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## LABOUR & EMPLOMENT DEPARTMENT

### NOTIFICATION

Bhubaneswar, dated the 9th June, 2009

No.5192—1i/1(B)-113/2000(Pt) /LE—, In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st April 2009 in I.D. Case No.233 of 2008 of the Presiding Officer; Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of President/Administrative Officer, Orissa Engineering College, 36-A, Saheednagar, Bhubaneswar and Shri Prasanna Kumar Panigrahi, S/o Shri Purna Chandra Panigrahi, at Nuasasan, P.O. Jitanaga, P.S. Tihidi, Via Dolasahi, Dist: Bhadrak was referred to for adjudication is hereby published as in the Schedule below:

### SCHEDULE

#### IN THE INDUSTRIAL TRIBUNAL : ORISSA : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 233 OF 2008

Dated Bhubaneswar, the 21st April, 2009

*Present :*

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

*Between :*

The President / Administrative Officer,  
Orissa Engineering College,  
36-A Saheednagar, .. First Party — Management.  
.Bhubaneswar.

And

Shri Prasanna Kumar Panigrahi  
S/o Purna Chandra Panigrahi  
At Nua Sasan  
Post Jitanaga  
P.S. Tihidi  
Via Dolasahi .. Second Party — Workman  
Dist. Bhadrak.

*Appearances :*

Shri P.K. Sahoo, .. For First Party— Management  
 Authorised Representative.

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Shri Prasanna Kumar Panigrahi . .. Second Party — Workman himself

## 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. 11244-li -1(B)-113/2000-LE., dated 24th August 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-LE., dated the 4th April 2008.

“Whether the termination of services of Shri Prasanna Kumar Panigrahi, Pump Driver, by the management of Orissa Engineering College, Bhubaneswar, with effect from the 7th December 1996 is legal and /or Justified ? If not, to what relief Shri Panigrahi is entitled ?”

2. The case of the workman as set out in his claim statement in brief is that he was appointed as an Attendant on *ad hoc* basis under the management on a monthly salary of Rs.400 and continued to work as such till the 30th June 1991 and thereafter w.e.f. 1st July 1991 till he was promoted as a Pump Driver as per the orders of the management, dated the 2nd May 1995. It is stated that while working as Pump Driver, he availed casual leave from the 12th August 1996 to the 14th August 1996 by submitting application to the management and while on leave as he suffered from ‘Peptic Ulcer’ he prayed for extension of his leave till the 6th December 1996 and intimated such fact to the management by sending applications through post under certificate of posting. It is alleged that after recovery when the workman intended to resume his duty on the 7th December 1996, he was refused employment and was informed by Shri Kedar Nayak, Accountant that his services has been terminated and the salary was held up. Although it is stated in the claim statement that on his approach the workman was again taken into the employment of the management, but he was not reposted in his former post of Pump Driver and at a subsequent stage, i.e. on the 19th July 1998, he was again refused employment. It is stated that since the date of his termination, the workman is striving hard to maintain his family, he being the only bread earner of the family. He has, therefore, prayed for his reinstatement in service with full back wages.

3. The management entered appearance and filed its written statement disputing the averments of the workman and stating therein *inter alia* that the reference of the dispute is not maintainable as because the second party is not a ‘workman’ as defined under the Industrial Disputes Act and further that the establishment of the first party is not an ‘industry’ or ‘Industrial Establishment’ as per the provisions of the said Act. Admitting about the engagement of the workman as an Attendant w.e.f. the 8th October 1990 for a period of 60 days, it is stated that on completion of the said period, he was relieved from his duty and again on the 11th July 1991, he was engaged as an Attendant on probation basis for a period of two years and thereafter as he was found unsuitable and was also involved in some misconduct, the management did not allow his further continuance. It is stated that on his approach the management again appointed him as a Pump Driver on 2nd May 1995 with the condition that he will be on probation for two years and in the event of unsatisfactory work, his services will be terminated without any reference, disputing the averments

