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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 2nd March 2009

No. 2265—li/1(B)-72/1998(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th February 2009 in Industrial Dispute Case No. 159/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Kandsi Automobiles Private Limited, Jagatpur, Cuttack and its workman Shri Debendra Kumar Swain was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 159 OF 2008

Dated the 16th February 2009

*Present :*

Shri P. C. Mishra, O.S.J.S. (Sr. Branch)  
Presiding Officer, Industrial Tribunal  
Bhubaneswar.

*Between :*

M/s. Kandsi Automobiles Private Limited, . . First Party—Management  
Jagatpur, Cuttack.

And

Shri Debendra Kumar Swain, . . Second Party—Workman  
Village Paschimakacha, Dihasahi  
Post Patapur, Bahugram  
Dist. Cuttack.

*Appearances :*

For First Party—Management	..	None
For Second Party—Workman	..	Shri Satyabadi Mishra, President.

## 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. 7218—li/1(B)-72/1998-L.E., dated the 15th July 1998, but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008 :—

“Whether the termination of employment of Shri Debendra Ku. Swain, Boiler Helper by the employer of M/s. Kandsi Automobiles Private Limited, Jagatpur with effect from the 17th September 1996 is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the workman in brief is that he was engaged as a Boiler Helper under the Management with effect from the January 1992 and was discharging his duty to the utmost satisfaction of the Management till the 14th September 1996. It is stated that as the 15th September 1996 and the 16th September 1996 were holidays, the workman as usual proceeded to the factory on the 17th September 1996 to perform his shift duty from 10 P.M. to the 6 A.M. of the 18th September 1996 but he was not allowed to work. Thereafter on his approach to the employer he was told that his services has been terminated with effect from the 17th September 1996. The workman in the context has alleged that while terminating his service no written notice/notice pay was given to him nor he was paid any compensation as required under the provisions of the Industrial Disputes Act. It is pleaded that at the time of termination of his service the workman was receiving a monthly wage of Rs. 1,070 and he was enjoying the benefits of E.S.I. and E.P.F. with the aforesaid averments. The workman has claimed for his reinstatement in service with full back wages.

3. Despite opportunity afforded to the management, it neither appeared nor filed its written statement as a result of which it was set *ex parte* vide Order No. 11, dated the 24th July 2001. On being called upon to adduce evidence on *ex parte*, the workman submitted his evidence on affidavit and proved three documents which have been marked Exts. 1, 2 and 3.

4. On perusal of the unchallenged evidence of the workman submitted on affidavit and the documents Exts. 1, 2 and 3, which are the copies of E.S.I. Card and P.F. receipts, it reveals that the stand taken by the workman in his claim statement is well substantiated through W. W. No. 1. There being no reason to disbelieve the same. It is held that the termination of employment of the workman by the Management with effect from the 17th September 1996 is neither legal nor justified.

5. In view of the finding, as aforesaid, the workman is held entitled to reinstatement in service forthwith. As regards back wages, it is seen that the workman in his evidence on

affidavit at Para. 11 has stated that since the date of his termination he is not gainfully employed elsewhere and is maintaining his family with much difficulties but the self serving statement is not enough to award full back wages in his favour. In the facts and circumstance of the case it would be better if the workman is awarded a compensation of Rs. 10,000 (Rupees ten thousand) and accordingly the management is directed to reinstate the workman in service and to pay him a lump sum amount of Rs. 10,000 as compensation 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  
16-02-2009  
Presiding Officer  
Industrial Tribunal,  
Bhubaneswar.

P. C. MISHRA  
16-02-2009  
Presiding Officer  
Industrial Tribunal,  
Bhubaneswar.

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