

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 673 CUTTACK, TUESDAY, MAY 26, 2009 / JAISTHA 5, 1931

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd May 2009

No. 4028—li/1(SS)-44/2006-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th January 2009 in Industrial Dispute Case No. 36/2006 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Orissa State Transport Corporation, Bhubaneswar and their workman Smt. Arati Jena, w/o Shri R. K. Samal, At C/152, Koelnagar, Rourkela was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 36 OF 2006

Dated the 30th January 2009

Present :

Smt. Suchismita Misra, LL.M.
Presiding Officer, Labour Court
Sambalpur.

Between :

The Management of .. First Party—Management
Orissa State Road Transport
Corporation, Bhubaneswar.

And

Their Workman .. Second Party—Workman
Smt. Arati Jena
W/o Shri R. K. Samal
At C/152, Koelnagar, Rourkela
Dist. Sundargarh.

Appearances :

For the First Party—Management	.. None
For the Second Party—Workmen	.. Self

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of power conferred upon them under Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short “the Act”) have referred the following dispute for adjudication by this Court.

“Whether the action of the management of O.S.R.T.C. in terminating the services of Smt. Arati Jena, Clerk with effect from the 16th June 2004 is legal and/or justified ? If not, to what relief Smt. Jena is entitled ?”

2. Shorn of unnecessary details, the facts leading to the present dispute between the First party namely the management of Orissa State and Road Transport Corporation, Bhubaneswar on the one hand and the workman, Smt. Arati Jena on the other are stated below :

The case of the second party workman as would appear from the statement of claim filed by her in the present proceeding runs as below :

The second-party workman was appointed employed as an Assistant Teacher by the first party Management of O.S.R.T.C., Bhubaneswar in Rajya Paribahan Prathamika Vidyalaya, Rourkela (for short “the School”) under the Administrative control of D.T.M. (A), Rourkela with effect from the 22nd October 1981 vide appointment letter No. 7821, dated the 21st October 1981. She was disengaged from her job with effect from the 9th July 2004 on the ground of her unauthorised absence in her duties. During the above mentioned period of her employment in the aforesaid School there was a move by the Corporate Office to close the School during the year 1999 which, however, could not be accomplished by virtue of an order of the Hon’ble High Court, Orissa and further due to intervention of the Minister of Commerce & Transport of the State. Thereafter, efforts were made for taking over the School by the Education Department of the Government of Orissa. Thus when the aforesaid State of affairs continued from the year 1999, the School went on functioning till the 20th October 2003. During the aforesaid period the Head Master of the School Shri Harihar Behera had applied for his retirement from the job under the Voluntary Retirement Scheme and ultimately he was allowed to retire from his services with effect from the 9th March 2001. At that time the second party workmen was ordered to take over charge of his duties in the school from him vide Memo. No. 493(4), dated the 31st January 2001 and No. 1011(5), dated the 9th March 2001. Not only that she was also directed by the first party Management to perform her duty as ‘Care Taker’ in respect of the School records and properties until further order from the management which she had accepted along with her charge of teaching the students present in the school. In the year 2003, other Teachers in the aforesaid School namely, Shri Bijaya Kumar Das, Smt. Kalpana Das and Shri Sudhakar Moharana joined the office of the D.T.M. (A), Rourkela with effect from the 22nd October 2003 whereas she could not as she was on leave than due to her illness. After recovering from her illness, the second party workmen submitted her joining report before the D.T.M.(A), Rourkela but to her misfortune she was relieved from her services

on the 9th July 2004 vide termination letter dated the 29th June 2004 issued by the General Manager (A), O.S.R.T.C. (Annexure-14). The second party workmen alleged that the First party Management did not give her any opportunity of being heard or to show cause before her services were terminated on the ground of her unauthorised absence whereas her colleagues in the School were allowed to continue in their services under the First party Management after having been relieved from the School. Under such circumstances the second party workman has claimed that the order of the termination of her employment dated the 16th June 2004 be held illegal and unjustified and she be reinstated in service from which she was terminated with full back wages from August, 1999 till the date of her joining.

