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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 11th February 2009

No. 1328—li/1(B)-58/2004(Pt.)-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th December 2008 in I. D. Case No. 70 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Cuttack Municipal Corporation and its Workman Shri Sradhakar Mohanty was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 70 OF 2004

Dated the 26th December 2008

*Present :*

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

*Between :*

The Management of Cuttack Municipal Corporation represented by Executive Officer/Municipal Commissioner. . . First Party—Management

And

His Workman Shri Sradhakar Mohanty, Ex-Helper. . . Second Party—Workman

*Appearances :*

Shri B. K. Raj . . . For the First Party—Management

Shri S. Mohanty . . . Second Party—Workman himself

## 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. 10268, dated the 11th November 2004 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The schedule of reference is as follows :

“Whether the termination of services of Shri Sradhakar Mohanty, Helper with effect from 1st January 2002 by the management of Cuttack Municipal Corporation is legal and/or justified ? If not, what relief is the workman entitled to ?”

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

He was engaged as skilled workman as Helper from the 1st December 1996 to 31st December 2001 in the Cuttack Municipal Corporation and was getting wage at the rate of Rs. 1,680 per month. According to him he had completed more than 240 days of work in the preceding 12 calendar months from the date on which he was terminated, i.e. from 1st January 2002. At the time of termination from service the management did not comply the provision under Sections 25-F(a) and (b), 25-G, and 25-H of the Industrial Disputes Act, 1947. So according to him the termination is invalid and against law. Therefore, he is entitled to be reinstated in service with full back wages.

4. In the written statement the management has submitted that the workman was engaged illegally, i.e. without approval of the Government that too after 19th May 1997. The Government in Housing & Urban Development Department vide Order No. 36051, dated the 15th December 2000 directed to disengage all D. L. Rs. and N. M. Rs. engaged after 19th May 1997. Therefore by virtue of the said order the workman and other persons who were illegally engaged after 19th May 1997 were disengaged. It is further stated that since the workman was engaged after the cut off date, i.e. 19th May 1997 without following proper procedure and permission from the Government, the procedure required to be followed at the time of termination as prescribed under the Industrial Disputes Act, 1947 was not necessary.

5. In view of the aforesaid allegations and counter allegations the following issues have been framed.

## ISSUES

(i) “Whether the termination of service of Shri Sradhakar Mohanty, Helper with effect from, dated the 1st January 2002 by the management of Cuttack Municipal Corporation is legal and /or justified ?

(ii) If not, what relief is the workman entitled to ?”

6. In support of his case the workman examined himself as W.W. 1. The management also examined a witness who is working as Deputy Secretary, Cuttack Municipal Corporation as M. W. 1.

## FINDINGS

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

The workman in his deposition has stated that he was working as skilled Helper in the management from 1st December 1996 to 31st December 2001 continuously and his last wage was Rs. 1,680 per month. He was illegally terminated by the management with effect from 1st January 2002. No enquiry was conducted against him, also no notice or notice pay or any type of compensation was paid to him at the time of termination of his employment. The principle of 'last come first go' was not followed at the time of retrenchment. He was further stated that after he was terminated from service he has not been gainfully employed anywhere else. He has filed certain documents to prove that he was in the employment of the management. During cross-examination he has admitted that he cannot file any documentary evidence that he had worked continuously from the 1st December 1996 to 31st December 2001 but in view of the admission of the management in the written statement that the workman was working in the management, I am not inclined to give any importance on the aforesaid statement made by the workman during cross-examination. M.W. 1 during time of his cross-examination has also failed to say the period for which the workman had worked under the management. He specifically admitted that he cannot say as to whether the workman was working continuously under the management from the 1st December 1996 to 31st December 2001. According to M.W. 1 the Government of Orissa issued a circular to regularise the services of the N.M. Rs. who were working in the management prior to 19th May 1997 but by that time the workman had already left his job as N.M.R and therefore, there is no question of regularisation of his service. But it is not the stand taken by the management in the written statement. According to the written statement the Government of Orissa in H. & U.D. Department vide Order No. 36051, dated the 15th December 2000 directed to disengage all D. L. Rs./N.M.Rs. engaged after 19th May 1997 and as the workman of the present case engaged after 19th May 1997, so he was disengaged. Along with the written statement the management has filed a copy of Order No. 36051, dated the 15th December 2000 of the Government of Orissa, H. & U.D. Department which the workman has also filed marked as Ext. 5. In the said letter a direction was given to disengage all the D.L.Rs. and N. M. Rs. engaged after 19th May 1997 but there is no direction in the said letter to disengage such D.L.Rs. and N.M.Rs. without following the procedure provided in different provisions of the Industrial Disputes Act, 1947. The workman has filed the copy of acquittance roll for the month of March, 1999, August, 1999 marked as Exts. 1 and 1/a respectively, copy of his identity card issued on the 24th November 2000 marked as Ext. 2 etc. Moreover the management in the written statement has nowhere stated that he was not working under the management at least from 19th May 1997 till the date of his retrenchment. So I believe the version of the workman that he had worked for more than one year under the management within the meaning of Sections 25-B (1) (a) (i) of the Industrial Disputes Act, 1947. Of course following the direction given by the Government the management disengaged the workman but at the time of disengagement the management was required to follow the provision of Sections 25-F (a) and (b) of the Industrial Disputes Act, 1947. There is no material to say that Section 25-F of the Industrial Disputes Act, 1947 was followed by the management at the time of retrenchment of the workman. Therefore, in view of the settled position of law I would say that the termination of the

workman from services was illegal and improper and that he is entitled to be reinstated in service with back wages.

It is stated by the workman that he was not gainfully employed anywhere else after his retrenchment but fact remains that he had actually not rendered any type of service to the management after the termination of his service. Under the aforesaid circumstance I feel it would be just and proper to direct the management to reinstate the workman in service and to pay 25% of his last wage towards back wages. Both the issues are answered accordingly.

8. Hence Ordered :

The management is directed to reinstate the workman in service and to pay 25% of his last drawn wage towards back wages. The award shall be implemented within a period of three months from the date of its publication in the Official Gazette failing which the management will be liable to pay interest at the rate of 6% per annum on the amount of wages from the date it becomes due till the date of actual payment.

The reference is answered accordingly :

Dictated and corrected by me.

M. R. TRIPATHY  
26-12-2008  
Presiding Officer  
Labour Court  
Bhubaneswar.

M. R. TRIPATHY  
26-12-2008  
Presiding Officer  
Labour Court  
Bhubaneswar.

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