of the workman that he was on leave from the 12th August 1996 to the 14th August 1996, it is stated by the management that while working on probation, the workman applied for leave from the 10th April 1996 to the 15th April 1996 on the ground of illness of his wife which was allowed. The specific case of the management is that during the period of probation on the 8th May 1995, the workman committed misconduct for which he was asked to explain and on enquiry, it was found that he was deliberately neglected in his duty which affected the functioning of the management and its Office, Hostel and College. The further case of the management is that after availing leave from the 10th April 1996 to the 15th April 1996, the workman did not turn-up to attend to his duty and subsequently informed that he is no more interested to work and wants to leave the service and enquiry it was learnt that he has opened a business cinema show at his native place for which he voluntarily relinquished the service. It is stated that when the workman voluntarily abandoned the work and did not turn up, one Siba Charan Sethi has been engaged in his place to manage the work. There having no termination of services of the workman, the management has pleaded to answer the reference in the negative as against the workman.

4. In his rejoinder, the workman has stated that the reference of the dispute is quite maintainable and the grounds advanced by the management on the score are not tenable. It is further stated that at no point of time, the workman committed any misconduct during the period of his employment under the management nor did he voluntarily abandon the work as alleged. As regards the appointment of Shri Siba Charan Sethi, it is stated that said Shri Sethi was appointed on the 14th July 1995, i.e., much prior to the date of availing leave by the workman and therefore, the assertions made on that count is false and concocted

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

#### ISSUES

- (i) Whether the first party -management is an 'Industrial Establishment' ?
- (ii) Whether the termination of services of Shri Prasanna Kumar Panigrahi, Pump Driver by the management of Orissa Engineering College, Bhubaneswar with effect from the 7th December 1996 is legal and/or justified ?
- (iii) If not, to what relief Shri Panigrahi is entitled .

6. As per the settled principle of law, the Tribunal cannot transgress beyond the scope of the reference and therefore, the adjudication of the present dispute is only confined to the order of reference made by the State Government.

7. *Issue No.(i)* -- Though the management has challenged the maintainability of the reference on the ground that its concern is not an 'Industrial Establishment' as per the provisions of the Industrial Disputes Act, yet no evidence is forthcoming from the side of the management to substantiate the aforesaid plea. In absence of any evidence, therefore, this issue is answered in the affirmative and it is held that the reference is maintainable.

8. *Issue No.(ii)* --In this issue, it is to be seen whether the action of the management in terminating the services of the workman with effect from the 7th December 1996 is legal and/or justified ?

It is not in dispute that the workman was initially engaged as an Attendant and thereafter as a Pump Driver on probation for a period of two years w.e.f. the 2nd May 1995. It is asserted that while the workman was working as a Pump Driver, he applied for leave from the 12th August 1996 to the 14th August 1996 and while availing the said leave, he suffered from illness and by sending applications to the management, he extended his leave till the 6th December 1996 and on the 7th December 1996 when he reported to duty, he was refused employment, On the other hand, it is the stand of the management that as the workman remained absent unauthorisedly and did not turn up to work in spite of steps taken by the management and further due to his absence, the management faced a lot of problem, it treated his absence as 'voluntary abandonment of job' as per Clause

15(b) of Chapter-VII of the service conditions of the employees and accordingly communicated the letter Dtd. 1-12-1996, Ext. E to the workman and in his place deployed another person to discharge the work of the workman.

Ext.1 is the copy of the engagement order of the workmen which shows that he was appointed as an Attendant on *ad hoc* basis and it was stipulated therein that after reviewing his performance, regular appointment order will be issued. Ext.2, the copy of the appointment order of the workman discloses that the Administrative Officer confirmed the appointment of the workman as an Attendant and extended all benefits to him like that of a regular employee and subsequently as per Ext.3, the workman was promoted to the post of Pump Driver and was kept under the administrative control of the Assistant Administrative Officer who has been examined in the case as W.W.No.2. Her statement discloses that the workman was doing his duty properly. On the face of the above, it is hard to believe that the performance of the workman was not up to mark. In the case of *Uptron India Ltd. Vrs. Shammi Bhan*, reported in 1998 AIR (S.C) 1681, their Lordships of the Hon'ble Apex Court have held as follows:-

“4. In view of the above, we are of the positive opinion that any clauses in the Certified Standing Orders providing for automatic termination of service of a permanent employee, not directly related to “Production” in a Factory or Industrial Establishment, would be bad if it does not purport to provide an opportunity of hearing to the employee whose services are treated to have come to an end automatically.”