3. The First party Management in their written statement contested the pleas advanced by the second-party workman on the following grounds :

- (a) The reference is not maintainable.
- (b) The second party workman who was serving as a School Teacher in O.S.R.T.C. Vidyapitha of Rourkela, being purely an O.S.R.T.C. employee failed to join the office establishment of O.S.R.T.C. within five years after closure of the said School on the 29th July 1999. Therefore she was not entitled for reinstatement with back wages.
- (c) The other teaching staff of the above named School had joined the office of the First party Management before expiry of five years from the time of closure of the School when they were asked to join their office establishment for doing Clerical job there since there was no work for them at the School. At the time the second-party workman however, did not join the office of the First party Management and remained absent for a period of more than five years after closure of the School for which she was not entitled to reinstat and back wages. Apart from that the second party workman used to remain absent continuously at her work place. Therefore, in the aforesaid circumstances she is not entitled to any relief as claimed by her.

The second party workman filed a rejoinder to the written statement of the First party Management denying the pleas advanced by the First-party Management. She also reiforted that termination of her employment/services without holding any departmental enquiry against her is highly illegal and against the principles of natural justice.

4. On the above pleadings only two issues were framed in this proceeding and those are :—

- (i) "Whether the action of the management of O.S.R.T.C., in terminating the services of Smt. Arati Jena, Clerk with effect from the 16th June 2004 is legal and/or justified ?
- (ii) If not, to what relief Smt. Jena is entitled ?"

5. In this proceeding the workmen submitted her evidence on affidavit on the 15th November 2007 which was received as her examination-in-chief and she was cross-examined on behalf of the First party Management. On behalf of the second party workmen, seventeen documents were marked as Exts. 1 to 17 respectively. Neither any witness was examined nor any document was proved on behalf of the First party Management relating to this proceedings.

It is not in dispute that the second party workmen was employed as an Assistant Teacher in the Rajya Paribahan Prathamika Vidyalaya set up and managed by O.S.R.T.C. (the First party Management) since the 22nd October 1981 and had served there till termination of her services by the First party Management on the 16th June 2004. The main thrust in this industrial dispute between the second party workmen and First party Management is found to be based upon the facts that then the second -party workman claimed that she was working in the School of the First party Management as stated above till the date 15th October 2003, the First party Management assailed her such claim by asserting that the said School was closed since the 27th July 1999. since the second party workmen did not join the First party Management's Office pursuant to the direction of the management within five years from the aforesaid date of closure of the School her services were terminated in accordance with the provisions contained in the regulation of the Service Code of the Orissa State Road Transport Corporation Limited.

As revealed from the evidence on record including the documents exhibited by the second party workmen in this proceeding, there was a move to close the aforesaid School in the year 1999 and as such an order was passed by the authority in that regard vide Ext. 6. There is also ample evidence on record that the said School was not closed during the year 1999 or immediately thereafter since the correspondences made between the Government and District Inspector of School, Rourkela, dated the 6th December 2000 vide Ext. 7 and various other authorities vide Ext. 6, Ext. 10, Ext. 11, Ext. 12 and Ext. 17 clearly indicate that the said School had functioned for some years more and during that time the second party workman as well as the Headmaster of the School and other Teachers were engaged in their respective jobs in the said School. From the document Ext. 8 which is a letter sent by the Deputy Director, Planning to the Joint Secretary to Government of Orissa, Department of School & Mass Education on the 28th October 2003 it is found that the process of taking over the School, as described above by the Government was in progress till the 28th October 2003. The document Ext. 10 which is an office order issued by the District Transport Manager, Administration, O.S.R.T.C., Rourkela on the 21st January 2001 reveals that the second party workmen was directed by him to function as 'Care Taker' in respect of School records and properties until further orders. In the said order the then Headmaster of the School Shri Harihar Behera was directed to hand over the detail charge of School records and properties to the second party workmen and report compliance. Then the Headmaster of the School Shri Harihar Behera was relieved of his duties from the 9th March 2001 vide Ext. 11 and was ordered by the District Transport Manager(A) I/c, O.S.R.T.C., Rourkela to handover complete charge of his seat in Rajya Paribahan Prathamika Bidyalaya, O.S.R.T.C. School to Smt. Arati Jena, the second party workmen which he did on the 13th March 2001. These documents as aforesaid clearly prove that the second party workmen was under the employment of the First party Management and was rendering her services to the First party Management as the Care Taker of the said School till her disengagement as stated above.

The First party Management has not filed a single piece of paper in this proceeding to indicate as to when Smt. Jena was relieved of her duties as the Care Taker of the above named School. On the otherhand it is revealed from the document marked as Ext. 15 that Smt. Arati Jena had written a letter to the Assistant Transport Manager, O.S.R.T.C., Rourkela requesting the authority to relieve her from duties as the 'Care Taker' in respect of the School records and properties and allow her to join the office of the First party Management to perform the Clerical job. The management, however, does not prove that such a letter from the workmen

was never received by them at any point of time. It is clearly found from the document Ext. 17 that the second party workmen was entitled for her salary till the year 2003. Therefore, the plea advanced by the First party Management that the second party workmen was terminated from her services as she did not join the office even after five years of the closure of the School run by the First party Management where she was appointed as an Assistant Teacher is found to be absolutely baseless in view of the facts as revealed from the aforesaid documents.

