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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 21st February 2009

No. 1827—li/1(B)-11/2005(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd February 2009 in Industrial Disputes Case No. 26 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of the Chief Executive, Chilika Development Authority, Orissa, Bhubaneswar and their workman Shri Girija Prasad Sahoo was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 26 OF 2008

Dated the 2nd February 2009

*Present :*

Shri P. C. Mishra, o.s.j.s. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Chief Executive, .. First Party—Management  
Chilika Development Authority,  
BJ-45, BJB Nagar, Bhubaneswar,  
At present C-11, BJB Nagar,  
Bhubaneswar.

And

Shri Girija Prasad Sahoo, .. Second Party—Workman  
S/o Shri Prasana Kumar Sahoo,  
Plot No. 1712, Mahatab Road,  
Old Bhubaneswar-751002.

*Appearances :*

For the First Party—Management	..	Shri Balunki Pradhan, Authorised Representative.
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For the Second Party—Workman himself	..	Shri Girija Prasad Sahoo

## AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 9256—li/1(B)-11/2005-L.E., dated the 29th October 2005, but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4418—li/1(B)-11/2005-L.E., dated the 11th April 2008 :—

“Whether the action of the management of Chilika Development Authority in terminating the service of Shri Girija Prasad Sahoo, Ex-Scientific Assistant, Chilika Development Authority with effect from the 1st April 2004 is legal and/or justified ? If not, to what relief Shri Sahoo is entitled ?”

2. The case of the second party (hereinafter referred to as the ‘workman’) in short is that he was working as Scientific Assistant under the first party M/s Chilika Development Authority (hereinafter referred to as the ‘Management’) with effect from the 16th April 1998 on a daily wage of Rs. 48 which was subsequently increased to Rs. 58 per day with effect from the 1st April 1999 and thereafter he was being paid Rs. 3,000 per month with effect from June, 2000 till the 31st March 2004, when his services were illegally and arbitrarily terminated by the management. It is pleaded that during the tenure of his service the workman performed various duties as and when entrusted by the management most sincerely and satisfactorily and there was no stigma of any kind against him and further during his such continuance the management has neither framed any charge for any misconduct nor made any enquiry against the workman. It is the specific stand of the workman that he was being paid his salary by the management in its printed voucher till February, 2004 but all of a sudden it asked the workman to receive salary for the month of March, 2004 in a separate voucher and when the workman objected to it, he was told that his services were placed in the Hydro-biological Monitoring Project Work and accordingly he would receive salary in a separate voucher meant for the Project. It is averred that as the workman was never employed nor at any time opted to work against the Project work, he refused to receive his salary for the month of March, 2004 and consequently he was refused employment with effect from the 1st April 2004. According to the workman, from the date of his joining till refusal of employment he had worked continuously under the management for more than 240 days without any interruption and as such, he was entitled to get the protection of the provisions of Section 25-F of the Industrial Disputes Act, as the action of the management amounts to retrenchment as per the provisions of Section 2 (oo) of the Industrial Disputes Act. The workman has therefore, claimed that the action of the

management being contrary to the provisions of the Industrial Disputes Act, the management may be directed to reinstate him in service. His claim statement further reveals that from the date of his termination he is not being gainfully employed elsewhere and is living with his family with much difficulties. With the aforesaid averments the workman has prayed for his reinstatement in service with full back wages and all consequential benefits.

3. The management entered appearance and filed its written statement in the dispute. Admitting about the engagement of the workman under it, it is pleaded in the written statement that such engagement of the workman was on casual daily wage basis from the 16th April 1998 till December, 1998 and on consolidated remuneration basis from January, 1999 till February, 2004. It is the specific stand of the management that from June, 2000 till February, 2004 the workman was engaged in the Hydro-biological Monitoring Project on a consolidated remuneration of Rs. 3,000 per month and on completion of the said Project all the persons including the workman were disengaged with effect from the 31st March 2004. Further it is pleaded that vide Notice No. 2875(7), dated the 31st December 2003 the workman was intimated that the Project work was going to be completed on the 31st March 2004 and accordingly his services will be discontinued with effect from the said date and knowing fully about the same the workman has foisted this false claim. In the premises, therefore, the management has prayed to reject the claim of the workman.

Refuting the averments made in the written statement, the workman in his rejoinder has pleaded that at no point of time he was engaged against any Project work nor any such intimation was ever served on him stating his engagement against any Project work undertaken by the management. Disputing the Notice No.2875(7), dated the 31st December 2003 referred to in the written statement of the management, it is pleaded that the workman was never informed through any such notice regarding termination of the Project and in that connections he has claimed strict proof of the same by the management.

4. On the basis of the pleadings of the parties, as aforesaid, the following issues emerge for consideration :—

### *ISSUES*

- (i) "Whether the action of the management of Chilika Development Authority in terminating the services of Shri Girija Prasad Sahoo, Ex-Scientific Assistant, Chilika Development Authority with effect from the 1st April 2004 is legal and/or justified ?
- (ii) If not, to what relief Shri Sahoo is entitled ?"

5. Both parties in order to substantiate their respective stand adduced oral as well as documentary evidence. The workman examined himself and proved three documents which have been marked Exts. 1, 2 and 2/a. The management on the other hand, filed affidavit evidence of its Scientific Officer and brought on record one document which has been marked Ext. A.

