

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 358 CUTTACK, FRIDAY, MARCH 13, 2009/FALGUNA 22, 1930

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 17th February 2009

No. 1606—li/1(BH-I)-2/2009-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th December 2008 in Industrial Dispute Case No. 207/1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management, S.D.O., Basudevpur Irrigation Division, Basudevpur and their Workman Shri Krupasindhu Nayak was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 207 OF 1994

Dated the 27th December 2008

Present :

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

Between :

The Management of the S.D.O., .. First Party—Management
Basudevpur Irrigation Division,
Basudevpur.

And

Their Workman, .. Second Party—Workman
Shri Krupasindhu Nayak.

Appearances :

Shri B. K. Mohanty, S.D.O. .. For First Party—Management

Shri N. K. Mishra, Advocate .. For Second Party—Workman

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. 15348, dated the 28th November 1994 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The Schedule of reference is as follows :

“Whether the action of the S.D.O., Basudevpur Irrigation Subdivision, Basudevpur in denying employment to Shri Krupasindhu Nayak, daily labourer with effect from the 31st July 1989 is legal and/or justified ? If not, to what relief Shri Nayak is entitled ?”

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

He was engaged as a D.L.R. employee by the S.D.O., Basudevpur Irrigation Subdivision from the 1st May 1988 to the 30th July 1989. On the 31st July 1989 he was retrenched from service. According to him he was getting wage at the rate of Rs. 345 per month at the time of his retrenchment. He had completed more than 240 days of continuous work prior to refusal of his employment by the management. No notice or notice pay or compensation as provided under Section 25-F of the Industrial Disputes Act, 1947 was given to him at the time of retrenchment. Some persons who are junior to him were working as D.L.R. workers at the time he was retrenched. Therefore he is entitled to be reinstated in service with full back wages.

4. The management in the written statement has admitted that the workman was working as daily labourer from the 1st May 1988 to the 30th July 1989. He did not turn up to perform his duty with effect from the 1st August 1989. Since he voluntarily absented himself from the work and he was never retrenched, so the management is not required to follow the procedure provided in Sections 25-F and 25-N of the Industrial Disputes Act, 1947.

5. In view of the aforesaid allegations and counter allegations of the parties, the following issues were framed :

ISSUES

- (i) “Whether the action of the first party management in denying employment to the second party workman with effect from the 31st July 1989 is legal and/or justified ?
- (ii) To what relief, if any the workman is entitled ?”

6. In support of his case the workman examined himself as W.W. 1. The management also examined two witnesses. M.W. 1 is working as Junior Engineer, Basudevpur Irrigation Section and M.W. 2 is working as S.D.O., Basudevpur Irrigation Subdivision, Basudevpur.

FINDINGS

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

The workman in his testimony has stated that he was working as a D.L.R. worker under the management uninterruptedly from the 1st May 1988 to the 30th July 1989 at Charbatia Switch Gate. The management refused employment on the 31st July 1989. He was getting a sum of Rs. 345 per month towards his wages. According to him he had completed more than 240 days of work before he was retrenched. Some of the co-workers were retained in service and some new persons were taken into service after he was retrenched from service. So he approached the District Labour Officer, Bhadrak and a conciliation proceeding was initiated. In spite of receipt of notice the management did not attend the conciliation proceeding and so the matter was referred to this Court. During cross-examination he claimed that he was working continuously from the 1st May 1988 to the 30th July 1989. He denied the fact that he was absent on some days i.e. on the 31st May 1988, the 31st July 1988, the 31st December 1988, the 31st March 1989, the 16th April 1989 to the 20th April 1989 and the 31st May 1989. He also denied the fact that he *suo motu* remained absent from the 31st July 1989 onwards. According to him the then S.D.O. asked him not to come for duty after the 31st July 1989.

8. The two witnesses examined on behalf of the management have stated that W.W. 1 was working as D.L.R. from the 1st May 1988 to the 30th July 1989 in Basudevpur Section and during the said period he was absent on the 31st May 1988, 31st July 1988, the 31st August 1988, the 31st October 1988, the 31st March 1989, the 16th April 1989 to the 20th April 1989 and 31st May 1989. Let us assume that W.W. 1 was absent on the aforesaid dates, even then he is entitled to get the relief sought for by him. The number of days as stated by M.Ws. 1 and 2 on which the workman remained absent comes to 11 days during the period from the 1st May 1988 to the 30th July 1989. According to law for the purpose of computation of period of 240 days in a year it is not necessary for the employee to be in service of the employer for the whole one year. The period of 240 days may not be a period of continuous 240 days and it is sufficient if the total number of 240 days is calculated with a reference to a period of 12 months as provided in Section 25-B (1) (a) (i) of the Industrial Disputes Act, 1947. In the present case admittedly he had performed duty from the 1st May 1988 to the 30th July 1989 with break of 11 days in total intermittantly. Thus during the preceding 12 months from the date on which employment was refused to him he had performed work for a period of 240 days. The two witnesses examined for the management i.e. M.Ws. 1 and 2 have categorically admitted that they cannot say why he was disengaged from the 31st July 1989. The management has taken a plea that the workman voluntarily remained absent from the 31st July 1989 but there is no material available in the record to believe this fact. After he voluntarily remained absent from duty no notice was sent to him to join in duty as it is admitted by the two witnesses examined on behalf of the management.

9. Admittedly no notice was given to the workman before he was retrenched. It is stated by him that no notice pay or any compensation was paid to him and the said fact is admitted by M. Ws. 1 and 2. They have also admitted that some of the employees who were working

as D. L. R. along with W.W. 1 are still continuing in service as D.L.R. workers. So I have no hesitation to say that the workman was retrenched from service in an illegal manner. His disengagement from service with effect from the 31st July 1989 cannot be said as justified.

It is stated by the workman that he has not gainfully employed himself elsewhere and no rebutal evidence has been adduced by the management. So he is entitled to be reinstated in service with back wages. As because he has actually not worked in any manner under the management, so I think it would be just and proper to award 50% of his last wage towards back wages. Accordingly both the issues are answered.

10. Hence ordered :

The management is directed to reinstate the workman in service with 50% back wages within three months from the date of publication of the Award in the official Gazette failing which the workman will be entitled to get interest at the rate of 6% per annum on the amount of back wages from the date on which it becomes due till the date of actual payment.

The reference is thus answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
27-12-2008
Presiding Officer
Labour Court, Bhubaneswar

M. R. TRIPATHY
27-12-2008
Presiding Officer
Labour Court, Bhubaneswar

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