

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1718 CUTTACK, FRIDAY, NOVEMBER 27, 2009/MARGASIRA 6, 1931

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 11th November 2009

No. 10146—li/1(J)-31/1999-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th September 2009 in Industrial Dispute Case No. 85/1999 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Berhampur Development Authority and its Workman Shri Pradeep Kumar Sahu was referred for adjudication is hereby published as in the Schedule below:—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 85 OF 1999

Dated the 16th September 2009

Present :

Shri P. K. Jena, o.s.J.s. (Jr. Branch),
Presiding Officer, Labour Court, Jeypore,
Dist. Koraput.

Between :

The Management of Secretary, . . . First Party —Management
Berhampur Development Authority,
Berhampur, At/P.O. Berhampur,
Dist. Ganjam.

Versus

Its Workman Shri Pradeep Kumar Sahu . . . Second Party—Workman
Jayaprakash Nagar, At/P.O. Berhampur,
Dist. Ganjam.

Under Sections 10 & 12 of the Industrial Disputes Act, 1947

Appearances :

For the Management	.. Shri K. N. Samantara and Gopabandhu Santra, Advocate, Jeypore.
For the Workman	.. Shri S. K. Panda, Advocate and Associates, Berhampur.
Date of Argument	.. 9-9-2009
Date of Award	.. 16-9-2009

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 14124 (5), dated the 5th November 1999 for adjudication of the following disputes :—

SCHEDULE

“Whether the termination of services of Shri Pradeep Kumar Sahu by the management of the Berhampur Development Authority, Berhampur with effect from the 11th September 1997 is legal and/or justified ? If not, to what relief he is entitled ?”

2. The case of the second party-workman is that, he was working as Amin on D.L.R. basis under the first party management, i. e. under the Establishment of Berhampur Development Authority, Berhampur from the 30th May 1996 and continued till the 10th September 1999. But his service was terminated on the 11th September 1997 by the first party-management without any prior notice and in contravention of Section 25-F of the I. D. Act. The workman was absorbed in the post of Amin since he fulfilled all the requisite qualification for the post of Amin and prior to him, there was no post of Amin under the Berhampur Development Authority, Berhampur. He was performing his duty by undertaking survey work as well as detection of unauthorised construction as per the order of the Secretary of B. D. A. vide Office Order No.5235, dated 11th December 1996. In spite of that, he was terminated by the first party-management without assigning any reason on the 11th September 1997. The work of Amin was very much required by the management which reveals from the fact that after his retrenchment, the management has engaged several persons from time to time to do the work of Amin. He had also made representation for his re-engagement but the management did not take any steps and remained callous. However, later on he was re-engaged in the same post on daily wages from the 7th July 1999 but again disengaged from his service with effect from the 12th January 2000. .

3. On the other hand, it is the case of the first party-management that the second party-workman Shri Pradeep Kumar Sahu was engaged since the 30th May 1996 as Amin as and when it was necessary by the first party-management with usual break. But he was disengaged from duty since the 11th September 1997 due to want of work. During tenure of his service, the break periods were the 27th October 1996, the 27th January 1997, the 26th April 1997, the 27th July 1997 and the 7th August 1997, once again Shri Sahu was re-engaged on the 7th July 1999 as an Amin on D.L.R. basis. But again disengaged in the service w.e.f. the 12th January 2000. The service of Shri Sahu was discontinued including other D.L.Rs due to insufficient of workload and shortage of funds. Further in view of the State Government's ban order against the engagement of D.L.Rs. the workman can not be engaged in that office. It is also pleaded by the management that the first party-management is not an Industry as defined under the I.D. Act and Shri Sahu is not a workman under the first party-management.

4. Previously *ex parte* award was passed on the 25th May 2000 in favour of the workman as the management did not contest the case at the time of hearing, though he filed his W.S. on the 7th April 2000. Being aggrieved such *ex parte* award, management preferred an appeal before the Hon'ble High Court in which the Hon'ble High Court in W.P.(c) No. 6459 of 2003 as per Order, dated the 15th September 2008 quashed the *ex parte* award passed by this Court and remitted back this matter to the Labour Court for reconsideration after giving opportunity to both the parties with a direction to dispose of the matter as expeditiously as possible. Accordingly, after receipt of this order of Hon'ble Court, opportunity was given to both parties to adduce further evidence in respect of their cases and as per direction, the workman examined himself as W.W.No. 1 and filed affidavit evidence. Whereas the management on his behalf has examined it's Senior Assistant as M.W. 1 and filed affidavit evidence. Both parties filed their respective documents in their favour. The workman filed xerox copies of several documents under Ext. 1 to Ext. 7 in his favour. Whereas the first party-management filed xerox copies of several documents in his favour under Ext. A to Ext. F.