6. It is not in dispute that the workman was not in the employment of the management. The workman while asserts that he was continuously engaged under the management from the 16th April 1998 to the 31st March 2004 and was receiving salary from it and that he was never engaged against any contractual job, the management pleads it to be a contractual engagement against a Project work, on completion of which the workman automatically faced the consequence and as such, the question of his retrenchment from service does not arise. In view of the rival contentions, it is first to be decided as to whether the engagement of the workman falls within the purview of Section 2 (oo) (bb) of the Industrial Disputes Act as pleaded by the management or it is a termination of service of the workman, which can otherwise be termed as 'retrenchment' requiring the management to comply with the provisions of Section 25-F of the Industrial Disputes Act while effecting such retrenchment. If it is held that the engagement of the workman was a contractual one, then analysis on the other part of the issue, i.e. the contention of the workman that the action of the management is an act of retrenchment, would become redundant in this connection, it is worthwhile to refer to the provisions of Section 2(oo)(bb) of the Industrial Disputes Act, which read as follows :—

“(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include —

(a) xx            xx            xx            xx            xx

(b) xx            xx            xx            xx            xx

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein”.

Keeping in view the aforesaid provisions of the Industrial Disputes Act and the evidence available on record now it is to be seen as to if the present case is one falling within the exception (bb) provided in Section 2 (oo) of the Industrial Disputes Act.

7. The workman in his evidence in chief has deposed that he was never engaged against any Project nor his services were ever placed against any such Project. He stated that on the 31st March 2004 the management wanted him to sign on the pay voucher with the heading 'Hydro-Biological Monitoring Project' and on his protest to the action he was refused employment with effect from the 1st April 2004. He denied to have received any letter No. 2875, dated the 31st December 2003 issued by the management regarding termination of his service.

The Scientific Officer examined as M. W. No. 1 on behalf of the management stated that the workman was engaged in the Hydro-Biological Monitoring Project with effect from June, 2000 which came to an end with effect from the 31st March 2004 and since the service of the workman engaged under the Project was coterminous with the currency of the particular Project, he was automatically disengaged. To corroborate the aforesaid aspect, not a single

documentary proof is produced wherefrom it can be deduced that the workman was engaged with a contractual assignment and on completion of such assignment he was disengaged. In absence of any contract of service entered into between the workman and the management specifying the period of engagement of the workman, it cannot be said that the services of the workman were utilised against a Project work and that too for a specific period.

Referring to Ext. A, Ext. 2 and Ext. 2/a it was contended that the aforesaid documents clearly suggest that the workman was engaged on contract basis. Ext. A is a copy of the Progress Report in the hands of the workman. No inference can be drawn therefrom as to if such a report was furnished officially to the Management or during course of his duty the workman had prepared such a report according to the instructions of his superior. The other documents, i.e. Exts. 2 and 2/a are the xerox copies of the vouchers of the management wherein the workman has endorsed his signature on revenue stamps mentioning therein that he had received his consolidated salary for the months of September, 2001 and June, 2003 respectively. The said documents Exts. 2 and 2/a are of no help to the management as there is nothing on record to show that the salary was disbursed to the workman as per the contract entered into between the management and the workman. Even though it is the admitted position that the salary of the workman was enhanced from time to time but no order to the effect is available to ascertain the other terms and conditions of engagement of the workman. For the reasons as aforesaid the contention of the management is not tenable.

From the discussions, as above, it is no doubt clear that such a course of action was adopted by the management with a view to defeat the object of the provisions of the Industrial Disputes Act. Hence, it is held that Section 2 (oo)(bb) of the Industrial Disputes Act is not attracted in the instant case.

8. Now coming to the other part of the issue as to whether the present case falls within the purview of Section 2 (oo) of the Act and consequently the provisions of Section 25-F of the Industrial Disputes Act comes into operation, it is the consistent plea of the workman that in spite of his rendering continuous service under the management which is more than 240 days preceding the date of his refusal of employment, the management has neither given him any notice/notice pay or paid him any retrenchment compensation. Such assertion of the workman regarding his engagement under the management stands admitted in the cross-examination of M.W. No. 1 where he has stated that the workman has rendered continuous service under the management from the 16th April 1998 to the 31st March 2004. Moreover, the copy of the experience certificate, Ext. 1, the genuineness of which has not been challenged, also reveals that he was continuing with his assignment under the management from the 16th April 1998. In the context, therefore, the refusal of employment made to the workman with effect from the 1st April 2004 is nothing but a clear case of termination and it attracts the ingredients of Section 25-F of the Industrial Disputes Act. It being the admitted fact that the management has not complied with the provisions of Section 25-F of the Industrial Disputes Act before effecting retrenchment of the workman, its action cannot be held to be legal and justified. Hence, the termination of service of the workman with effect from the 1st April 2004 by the management is found to be neither legal nor justified.

9. Now coming to the question of relief to which the workman is entitled, it is found that M. W. No. 1, who is the Scientific Officer of the management, has admitted in his cross-examination that Chilika General Monitoring Work is a continuous process of work and is continuing till now. In view of such evidence, the management is directed to reinstate the workman forthwith. As regards back wages, since there is nothing on record to the effect that from the date of termination till today the workman is not gainfully employed elsewhere, a compensation to the tune of Rs. 10,000 (Rupees ten thousands only) is awarded in his favour. The management is directed to carry-out the orders within a period of one month from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA  
2-2-2009  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

P. C. MISHRA  
2-2-2009  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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