6. The second party workmen admitted that she remained absent in her duty from the 15th October 2003 onwards as she was suffering from some ailments and was under going treatment at that time for which she could not join the office of the D.T.M.(A), Rourkela on the 22nd October 2003. She further stated that after recovering from her illness she submitted her joining report in the office of the First-party Management on the 16th June 2004 but at that time no action was taken in respect of her joining there and her services were terminated all of a sudden on the 9th July 2004 by the First party Management on the ground of her unauthorised absence in her duties for more than five years. Now the question comes whether such termination of services of Smt. Arati Jena, by the First party Management with effect from the 16th June 2004 is legal or not.

As discussed above in the foregoing paragraphs it could be gathered that services of Smt. Jena, the second party workmen was not terminated due to default/closure of the school namely Rajya Paribahan Prathamika Vidyalaya but because of her unauthorised absence as alleged by the management. It is admitted by the First party Management that the second party workmen was purely an employee of O.S.R.T.C. (in Paragraph 5) of their written statement. In the present proceeding the First party Management took the plea that Smt. Jena, the second-party workman was terminated from her service as she remained absent continuously at her work place and further did not join her duty despite the option given to her to report for her duties at the O.S.R.T.C. Office. When she remained absent in her duties continuously for more than five years the same resulted in cessation of her services under the First-party Management. the First party Management though took the aforesaid plea for terminating the services of the second party workmen, yet failed to prove, if the second-party was subjected to disciplinary enquiry for her such conduct as alleged by the management and thereby was afforded reasonable opportunity to explain about her unauthorised absence, if any, during the relevant period. In the case before me not a single scrap of paper has been filed to indicate much less to prove that an enquiry was conducted regarding unauthorised absence of the second party workmen, to her knowledge. No evidence has been given by the first party Management to prove as to when did the management relieved her (the second party workmen from her duties as Care Taker of School records and properties of which she took charge on the 13th March 2001 from the then Headmaster of the School. There is also absolutely no evidence coming from the side of the First party Management that efforts were made by the to give opportunity to the workman even once to show cause and explain about her alleged unauthorised absence before terminating her services for ever. All these circumstances as stated above clearly indicate that the second party workman was given the punishment of termination from service by the First party Management without due enquiry following the principles of natural justice.

Thus, in view of the discussions made above, I have no hesitation to hold that the termination of services of the second party workmen by the First party Management with effect from the 16th June 2004 is illegal and unjustified.

Now the question comes as to what relief is the second party workmen entitled to ? It is evident from the case record that the workmen filed her complaint before the District Labour Officer-*cum*-Conciliation Officer, Rourkela with regard to her termination from the services by the First party Management which was admitted in to conciliation on the 20th April 2006. As no settlement could be arrived at between the parties during the said conciliation proceeding, the aforesaid reference was made by the State Government in the Labour and Employment Department basing upon the report of the Conciliation Officer-*cum*-District Labour Officer, Rourkela. In her statement of claim, the workmen made a prayer for her reinstatement in service with back wages from August, 1999 till the date of her joining. Since it has already been held that the termination of services of the second party workmen by the First party Management is illegal and unjustified, she is certainly entitled for her reinstatement in the post which she had held during the period of her appointment/employment under the management of the Orissa State Road Transport Corporation, Rourkela. However as it has been brought to my notice through pleadings of the parties and evidence of the workman that all the Teachers appointed in the aforesaid School except this workman have already been absorbed in the office of the management after being relieved from the School and have been engaged to do clerical work, the second party workmen in the event of her reinstatement is also entitled for her appointment in the office of the management.

