

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

No. 748 CUTTACK, SATURDAY, JUNE 6, 2009/JAISTHA 16, 1931

---

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 21st May 2009

No. 4535—li/1(B)-81/2005-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th April 2009 in Industrial Dispute Case No. 69/2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of M/s Text Book Production and Marketing, Bhubaneswar and its workman Shri Lingaraj Panda was referred for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 69 OF 2005

Dated the 9th April 2009

*Present :*

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

*Between :*

The Management of Text Book .. First Party—Management  
Production and Marketing, Bhubaneswar.

*And*

Its Workman .. Second Party—Workman  
Shri Lingaraj Panda

*Appearances :*

For First Party—Management .. Shri B. B. Paikray, A.G. P.  
For Second Party—Workman .. Shri S. Mishra, Advocate

## AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 22, 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 vide Order No. 9241—li/1(B)-81/2005-LE., dated the 29th October 2005 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The Schedule of Reference is as follows :

“Whether the termination of services of Shri Lingaraj Panda with effect from the 9th July 2003 by the management of Text Book Production and Marketing, Bhubaneswar as per their Order No. 400, dated the 10th July 2003 is legal and/or justified ? If not, to what relief Shri Panda is entitled ?”

3. The case of the workman is that he was appointed as a Helper on daily wage basis at the rate of Rs. 25 per day in the month of May, 1991 by the Management. He worked as such till the 18th September 1997. Thereafter on the 19th September 1997 he was selected and appointed as Casual Attendant on daily wage basis at the rate of Rs. 30 per day. His wage was enhanced to Rs. 37.50 per day in January, 1999 and further enhanced to Rs. 1,350 per month in the year 2001. He was getting salary at the above rate till the date on which he was refused employment, i.e. on the 9th July 2003. He was performing his duty sincerely and satisfactorily without any stigma. On the 10th July 2003 when he reported for duty the management served an Office Order bearing No. 400, dated the 10th July 2003 intimating therein that his service has been discontinued with effect from the 9th July 2003 due to involvement in theft of N.T. Books. The aforesaid refusal of employment amounts to retrenchment as per Section 2(oo) of the Industrial Disputes Act, 1947. But condition precedent to retrenchment was not followed by the management. If he was involved in a theft case, the management could have reported the matter to Police and could have asked for explanation from him. Also the management was supposed to initiate an enquiry to find out the truth of the allegation made against him. But no charge was framed nor any enquiry was also conducted against him. By the date of refusal of employment he had worked for more than 240 days within the meaning of Section 25-B of the Industrial Disputes Act, 1947 and therefore he was entitled to get retrenchment compensation and benefits as provided in Section 25-N of the Industrial Disputes Act. It is further complained by the workman that Sections 25-G and H of the Industrial Disputes Act, 1947 was not followed by the management in as much as some junior workers are still working in the management and some new persons have been given appointment. According to him, he is still unemployed and therefore, the management may be directed to reinstate him in service with full back wages.

4. The management in the written statement has submitted that the Text Book Production and Marketing is a Government establishment functioning directly under the Administrative

Control of Government of Orissa. The organisation is meant for printing and marketing of nationalised Text Books for the students of Class-I to VII of the State. In order to carry-out the production and marketing work, employees in different categories are employed who are permanent Government servants. Apart from them some workers have been engaged on casual basis to carry-out the work which is intermittent in nature. The workman was engaged as a Casual Helper as per Office Order No. 9081, dated the 19th September 1997 wherein it was stipulated that his engagement was purely casual in nature subject to availability of work and can be discontinued at any time without any notice. He was being paid wages applicable to daily wager as fixed by the Government from time to time. On the 7th July 2003 at about 11-00 P.M. one Gandharva Patasani an outsider engaged to work on daily wages basis and one Shri Prasanta Behera, Casual Helper were going outside from the premises of the management Press by a Luna bearing No. OR-02B-5042. The Time Keeper Shri Sudam Ch. Sahoo detained them on suspicion and asked them to open the Luggage box of the Luna. They replied that the workman is the owner of that Luna and the key of the luggage box is with him. So the workman was called to the spot and the box of the Luna was opened. Twenty-three number of N.T. Books were recovered from the Luna box in presence of the above-named persons as well as Shri Umakanta Satapathy, Shri P. K. Senapati, Shri Raghunath Padhi, Shri Subodha Bihari Harichandan, Shri Muralidhar Nayak, etc. The Time Keeper prepared a report in which Shri Patasani and Shri Behera signed but the workman refused to sign on that report. However the persons who were present at the time of recovery of the books put their signatures on the report and the report was sent to the higher authority, i.e. Deputy Director-*cum*-Manager of the Press who was satisfied that the workman was involved in theft of N.T. Books Therefore further enquiry in the matter did not arise. Since the involvement of the workman in theft of books from the factory premises was well established by eye witnesses, so according to the terms of appointment he was disallowed to work with effect from the 9th July 2003 and necessary Office Order to that effect was issued vide Order No. 400, dated the 10th July 2003. As due procedure was followed, the termination of service of the workman is not illegal, unjustified, etc. Therefore, the workman is not entitled to get any relief in this case.

5. A rejoinder was filed by the workman wherein he has refuted the allegations of the management.

6. The following issues were framed :—

#### *ISSUES*

- (i) "Whether the termination of services of Shri Lingaraj Panda with effect from the 9th July 2003 by the management of Text Book Production and Marketing, Bhubaneswar as per their Order No. 400, dated the 10th July 2003 is legal and/or justified ?
- (ii) If not, to what relief Shri Panda is entitled ?"

