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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 2nd May 2009

No. 4043—li/1(BH)-177/1999(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th March 2009 in Industrial Dispute Case No. 198 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of the Assistant Fruit Utilisation Officer, Orissa Fruit Preservation Factory, At/P.O. Samantrapur, Bhubaneswar and Shri Radhashyam Mohanty, village Simoi, P.O. Khandol, via Sundragram, Dist. Cuttack was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 198 OF 2008

Dated the 9th March 2009

*Present :*

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

*Between :*

The Asst. Fruit Utilisation Officer                      .. First Party—Management  
Orissa, Fruit Preservation Factory  
At/P.O. Samantrapur, Bhubaneswar.

*And*

Shri Radhashyam Mohanty                                      .. Second Party—Workman  
At Simoi, P.O. Khandol  
Via Sundragram, Dist. Cuttack.

*Appearances :*

For the First Party—Management .. None

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For the Second Party—Workman himself .. Shri Radhashyam Mohanty

### 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. 1727—li/1(B)-177/1999-L.E., dated the 27th January 2000, 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 action of the Assistant Fruit Utilisation Officer, Fruit Preservation Factory, Samantrapur, Bhubaneswar in terminating the services of Shri Radhashyam Mohanty, highly skilled workman by way of refusal of employment with effect from the 10th June 1998 is legal or justified ? If not, what relief he is entitled to ?”

2. Shortly stated, the case of the workman is that he was under the engagement of the management from the 18th May 1992 till the 9th June 1998 being employed as a casual labourer from the 18th May 1992 to the 7th November 1993 as a skilled labourer from the 8th November 1993 to the 30th April 1997 and as highly skilled labourer from the 1st May 1997 till he was refused employment by the management. He has stated that at the time of his refusal of employment he was getting Rs. 48 per day as his wages. It is alleged that in spite of his rendering continuous service under the management from the 18th May 1992 till the 9th June 1998, he was refused employment by the management and while taking such action neither the management had given him any notice nor notice pay and compensation as provided under Section 25-F of the Industrial Disputes Act. He further alleges that on his disengagement, the management has allowed juniors to him to continue in job which is also violative of the provisions of the Industrial Disputes Act. With the aforesaid averments, the workman has prayed for his reinstatement in service with full back wages.

3. The management filed its written statement stating therein *inter alia* that its concern is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act and further stating that the workman in the present case having voluntarily abandoned the job, the question of retrenchment does not arise. It is specifically pleaded by the management that the workman did not report to duty on the 10th June 1998 after being relieved from the Madhuban Mahila Vikas Kendra, Paradeep Port, Paradeep and being interested to join as Gardner, he requested the A.F.U.O. to recommend his name for consideration and accordingly the officer concerned made a formal recommendation in favour of the workman. Since the service of the workman were not utilised on account of his voluntary abandonment of job, it is pleaded that he is not entitled to any wages on and from the 10th June 1998.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

### ISSUES

- (1) Whether the action of the Assistant Fruit Utilisation Officer, Fruit Preservation Factory, Samantrapur, Bhubaneswar in terminating the services of Shri Radhashyam Mohanty, highly skilled workman by way of refusal of employment with effect from the 10th June 1998 is legal or justified ?
- (2) If not, what relief he is entitled to ?

5. In the hearing of the dispute since the management did not participate, it was set *ex parte* vide Order No. 16, dated the 4th June 2002 and the workman on being called upon to adduce evidence, he submitted his evidence on affidavit. No documentary evidence is, however, adduced on behalf of the workman.

6. It reveals from the affidavit evidence submitted by the workman that by virtue of an amicable settlement, he has since been reinstated in service with effect from the 21st November 2000 as per office Order No. 1002, dated the 17th November 2000. He has only claimed his back wages for the period from the 10th June 1998 to the 20th November 2000 on the ground that during the period, he was not gainfully employed elsewhere. The evidence that the workman was not gainfully employed elsewhere during the period claimed though remained unrebutted but that is not sufficient to award back wages in favour of the workman. During the period of his unemployment, admittedly the workman has not rendered any work under the management. It is the settled principle of law that awarding of back wages in favour of an employee depends on the circumstance of each case and more particularly the status of the workman and the mode of his selection. In the instant case, the workman was employed initially as a casual worker and by efflux of time he was paid wages as a highly skilled worker. So, taking into consideration the fact that the workman has already been taken into employment by the management since the 21st November 2000 and keeping in view of the judgement of the Hon'ble Supreme Court rendered in the case between Manager, R. B. I. and Gopinath Sharma (S.C.), reported in 2006(110) FLR 803, it is held that the workman is not entitled to any back wages in the present proceeding.

The reference is disposed of accordingly.

Dictated and corrected by me.

P. C. MISHRA  
9-3-2009  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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9-3-2009  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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