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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 2nd February 2009

No. 942—li/1(B)-3/2009-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th December 2008 in Industrial Disputes Case No. 15/1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of M/s Kartik Enterprises (P) Ltd., Industrial Estate, Cuttack and its workman Shri Bhagabat Das was referred for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 15 OF 1998

Dated the 15th December 2008

*Present :*

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

*Between :*

The Employer of M/s Kartik .. First Party—Management  
Enterprises (P) Ltd., Industrial  
Estate, Cuttack.

And

Shri Bhagabat Das .. Second Party—Workman

*Appearances :*

For First Party—Management .. Shri P. K. Bhuyan, Advocate

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For Second Party—Workman .. Shri A. K. Mohanty (A) } Advocates  
Shri R. K. Behera }

## AWARD

The State Government 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 to this Court vide Order No. 4556-L.E., dated the 27th April 1998 of the Labour & Employment Department.

2. The terms of reference may briefly be stated as follows :

“Whether the termination of employment of Shri Bhagabat Das, Watchman by the employer of M/s Kartik Enterprises Pvt. Ltd., Cuttack with effect from the 12th September 1996 is legal and/or justified ? If not, to what relief Shri Das is entitled ?”

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

The workman was engaged as a Watchman in the management of M/s Kartik Enterprises Pvt. Ltd., Cuttack on the 1st April 1983. He continued to serve as such till he was terminated on the 12th September 1996. It is alleged by him that without any reason the management terminated him from service and at the time of termination Section 25-F of the Industrial Disputes Act, 1947 was not complied. So he approached the District Labour Officer, Cuttack and accordingly a conciliation proceeding was initiated which ended in failure. Hence the matter was referred to this Court for adjudication.

4. The management was in its written statement refuted the allegation of the workman. According to the management, the workman was not retrenched from service arbitrarily as it is alleged by him. The workman while working as Night Watchman was found in the early hours of the 10th September 1996 morning, loading scrap materials on a trolley rickshaw for the purpose of removal of the same out of the factory premises. He was confronted by the Director of the factory to which he could not give any satisfactory reply. He was given 24 hours time to provide the detail particulars of the materials sold by him earlier. Since he was staying with his family within the factory premises he was not handed over to the police immediately. After the above said incident, the workman voluntarily left the factory premises in the night of the 11th September 1996 and thereafter never turned up to perform his duty. His whereabouts were not known and so the management had no other option but to wait for him. Subsequently the management received a copy of complaint petition from the District Labour Officer, Cuttack wherein the workman had complained about his termination from service on the 12th September 1996 in an illegal manner.

5. Basing on the aforesaid materials, this Court framed two Issues such as :

## ISSUES

- (i) “Whether the termination of employment of Shri Bhagabat Das, Watchman by the employees of M/s Kartik Enterprises Pvt. Ltd., Cuttack with effect from the 12th September 1996 is legal and/or justified ?
- (ii) If not, to what relief Shri Das is entitled ?”

6. Earlier Issue No. (i) was decided in favour of the workman and Issue No. (ii) was decided against him. The relevant portion of the Award passed earlier (i.e. Para. 9) may be stated here for better appreciation.

“9. The schedule of reference reveals that the termination of the workman has been effected from the 12th September 1996. Admittedly the management has not availed the services of the workman with effect from the date of his termination. In such premises, the workman is entitled to be reinstated in service, but on the facts and circumstances of this case, as the workman had not worked with effect from the date of termination, he is not entitled to any back wages. Both the above issues are answered accordingly.”

As against the above said Award passed by this Court on the 30th December 2005, the workman filed a writ in the Hon'ble Court bearing W.P. (C) No. 5693 of 2006. In the said writ the Hon'ble Court was pleased to pass the following order on dated the 28th July 2008 :

“Without going into the merits of the case one way or the other, the impugned award passed by the Presiding Officer, Labour Court, dated the 30th December 2005 with regard to non-grant of back wages is quashed. The matter is remitted back to the Labour Court to reconsider the same after providing opportunity to the parties and decide the same in accordance with law.”

In view of the aforesaid direction of the Hon'ble Court, the following additional Issue was framed on the 25th November 2008.

#### ADDITIONAL ISSUE

(iii) Whether the workman was gainfully employed elsewhere during the period from the 12th September 1996 till the date of the Award i.e. the 30th December 2005 or not ?