Before going to discuss, the evidence of the both parties as well as their pleadings, it is first to be considered, whether the first-party is an Industry and whether the termination of Shri Sahu by the Management with effect from the 11th September 1997 is legal and/or justified and if not, to what relief he is entitled ?

5. The first party-management in his pleadings as well as in his affidavit evidence has categorically stated that the first party-management is not Industry and does not qualify to be an Industry as per definition of I. D. Act, to which the workman vehemently objects. As per his (Workman) pleading the first-party is an Industry and he is a workmen under the first party-management. In that aspect, first party-management does not elaborate as to why it can not be called an Industry under the I.D. act and what for labour laws are not applicable to it. It is

simply stated in the W.S. that the first party is a Statutory Autonomous Body constituted for the purpose of ensuring overall and integrate development of Berhampur, Chhatrapur and Gopalpur Towns and the intervening areas. All these averments are not sufficient to give a finding that the first-party can be excluded from the definition of the word 'Industry'. Rather these averments indicate the first party carries on an activity, i. e. Urban Development for the production of service calculated to satisfy human wants and wishes distribution. This activity is organised by co-operation of the first party-management (employer) and its employees like the present workman. The management does not carry on any sovereign function of the State. So as per the above observation, it can be safely stated that the first party is an Industry and the present workman is a worker working under the first party-management.

6. The second point is to be determined whether the termination of the service of Shri Sahu is legal and/or justified. It is admitted, but not disputed that the second party-workman was engaged by the first party-management to work as an Amin on D.L.R. basis. As per the evidence of the workman, he was the first man to work as Amin with the first party-management. According to him, he was appointed an Amin on D.L.R. basis by the management and worked from the 30th May 1996 to the 10th September 1997. In respect of such Amin post, he had undergone Amin Training as per his statement but the management removed him from his service without assigning any reason or complying Section 25-F of the I.D. Act. Although he submitted representation on the 20th September 1997 to the Chairman, Berhampur Development Authority, Berhampur but the management instead of considering his application appointed one K. Ch. Patra Work Sirkar of B.D.A. to discharge the function of Amin as per Order, dated the 19th September 1997. He proves Ext. 3 to be his representation before Vice-Chairman of B.D.A., Berhampur. It is also evident that due to necessity of more Amins, the Management invited petition from its Tax Collectors and asked their willingness to observe them after completion of training of Amins. In that aspect, he files xerox copy of document marked as Ext. 4, which shows that the said letter has been addressed to P. Ganapati, Tax Collector by the Vice-Chairman in his letter, dated the 3rd October 1997 regarding his willingness to observe him in the post of Amin after completion of Amin training. Such type of letter addressed to P. Ganapati, Tax Collector for the post of Amin by the Vice-Chairman, dated the 3rd October 1997 is best known to him. Even though, there is availability of the present workman, who is a trained Amin in their hand. Further, it is stated by the workman that the first party-management also appointed one Dilip Sahu, Tax Collector to work as Amin with K. Ch. Patra. In this aspect, he has filed xerox copy of Ext. 5 (page 11) which shows that it is a Minutes of Proceedings of the 7th Meeting held on the 22nd July 1998 of B.D.A., Berhampur, which shows the engagement of those two (2) persons as Amins of B.D.A., who have got no technical qualification for the post of Amin as stated by the second party-workman. As per the evidence of the workman since they could not manage the work so they were reverted to their parent post. Again it is also stated by the workman that one Biswabrata Biswal was employed as an Amin on D.L.R. basis during the year 1998-1999 vide letter No. 8141, dated the 31st December 1998 under Ext. 6. Ext. 6 shows that it is a xerox copy of the letter addressed to Biswabrata Biswal by the Vice-Chairman for the