Ext. D shows that the appointment of the workman as a Pump Driver on probation was till the 1st May 1997 and before that on the 20th November 1996 on the note of the Administrative Officer, his services were done away with. Even conceding for the sake of argument that the management construed the absence of the workman as “unauthorised”, but in absence of any enquiry into the matter and depriving the workman an opportunity of hearing entails the action of the management not sustainable in the eye of law. In connection with this, the judgement reported in 1993 (67) FLR (S.C) Page-111 (D. K. Yadav Vrs. JMA Industries Ltd.) may be referred to, wherein the Lordships of the Hon'ble Apex court have held thus:-

“The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned persons.”

In the instant case, the management has not produced any cogent evidence in support of its stand that owing to the unauthorised absence of the workman, he was either noticed to show-cause or any enquiry to the effect was made to ascertain the reason of absence of the workman. Even the management has not proved the factum of service of Ext.E, the order of termination on the workman. Hence, on this count alone, it cannot be said that the termination of service of the workman is either legal or justified.

9. Even viewing the case from another angle as per the argument advanced by the learned counsel for the workman that in spite of rendering continuous service for more than 240 days preceding the date of refusal of employment, i.e. the 7th December 1996, the workman was not given any notice/notice pay and retrenchment compensation as a token of compliance of the provisions of Section 25-F of the Industrial Disputes Act, the action of the management is also not tenable; the admitted fact being that no notice or notice pay and retrenchment compensation was paid to the workman while doing away with his job.

10 The other ground of attack of the management is that the workman having voluntarily relinquished his job and did not turn-up to resume his duty, it is false to assert that he was refused of employment. In connection with the above, a decision of our own Hon'ble High Court in the case between Divisional Manager, OFDC Ltd. Vrs. Kanista Bisoi and another reported in 2004 (supp.) OLR 694 may be seen, wherein their Lordships of the Hon'ble Court have held that "to constitute 'abandonment of service' there must be total or completely giving up duties and/or expression of the intention not to serve any further. This being a question of fact, onus lies on the management, which took such a plea to prove with cogent evidence that in fact the workman had abandoned his service." In the instant case, the management has failed to produce any cogent evidence justifying its plea that in spite of service of notice on the workman calling upon to join his duty he did not turn up and consequently the said act was construed to be an act of voluntary abandonment of job by the workman. The evidence of M. W. No. 1 to the effect that he had been to the house of the workman to deliver the notice, Ext.E which he refused to accept cannot be said to be a conclusive proof of serving notice on the workman as in his cross-examination, he has admitted that he cannot produced any proof to show that he had been to the house of the workman to deliver the notice sent by the management. Had this been a fact, M. W. No.1 should have intimated the same in writing to the management and the management ought to have produced the same in support of its plea. In absence of such material evidence, therefore, the plea of voluntary abandonment taken by the management is not tenable. Hence, as held by their Lordships in Punjab Land Development and Reclamation Corporation Ltd. & others Vrs. The Presiding Officer, Labour Court, Chandigarh & others reported in 1991(61) FLR (S.C.) Page-73, it is held that the termination of service of the workman amounts to 'retrenchment' within the meaning of Section 2(00) of the Industrial Disputes Act and the same is illegal for non-compliance of the provisions of Section 25-F of the Industrial Disputes Act.

*Issue No. 3*—Now coming to the question of relief, it is seen that M.W.No.3 in his examination in-chief has deposed that another employee has been engaged in place of the workman to work as Pump Driver and as such, there is no vacancy to absorb the workman in his former post. This evidence of the management is of no help to the management because of the reason that the workman was a regular employee of the management and during his employment, he was extended all the benefits including E.P.F. like that of a regular employee and for no fault of his he was thrown out of employment. Hence, the workman is held entitled to reinstatement in service forthwith and as regards back wages, it being the admitted fact that after termination of service the workman was employed for sometime under the Management, he is held entitled to a lumpsum amount of Rs.20,000 (Rupees twenty thousand only). The management is directed to implement the Award within a period of two months from the date of its publication in the Official Gazette.

The refernce is answered accordingly.

Dictated & corrected by me.

P.C.MISHRA  
Dt.21-4-2009  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P.C.MISHRA  
Dt.21-4-2009  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government