002 by the Managing Director and was received by the workman on the 19th February 2002 as it appears from the date mentioned below the signatures of the Managing Director and the workman. The management has also filed the copies of the Bill Register marked as Ext. B to prove that the whole amount of Rs. 10,800 was paid to the workman on the 19th February 2002. Since the workman was retrenched on the 20th February 2002 and the notice pay, retrenchment compensation, etc. were duly paid to him on the 19th February 2002, so it cannot be said that Section 25-F of the Industrial Disputes Act, 1947 was not properly complied at the time of retrenchment of the workman.

11. Keeping in view the direction given by the Government vide Letter No. 22490, dated the 10th December 2001 and the financial condition of the management not only the workman but also some other employees were retrenched from service. No illegality is noticed in the procedure adopted by the management at the time of retrenchment of the workman in the present case. Therefore, in the conclusion I would say that the action of the management of Orissa State Fishermen's Co-operative Federation Ltd., Bhubaneswar by retrenching the workman with effect from the 20th February 2002 is legal and justified. The workman is not entitled to any relief. Both the issues are answered accordingly

12. Hence it is ordered :

The action of the Managing Director, Orissa State Fishermen's Co-op. Federation Limited, Matsya Sadan, Cuttack Road, Bhubaneswar by retrenching the workman Shri Bharat Ch. Gochhayat, Watchman with effect from the 20th February 2002 is legal and justified. The workman Shri Gochhayat is not entitled to any relief in this case.

Accordingly the reference is answered.

Dictated and corrected by me.

M. R. TRIPATHY  
29-06-2009.  
Presiding Officer,  
Labour Court, Bhubaneswar.

M. R. TRIPATHY  
29-06-2009.  
Presiding officer,  
Labour Court, Bhubaneswar.

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