appointment in the post of Amin in the scale of pay Rs. 825 to Rs. 1,200 w. e. f. 1st January 1999 for a period of six months. On scrutiny of the said letter under Ext.-6 it does not clearly indicate, if Shri Biswabrata Biswal had undergone any Amin training for the said post. It is not known to why several letters have been issued by the authorities at different times to work as Amin under B.D.A. even though, there is available of the present workman in their hand who is a skilled person having technical qualification in that line, for the post of Amin. Similarly Ext.-7 filed by the workman shows that one Amiya Kumar Das, Amin of Town Planning Unit of Berhampur had been deputed to work as Amin with the first party vide order, dated the 8th December 1998 of Director, Town Planning, Bhubaneswar. Further it reveals from his evidence that in the year, 1999 first party-management had requisitioned the services of two (2) Amins, namely, Kasinath Gouda and A. Madhusudan Patra from the office of the Berhampur Municipality and in the meanwhile they have been reverted to their parent office. According to him, one Kora Behera is working as an Amin at present under the first party. Though he (workman) was removed from his service by the first party-management again the management re-engaged him on the 7th July 1999 for a period of six months. On the other hand, M.W. 1 during his examination has stated that the workman Shri Pradeep Kumar Sahu was engaged in the job of Amin purely on temporary basis to meet the requirement of the first party in their Planning enforcement and other works as and when required. According to him, Shri Sahu was working on casual and D.L.R. basis on payment of daily wages during period from the 30th May 1996 to 10th September 1997 with breaks and the total periods he worked was 179 days in the year 1996, 206 days in 1997, later on he was re-engaged from the 7th July 1999 to the 12th January 2000 for a total period of 154 days with intermittent gaps. As per his contention, the workman will not come under the provision of under Section 25-F of the I.D. Act, since he has not completed one year service or 240 days in a year. It is admitted by the first party that the second party was working as D.L.R. worker during the period the 30th May 1996 to the 10th September 1997 and from the 7th July 1999 to the 12th January 2000. According to him, the second party-workman was never in continuance of work over 240 days in order to attract provision of the I.D. Act. But it is curious enough that, during his cross examination, he has admitted that the workman was doing Amin work on D.L.R. basis from 30th May 1996 to 11th September 1997 with 5(five) days break which has been reflected in their counter regarding such break periods. On perusal counter of the first party-management it is revealed that Shri Sahu was working from the 30th May 1996 to the 11th September 1997 with 5 (five) days break up such as on the 27th October 1996, the 27th January 1997, the 26th April 1997, the 27th July 1997 and the 7th August 1997. Although this witness during his examination in chief denies, the continuance of work over 240 days by the workman but during his cross-examination as well as in his counter admits the continuance of service by the workman from the 30th May 1996 to the 11th September 1997 with 5 days of break, which clearly shows that the workman performed duty more than 240 days in order to attract the provision of Section 25-F of the I.D. Act. It has also been elicited from the mouth of M.W. 1 during his cross-examination that from the 19th September 1997 their Work Surkar Krushna Ch. Patra was engaged to do the work of Amin under B.D. A. as per their internal arrangement though there is no specific order to that effect. It is also admitted by him that under Ext. 4, letter was issued to P. Ganapati, Tax Collector to perform Amin work of

B.D.A. after obtaining proper training. He can not say any stranger, namely, Shri Biswabrata Biswal had been appointed as Amin under B.D.A. with effect from the 1st January 1999 vide Ext. 6 in letter No. 8141, dated the 31st December 1998. Even though M.W. 1 is one of the employes of B.D.A. working as a Senior Assistant, but he suppresses the contention of Ext. 6 and does not like to tell the true fact, regarding appointment of Biswabrata Biswal to work as Amin in their office. During his cross-examination, he admitted that performing the work of Amin, their office brought one Amiya Kumar Das from Town Planning Unit, Berhampur as per Ext. 7. Similarly, one Madhusudan Patra, Amin was brought from Berhampur Municipality to work as Amin under B.D.A. on deputation as well as one Kasinath Gouda performing duty of Amin on deputation from Berhampur Municipality. It is also his evidence that for the time being, one Kora Behera performed the duty of Amin under the B.D.A. in free of cost being deputed from Settlement Office. To establish his case, the M.W. No. 1 filed xerox copy of minutes of proceeding of the 7th Meeting of B.D.A held on the 22nd July 1998 which is marked as Ext.-E but he suppresses the Page No. 11 of the said proceeding which is filed by the W.W. No.1 under Ext. 5. So, from the examination of W.W. 1 and cross-examination of M.W. 1 it is crystal clear that after disengagement of the present workman, the management had engaged several persons to work as Amin under B.D.A. at different times by ignoring the present workman who is a skilled person and has undergone Amin training with the knowledge of the management. Even if, after retrenchment, the management again re-engaged the present workman from the 7th July 1999 to the 12th January 2000.