So far as the claim of the workmen for back wages from the month of August, 1999 is concerned, I would like to mention here that the second party workmen, in the present proceeding, has established with ample evidence that she was on duty in the establishment of First party Management till the 14th October 2003 after which she remained on leave and was ultimately terminated from her services on the 29th June 2004. She has filed documents and proved through Ext. 8, Ext. 9 and Ext. 13 that she was paid her salary up to July, 1999 (vide Ext. 8) and further she had placed her case before the Hon'ble Court with regard to the disturbances in her services caused by the First party Management and the Hon'ble Court was pleased to pass an order in the writ Petition Case No.7439/2004 with the observation that, if in fact the petitioner was still in service and discharging her duties regularly, the authorities of the Corporation should take steps for payment of her current salary, if there was no other impediments. In the same order of the Hon'ble Court dated the 3rd January 2005 liberty was also granted to the petitioner to file a suitable representation before the authority concerned for payment of her back wages which was to be disposed of by the said authority in consonance with Law as per the above order of the Hon'ble Court.

As stated earlier in this case not a single scrap of paper has been filed on behalf of the management to indicate much loss to prove that the second party workmen is not at all entitled to get her salaries from August, 1999 till her termination from the services. Under such circumstances, I would hold that the second party workmen is certainly entitled to get her wages/salaries till the 14th October 2003. Since it is admitted by the second party workmen that she remained absent in her duties after the 14th October 2003 and she explained that her such absence was only due to her illness, in that event I feel it would be proper to direct the First party Management to take appropriate decision as to what should be her (second party workmen) dues during the period of her absence commencing from the 14th October

2003 to the 29th June 2004. In accordance with the leave rules adopted by the First-party Management and applicable to the second party workmen in the case and make payment of her dues accordingly.

As regards the claim of the second party workmen about payment of back wages to her till the times of her joining. I feel it proper to mention here that the settled position of Law on this point is that a claim of service benefits which includes back wages should not be the normal and natural consequences of an order of reinstatement and a workmen cannot claim for such a relief as a matter of right. In this regard I would like to quote here the decision in the case of Devendra Sahu *Vrs.* Presiding Officer, Industrial Tribunal, Labour Court, Vishakhapatnam and another reported in 2008-III-LLJ October wherein it has been held by the Hon'ble Court that" while awarding back wages care should be taken to find out whether the employee has pleaded and established with reference to material on record that in spite of his best efforts, he could not secure any alternative employment during the period of his absence". In the aforesaid decision it has been made clear that such a claim has to be sufficiently pleaded and proved with the fact that the workmen was not gainfully employed in any alternative employment during the period of his absence and in the absence of any material brought on record by the petitioner to that effect, he is not entitled to ask for back wages.

In the present proceeding the workmen has neither stated nor provided any evidence that she had made efforts to secure an alternative gainful employment during the period of her disengagement but could not find one and the same is a relevant factor for consideration regarding payment of back wages to her by the First party Management. Therefore, it has to be held that the workman is not entitled to back wages for the period when she was not in the service i.e. from the 16th June 2004. However, she is entitled to other service benefits like continuity of her service which would make her entitled to counting of the period of services rendered by her under the First party Management before her termination for the purpose of fixation of her salaries on her reinstatement and regularisation of her services in the event such question is considered.

Thus, as per the discussion made in the foregoing paragraphs I would dispose of this reference with a direction to the first party management to reinstate the second party workmen into service commensurating to the post which she had held prior to termination of her services without any back wages from the date 16th June 2004 but with continuity of service notionally only for the purpose of fixation of her salaries on her reinstatement and regularisation of her services in the event such question is considered. Hence the following award.

AWARD

The reference is answered on contest in favour of the second party workmen and against the First party Management. The termination of services of Smt.Arati Jena, Assistant Teacher in the Rajya Paribahan Prathamika Vidyalaya (U.P. School) set up and managed by the First party Management with effect from the 16th June 2004 by the First party Management is held illegal and unjustified. The First party Management is hereby directed to reinstate the second party workmen Smt. Arati Jena into service commensurating to the post which she

had held prior to the termination of her services with immediate effect in the establishment of Orissa State Road Transport Corporation, Rourkela. The first party management is further directed to make payment of her back wages from August, 1999 to the 14th October 2003 for the services rendered by her as an Assistant Teacher of the above mentioned School and further to pay her salaries which she would be found entitled to get as per the leave rules applicable to her relating to the period of her absence in her duties on account of her illness. The second party workmen is not entitled to back wages for the period commencing from the 16th June 2004 though she is entitled for her reinstatement with immediate effect with continuity of service notionally only for the fixation of her salaries on her reinstatement and regularisation of her services in the event such question is considered.

Dictated and corrected by me.

SUCHISMITA MISRA
30-1-2009
Presiding Officer
Labour Court, Sambalpur

SUCHISMITA MISRA
30-1-2009
Presiding Officer
Labour Court, Sambalpur

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