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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 5th May 2009

No. 4132—li/1(B)-49/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2009 in Industrial Dispute Case No. 57/2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Dean Faculty of Veterinary Science and Animal Husbandry, O.U.A.T., Bhubaneswar and their workman Shri Bishnu Charan Dalai was referred for adjudication is hereby published as in the Schedule below:

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 57 OF 2006

Dated the 31st March 2009

*Present :*

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

*Between :*

The Management of Dean Faculty of . . . First Party—Management  
Veterinary Science and Animal  
Husbandry, O.U.A.T., Bhubaneswar.

And

Their Workman . . . Second Party—Workman  
Shri Bishnu Charan Dalai

*Appearances :*

For First Party—Management . . . Shri P. K. Mishra  
Second Party—Workman himself . . . Shri B. C. Dalai

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## 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 matter in dispute between the parties to this Court for adjudication vide Order No. 4811—li/1 (B)-49/2006-LE., dated the 17th June 2006 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The Schedule of Reference is as follows :

“Whether the action of the Dean Faculty of Veterinary Science and Animal Husbandry, Orissa University of Agriculture & Technology, Bhubaneswar, in terminating the employment to Shri Bishnu Charan Dalai, workman with effect from the 1st April 1997 is legal or justified ? If not, what relief the workman is entitled to ?”

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

The workman Shri Bishnu Charan Dalai joined as N.M.R. Attendant on the 1st April 1991 and continued to work as such till the 31st March 1997 under the control of the management. He was refused employment with effect from the 1st April 1997 in an illegal manner. At the time of termination of his service he was getting a fixed amount of Rs. 1,050 per month as his salary. After termination of his service he submitted representations on the 11th April 1997, the 22nd August 1998 and the 3rd February 2001 but no action was taken by the management. Rather in his place one Madhab Chandra Das was appointed. It is alleged by him that the management demanded Rs. 5,000 as bribe from him and as he failed to meet the said illegal demand, he was terminated from service. According to him he has not been gainfully employed anywhere else after the 1st April 1997. Since Section 25-F of the Industrial Disputes Act, 1947 was not complied at the time of termination of his service and Sections 25-G and H of the Industrial Disputes Act, 1947 were violated by the management, so he is entitled to be reinstated in service with all back wages.

4. The management in the written statement has refuted the allegation of the workman. According to the management the workman was engaged as a casual worker on daily wage basis to clean the poultry farm with effect from the 1st November 1991. Besides the workman, some other casual labourers were also engaged to perform similar nature of job as well as to take care of the birds. During the year 1995 the University sanctioned 8 posts Poultry Attendant, one post of Watchman and one post of Sweeper. So following rule pertaining to recruitment 10 persons were appointed including some casual workers already working under the management in the month of February, 1996. Since the name of the workman was not sponsored by the employment exchange so his case was not considered. For the aforesaid reason the workman was unhappy and was expressing his intention not to work as casual worker any more. After regularisation of the posts, the workman was also allowed to work on daily wage basis but he remained absent from his duty from the 1st April 1997 without any information. After lapse of about 7 years he raised a dispute before the labour authority out

of which the present case arose. Since he voluntarily abandoned the job, the question of termination of his service or non-compliance of Section 25-F (a) and (b) of the Industrial Disputes Act, 1947 or violation of Sections 25-G and H of the Industrial Disputes Act, 1947, etc. does not arise. The management has also refuted the allegation of demanding Rs. 5,000 as bribe from the workman. According to the management the workman is not entitled to get any relief in this case.

5. The following issues were settled :—

#### *ISSUES*

- (i) “Whether the action of the management in terminating the employment of the workman with effect from the 1st April 1997 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?”

6. In order to substantiate his claim, the workman besides examining himself as W. W. 1 also examined one Sanjib Kumar Mohanty as W. W. 2. The management examined the Poultry Supervisor as M.W. 1, Senior Poultry Geneticist as M. W. 2 and the retired Dean of O.U.A.T. as M. W. 3.

#### *FINDINGS*

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

Admittedly Section 25-F of the Industrial Disputes Act, 1947 has not been complied by the management in this case. But the question of compliance of Section 25-F of the Industrial Disputes Act, 1947 would arise only when it is proved that the workman was retrenched. Also the management is required to comply Section 25-F of the Industrial Disputes Act, 1947 in respect of those workmen who were in continuous service for a period of one year within the meaning of the definition of continuous service as provided in Section 25-B of the Industrial Disputes Act, 1947 that means the person who had rendered service to the employer for more than 240 days during the preceding 12 calendar months. In the present case the management has taken two pleas, in support of its stand that Section 25-F of the Industrial Disputes Act, 1947 was not required to be complied. According to the management, the workman voluntarily abandoned the job and did not turn up to perform his duty after the 1st April 1997 that means the workman was never retrenched. The second plea is that the workman had not performed 240 days of work during the preceding 12 calendar months from the 1st April 1997. On the other hand, it is stated by the workman that the management demanded Rs. 5,000 from him as bribe and when he failed to meet the said demand, he was refused employment with effect from the 1st April 1997. It is also stated by him that he had performed 240 days of work in the preceding 12 calendar months. So let us now examine the aforesaid two points one after another.