7. It is admitted by the first party that the workman was engaged to work as an Amin on D.L.R. basis. It is not disputed that the workman had worked during the period from the 30th May 1996 to the 11th September 1997 with breaks on the 27th October 1996, the 27th January 1997, the 26th April 1997, the 27th July 1997 and the 7th August 1997. Thus it is crystal clear that from the 30th May 1996 to the 10th September 1997, the workman had worked on all days excluding 5(five) days as mentioned above. So it is established that the workman Shri Sahu had worked continuously for more than one year before termination of his service. In between the 10th September 1996 and the 11th September 1997, the workman is found to have worked for more than 240 days in a year. This is the period of 12 the months immediately preceding the date of retrenchment. Therefore, as per Section-25(B) sub-clause 2, the workman is found to have worked continuously for more than one year as on the date of his retrenchment. It was specifically pleaded by the workman and not denied by the first party in the W. S. that even after his disengagement, the management had engaged some other Amins in their establishment. It is not denied by the first party that the second party was the first man to work in their establishment as an Amin. Further, it is proved by the workman as well as M.W. 1 that the management has engaged many other persons to work as Amin at different times. In this case, it is found that work of Amin was available, when the workman was disengaged. This is also evident from the fact that the management engaged different persons to do the work of Amin by ignoring the present workman after his disengagement. The management should not have disengaged the workman to give employment to another person; even if he had not completed one year of continuous service as this violates the provisions of Section 25-H of the I. D. Act. Unless and until the post of Amin is not filled up by regular recruitment, the work man cannot be disengaged, so long the work of an Amin is required to be performed by any one in the establishment of the first party-management.

8. After perusal of the oral testimony of both parties, documentary evidence as well as pleading of both parties, it is crystal clear that the management has violated Section 25-F and Sec-25-H of the I. D. Act. So the termination of the service of the workmen is not legal and Justified.

9. As per the above findings, it is found that the workman was made to sit idle by the management from the 11th September 1997 to the 6th July 1999. There after, he was again engaged by the management for the period of Six months w. e. f. the 7th July 1999 and again disengaged with effect from the 12th January 2000 and sat idle. At that relevant time, he was getting daily wages at the rate of Rs. 42 per day till the 10th September 1997 and at the rate of Rs. 56% per day after his re-engagement since the 7th July 1999. Since due to no fault of the workman, he made to sit idle till this day and due to non-compliance of the Section- 25-F and Section 25-H of the I.D. Act by the management and by engaging other persons for the work of Amin in their establishment by ignoring a trained person for such work, which clearly presumes that the management has whimsically violating the provisions of the I. D. Act, ignored the present workman, who is a Senior-most and trained person for that post. In view of the above observation, the management is directed to reinstate the workman to work as Amin on daily wage basis. In respect of granting of full back wages in my considered opinion, it would be just and proper to grant some lumpsum amount as back wages of Rs. 20,000 (Rupees twenty thousand) only to the workman by the management to meet the ends of Justice.

ORDER

In the result the reference is answered on contest, in favour of the second party-workman. The management is directed to reinstate the second party-workman with immediate effect and pay an amount of Rs. 20,000/- (Rupees twenty thousand) only towards back wages within two (2) months from the date of this Award failing which the workman is at liberty to take shelter in the appropriate authority for realisation of the same.

Dictated and corrected by me.

P. K. JENA
16-9-2009
Presiding Officer
Labour Court, Jeypore.

P. K. JENA
16-9-2009
Presiding Officer
Labour Court, Jeypore.

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