7. The workman further examined himself as W.W. 1 and he was cross-examined by the management. Similarly M.W. 1 namely Shri Madhusudan Munjal who is working as a Director in the management of M/s Kartik Enterprises Pvt. Ltd., Cuttack further examined himself and he was also cross-examined by the learned Advocate for the workman.

8. As indicated by me earlier Issue No. (i) was decided in favour of the workman and the said finding has remained undisturbed. Since no back wages was granted by this Court in the earlier occasion, so the Award with regard to non-grant of back wages was quashed by the Hon'ble Court. It was observed by the Hon'ble Court that since no opportunity was given earlier to the workman to produce material to prove that he had not been gainfully employed elsewhere during the period the 12th September 1996 till the date of the Award. So leave was granted to the workman to produce material with regard to the above subject and the management through its witness has also adduced rebutal evidence. So a finding on Issue Nos. (ii) and (iii) which are related to each other is required to be made.

#### FINDINGS

9. *Issue Nos. (ii) and (iii)*—The workman in his evidence has stated that he joined as Watchman in the establishment of the management on the 1st September 1983 and continued to work as such till the date of termination i.e. on the 12th September 1996. In Para. 4 of his

affidavit evidence he has categorically stated that he had not worked in any other Company after his termination from service on the 12th September 1996. During cross-examination he has admitted that his eyesight deteriorated sometime in the year 1997-1998. At present he is not able to see perfectly particularly during night. The defect in his eyesight is continuing since 1997 to 1998. For the aforesaid reason he is not ready and willing to join in his service. M.W. 1 in his deposition has stated that after the Award was passed they sent letters to the workman on the 11th March 2006 and the 5th May 2006 to join in duty. He has proved the office copies of the aforesaid letters marked as Exts. A and A/1 respectively. In response to their letter, dated the 5th May 2006 the workman sent a reply on the 22nd May 2006 marked as Ext. B expressing his unwillingness to join in duty.

10. During course of argument the Learned Advocate for the workman submitted that the workman in his evidence has clearly stated that he was not gainfully employed anywhere during the period of the 12th September 1996 till the date of Award and no rebuttal evidence has been adduced by the management to nullify the same. The workman having been terminated from service illegally as held by this Court in the earlier occasion and confirmed by the Hon'ble Court, he is entitled to get full back wages from the date of termination. In reply the Learned Advocate for the management submitted that the workman himself has admitted that he is not able to see perfectly and defect in his eyesight developed since 1997-1998. That apart the workman himself has intimated in writing his unwillingness to join in duty due to his defect in eyesight and poor health condition. Thus has there been no disputes the workman could not have continued in service and therefore, he is not entitled to get any amount towards back wages.

11. According to settled position of law if there is no material that the workman was gainfully employed elsewhere during the intervening period he is entitled to get back wages. For this reason the case was remanded back by the Hon'ble Court to record a finding on this point. As stated earlier the workman in his deposition has categorically stated that he was not employed anywhere else after the 12th September 1996 till the date of his examination. The management has not produced any material to prove that the workman was gainfully employed somewhere else during the period the 12th September 1996 till the date of the Award. Of course the workman has admitted that defect in his eyesight developed sometime in the year 1997-1998. Also when he was asked to join in duty in view of the Award passed by this Court he has expressed his unwillingness vide letter sent by him on the 22nd May 2006 marked as Ext. B. These things can be taken into consideration to determine the amount of back wages but for the aforesaid reason it would not be correct to say that he is not entitled to get any amount towards back wages. This Court in the earlier occasion has specifically recorded a finding that the workman was terminated illegally and his termination was held unjustified. In the Award a direction was given to the management to reinstate the workman in service. Of course the workman is not willing now to join in service due to his poor health and vision. But that would not disentitle him to claim for back wages because he was illegally terminated and till the date of passing of Award he was not gainfully employed elsewhere.

12. Since he had actually not performed any work under the management and had a poor vision at the relevant period, so I feel it will be just and proper to direct the management

to pay back wages at the rate of 40% (Forty per cent) of his last drawn salary (i.e. 40% of last pay of Rs. 850 per month) within 30 days from the date of publication of the Award in the Gazette. In case the management fails to pay the amount to the workman as directed above, then the workman will be entitled to get interest at the rate of 6% (six per cent) per annum from the date when it becomes due to the date of actual payment.

Dictated and corrected by me

M. R. TRIPATHY  
16-12-2008  
Presiding Officer  
Labour Court, Bhubaneswar

M. R. TRIPATHY  
16-12-2008  
Presiding Officer  
Labour Court, Bhubaneswar

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