7. In support of his case, the workman examined himself as W.W. 1. He proved the copy of the appointment letter issued by the management in his favour marked as Ext. 1 and the copy of the termination order marked as Ext. 2. The management examined six witnesses. M.W. 1 is the Time Keeper who detained Shri Gandharva Patasani and Shri Prasanta Behera while they were going in a suspicious manner in the night of the 7th July 2003 by a Luna. M.W. 2 is Shri Prasanta Kumar Behera who is working as a Darwan. M. W. 3 is Shri Muralidhar Nayak who is also working as a Darwan. M.W. 4 is Shri Prasanta Kumar Senapati who is working as Production Officer, M.W. 5 is Shri Raghunath Padhi another Darwan and M.W. 6 is a Peon working in the management. The management proved the report prepared by M.W. 1 soon after the alleged incident marked as Ext. A containing list of books recovered from Luna and the allotment order of Text Book Production and Marketing wherein a direction has been given to disengage casual/voucher paid workers engaged after the 12th April 1993 marked as Ext. B.

#### FINDINGS

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

In the written statement the workman has submitted that initially he was getting wage at the rate of Rs. 25 per day which was subsequently enhanced to Rs. 30 per day and then to Rs. 37.50 per day and finally to Rs. 1,350 per month from the year 2001. This fact is not admitted by the management. The workman has not filed any other paper except the appointment order bearing No. 9081, dated the 19th September 1997, marked as Ext. 1. No dispute has been raised by the management against the aforesaid letter filed by the workman rather in Para. 2 of the written statement the management has also placed reliance on this document. According to Ext. 1 the workman was selected to work as Casual Attendant on daily wage basis at the rate of Rs. 30 per day. It is stated in Ext. 1 that his engagement was purely casual in nature subject to availability of work and can be discontinued at any time without any notice. Thus it is clear that he is a casual worker and he was engaged subject to availability of work. According to settled position of law compliance of Section 25-F of the Industrial Disputes Act, 1947 is required before retrenchment even if the employment is contractual or for a specific term. It is stated by the workman that since more than 100 persons were engaged in the management so to his case Section 25-N of the Industrial Disputes Act, 1947 is applicable. In that regard he has also relied on a decision reported in AIR 1999 Supreme Court, 355 in the case of Lal Mohammad and others V. Indian Railway Construction Co. Ltd. and others. Admittedly in the present case neither Section 25-F nor Section 25-N of the Industrial Disputes Act, 1947 was complied by the management before the employment was refused to the workman on the 9th July 2003.

The management has examined as many as six witnesses to prove that the workman was involved in theft of some books from the premises of the management Press in the night of the 7th July 2003. All the management witnesses have also given evidence against the workman in the above regard. But the real issue before me is something else. In the present case I am not required to record a finding as to if the workman is guilty of committing the

offence of theft. Rather I am required to examine as to if he was actually retrenched with effect from the 9th July 2003 and whether the said retrenchment is legal and justified.

Section 2 (oo) of the Industrial Disputes Act, 1947 defines the word 'retrenchment'. According to the said definition, 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) voluntary retirement of the workman; or
- (b) xx                    xx                    xx                    xx
- (bb) termination of the service of the workman as a result of the non-renewal of the contract or 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; or
- (c) termination of the service of a workman on the ground of continued ill-health.

In the present case there was no contract of employment between the employer and the workman. It is not that the workman was terminated from service on expiry of any contract or under any stipulation made in that behalf in the contract. Ext. 2 reads as follows :

“ The services of Shri Lingaraj Panda, Casual Attendant are discontinued with effect from the 9th July 2003 F.N. due to his involvement in theft of N.T. Books.”

Thus it is clear that his services were terminated as a punishment inflicted on him by way of disciplinary action. Admittedly no disciplinary proceeding was initiated against him after allegation of theft of N.T. Books was made by M.W. 1 to the authority. M.Ws. 3,5,6, etc. have categorically stated that no officer of the management including the Deputy Director-*cum*-Manager had asked anything relating to the occurrence to him. They have also admitted that no departmental enquiry was conducted. As it appears on the basis of the report of the Time Keeper a decision was taken unilaterally by the authority to remove the workman from service which is against the principles of natural justice. If the authority was of the view that the workman was involved in theft of books from the premises of the management Press, the authority could have initiated a departmental proceeding and could have given reasonable opportunity to the workman to defend himself and thereafter only the authority could have taken the action as deemed fit by him. But it is seen that such a procedure was not followed by the management. Since no domestic enquiry was held with regard to the allegation made by M.W. 1 against the workman, so it would not be correct to say that the punishment of removal from service inflicted by the authority of the management was made by way of a disciplinary action. Therefore I am of the view that the termination of service of the workman with effect from the 9th July 2003 is nothing but retrenchment. Admittedly no notice pay or compensation of any kind was paid to the workman at the time of termination of his service on the 9th July 2003. Therefore, I come to the conclusion that the termination of services of the workman with effect from the 9th July 2003 by the management is not legal and justified. He is entitled to be reinstated in service.

However, in the facts and circumstances of the present case, he is not entitled to get any back wages. Both the issues are answered accordingly.

9. Hence ordered :

The termination of services of Shri Lingaraj Panda with effect from the 9th July 2003 by the management of Text Book Production and Marketing, Bhubaneswar as per their Order No. 400, dated the 10th July 2003 is illegal and unjustified. The workman Shri Panda is entitled to be reinstated in service, but without any back wages. The management is directed to implement the Award within one month from the date of its publication in the official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY  
09-04-2009  
Presiding Officer  
Labour Court, Bhubaneswar.

M. R. TRIPATHY  
09-04-2009  
Presiding Officer  
Labour Court, Bhubaneswar.

---

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