8. It is admitted by the management in the written statement that the workman was engaged as a worker with effect from the 1st November 1991. It is also not denied by the management that he was working till the 31st March 1997. But according to the management he was being paid wages in respect of those days he had actually worked. In this regard it is stated by the workman that he was getting a fixed amount and at the time of termination of

service he was getting Rs. 1,050 per month. The workman in his evidence has stated that he had received letters from the management to appear in the interview for absorption in the regular post of Attendant in the year 1997. He also appeared in the said interview but Shri Sarat Chandra Mishra (M. W. 3) demanded Rs. 5,000 as bribe from him. As he could not pay the said amount he was refused employment thereafter. His witness, i.e. W. W. 2 did not utter a word, in his evidence regarding the demand of Rs. 5,000 as bribe by M. W. 3 from the workman. There is no other material available in the record in support of the aforesaid allegation made by the workman against the M. W. 3. Of course the workman has filed two interview call letters issued on the 22nd March 1997 and the 31st March 1997 to appear in the interview which was held on the 29th March 1997 and the 5th April 1997 marked as Exts. 2 and 1 respectively. On the basis of these two documents at best it can be said that he was called to appear in the interview held by the management for filling up the post of Cattle Attendant, Poultry Attendant, etc. but it is stated by the witnesses of the management that the workman could not succeed in those interviews. The workman has also filed three representations said to have been submitted by him on the 11th April 1997, the 22nd August 1998 and the 3rd February 2001 marked as Exts. 3, 4 and 5. But there is no material that those representations were received by any authority of the management. The workman has not filed any other document. On his prayer the management was directed to file the muster roll. As per the muster roll though he joined in the management some time in the year 1991 and had worked in the subsequent years till the 31st March 1997, he was not performing duty continuously. During the period the 1st April 1996 to the 30th November 1996 he had not performed duty on a single day. At that time one K. Laxman and Ashok Kumar Nanda were doing the job. It is also not known as to why he remained silent till the 19th November 2004, i.e. the date on which he raised the industrial dispute before the labour authority. If the management refused employment to him on the 1st April 1997 there was no reason for him to wait till the 19th November 2004 to raise a dispute. So I am not able to believe that the management had refused employment to him with effect from the 1st April 1997 as he could not meet the illegal demand of bribe allegedly to have been made by M. W. 3.

9. According to settled position of law the burden of proof lies on the workman to establish the fact that he was in employment for more than 240 days during the preceding 12 calendar months from the date of refusal of employment. Though the workman has pleaded the fact specifically in Para. 2 of his statement of claim, he could not file a single paper to prove his employment for more than 240 days during the preceding 12 calendar months from the 1st April 1997. On verification of the muster roll, I found that during the period the 1st April 1996 to the 30th November 1996 he had not performed work on a single day, and during the period the 1st December 1996 to the 31st March 1997 he had performed work for a total period of 97 days. Thus it is proved that he had not performed 240 days work during the preceding 12 calendar months, i.e. the period from the 1st April 1996 to the 31st March 1997. As I have said earlier the management is required to comply Section 25-F of the Industrial Disputes Act, 1947 only in respect of a workman who had performed duty for more than 240 days during the preceding 12 calendar months. As in the instant case the documents filed by the management show that during the preceding 12 calendar months the workman had performed duty only for 97 days, so the management was not required to comply Section 25-F of the Industrial Disputes Act, 1947.

10. According to the workman one Madhab Chandra Das was appointed in his place after he was terminated from service. W. W. 2 has also supported him. But while facing cross-examination the workman admitted the fact that Shri Madhab Chandra Das was working with him in the Poultry Farm in the year 1996. Also as per the muster roll Shri Madhab Chandra Das was working in the management much prior to the 1st April 1997. During cross-examination of M. Ws. 2 and 3 the workman suggested to them that one Meghanada Nayak was junior to him but he is still working in the management. To the said suggestion both the M. Ws. 2 and 3 gave negative reply and M. W. 3 further clarified that Meghanada Nayak was working in the management earlier and so he is senior to the workman. Since the workman has taken the plea that he was retrenched from service while his juniors were retained in service, the burden of proof was on him to establish the above fact, but he was failed to do so. Hence I come to the conclusion that the action of the management in terminating the employment of the workman with effect from the 1st April 1997 is legal and justified. Both the issues are answered accordingly.

11. Hence Ordered :

The action of the Dean Faculty of Veterinary Science and Animal Husbandry, Orissa University of Agriculture & Technology, Bhubaneswar in terminating the employment of Shri Bishnu Charan Dalai, workman with effect from the 1st April 1997 is legal and justified. The workman Shri Dalai is not entitled to get any relief in this case.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY  
31-3-2009  
Presiding Officer  
Labour Court, Bhubaneswar

M. R. TRIPATHY  
31-3-2009  
Presiding Officer  
Labour Court, Bhubaneswar

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