

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 914 CUTTACK, THURSDAY, JULY 2, 2009/ASADHA 11, 1931

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th June 2009

No. 5261—li/1(B)-167/1995-L E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd May 2009 in Industrial Dispute Case No. 123/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of the Managing Director, Indian Metal Industries, Nayabazar, Cuttack and Shri S. N. Biswal, General Secretary, Cuttack Commercial Workers' Union, Cuttack, At Goshala Road, Nayabazar, Cuttack-4 was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 123 OF 2008

Dated the 22nd May 2009

Present :

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

Between :

The Managing Partner, .. First Party —Management
Indian Metal Industries,
Nayabazar, Cuttack.

And

Shri S. N. Biswal, General Secretary, .. Second Party—Workman
Cuttack Commercial Workers'
Union, Cuttack, At Goshala Road,
Nayabazar, Cuttack-4.

Appearances :

Shri A. K. Mohanty, Advocate	..	For First party—Management
Smt. S. N. Biswal and Shri S. B. Mishra, Authorised Representative.	..	For Second party—Workman

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. 7846—li/1 (B)-167-1995-LE., dated the 8th July 1996 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 Service of Shri Mani Paramanik, Viceman by the employer of M/s. Indian Metal Industries, Nayabazar, Cuttack w.e.f. the 6th May 1995 is legal and/or justified ? If not, to what relief he is entitled ?”

2. The case of the workman as narrated in his claim statement in brief is that he was working as a Viceman under the management of M/s. Indian Metal Industries, Cuttack since February, 1983 and was discharging his duty as a skilled workman on a monthly wage of Rs. 510 which was less than the minimum wages. It is stated in the claim statement that the workman continued to work as such continuously till December, 1994. It is stated that on the 30th December 1994, the workman while doing casting work suddenly met with an accident for which he was treated in the S. C. B. Medical College and Hospital and remained under treatment till the 5th May 1995 and after being discharged from the Hospital when he approached the management for employment, he was harassed in many ways and was refused employment w.e.f. the 6th May 1995. It is averred that during the continuance of the workman under the management, he was never charge sheeted nor any enquiry was conducted for any such misconduct committed by the workman. According to the workman, his termination from service being contrary to the provisions of the Industrial Disputes Act, the same is not sustainable in the eye of law and consequently he is entitled to the reliefs claimed.

3. The management entered contest and filed its written statement stating therein *inter alia* that the workman joined under it as a Helper in January, 1987 and continued to work under it till the 27th December 1994 when he suffered from paralysis and did not come thereafter to resume his work. The specific case of the management is that the workman never approached the management for employment, rather he did not turn-up to duty after the 27th December 1994 due to his ill health. It is further asserted in the written statement of the management that the workman has not rendered continuous service from January, 1987 to December, 1994, inas much as, the workman had not at all worked in September, 1987, December, 1987, March, 1988 to August, 1988, November, 1988, November, 1989 to March, 1990 and as such he is not entitled to the protection of Section 25-F of the Industrial Disputes Act. The management in the premises has prayed to answer the reference in the negative as against the workman.

4. During pendency of the proceeding, the workman Mani Paramanik expired and on a petition being moved by his wife Pravati Paramanik, she was substituted in place of her deceased husband vide Order No. 21, dated the 27th November 2003 and accordingly, she is contesting the case on behalf of her deceased husband.

5. The issues which have been framed in the proceeding are —

ISSUES

(1) Whether the termination of service of Shri Mani Paramanik, Viceman by the employer of M/s. Indian Metal Industries, Nayabazar, Cuttack w.e.f. the 6th May 1995 is legal and/or justified ?

(2) If not, to what relief he is entitled ?

6. On behalf of the deceased workman, his widow Pravati Paramanik submitted evidence on affidavit and proved certain documents which have been marked Exts. 1 to 6. The management in its turn has examined one witness and got marked Exts. A to D.

7. As per the settled principle of law, in order to attract the provisions of Section 25-F of the Industrial Disputes Act 1947 (for short 'Act'), the claimant has to establish first that he had rendered 240 days of continuous service under the management prior to the date of his alleged termination of service. It is, therefore, to be seen whether in the instant reference the deceased workman was in continuous service under the management as stipulated in Section 25-B of the Act.

In this connection, W. W. No. 1 stated in her affidavit that her husband (workman) was working under the management continuously from 1983 till the 30th December 1994 when he met with an accident. She stated that for such accident, her husband remained under treatment till the 5th May 1995. Exts. 1, 2 and 3 filed by W. W. No. 1 reveal that the workman being ill was admitted in the S. C. B. Medical College and Hospital twice and ultimately was discharged from the Hospital on the 5th May 1995. She stated that after discharge from the Hospital, the management did not allow her husband to remain in the shed provided by it and harassed them in many ways. The management though not admitted regarding the employment of the workman with it from 1983, yet it had admitted about his continuance under it from 1987 and in cross-examination, M. W. No. 1 has admitted that he had worked till the 30th December 1994. It also stands admitted by M. W. No. 1 in his cross-examination that he himself had taken the workman to the Hospital. Since the management through its witness M. W. No. 1 has brought into evidence that since 1987 to 1990, the workman had not performed regular duty but the period of his working from 1991 till the date of alleged refusal of employment has not been disputed. On the face of the admitted fact that till the 30th December 1994, the workman was under the employment of the management coupled with the documentary evidence Exts. 1, 2 and 3, it cannot be said that prior to his refusal of employment, the workman had not rendered continuous service of 240 days under the management. Hence, the workman is held to have rendered 240 days of continuous service as per Section 25-B of the Act and thereby he was entitled to the protection of Section 25-F of the Act.

8. The management contended with reference to the evidence of M. W. No. 1 that since the workman did not turn-up to duty after the 27th December 1994 having suffered from paralysis, it is a clear case of voluntary abandonment of job by the workman and therefore, it was not obligatory for the management to comply with the requirements provided under the Act. It being the admitted fact that the workman was in employment of the management till the 30th December 1994 and further it was within the knowledge of the management that the workman being ill was unable to turn-up to duty, it is quite unbecoming on the part of the management either to plead or adduce evidence that on his own volition, the workman abandoned the job. From this, the position is manifestly clear that the workman had not voluntarily abandoned the job but being compelled by circumstance he was not able to perform his duty for the period from the 1st January 1995 till the 5th May 1995. In this connection, the decision reported in 2004 (Supp.) OLR-694 in the case between Divisional Manager, Orissa Forest Development Corporation Ltd. and Kanista Bisoi and another may be looked into wherein their Lordship of the Hon'ble High Court of Orissa have held thus —

“ x x To constitute ‘abandonment of service’ there must be total or complete giving up of 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.”

While the law laid down by the Hon'ble Court casts a duty upon the employer to enquire into the motive behind the workman who abstains himself from duty, the management in the instant dispute has not produced any cogent evidence that in spite of its effort, the workman did not turn-up to duty. Hence, it is not at all believable that the workman who had worked with the management for a substantial period had voluntarily left his job. The refusal of employment made to the workman being an act of termination of his service and further the same having admittedly effected without compliance of the provisions of Section 25-F of the Act, it cannot be held that the action of the management is either legal or justified.

9. Now coming to the question of relief, the workman being no more alive to avail the benefit of the Award, a lump sum compensation of Rs. 20,000 (Rupees twenty thousand only) is awarded in favour of Pravati Paramanik, the widow of the deceased workman. The management is directed to carry out the orders of this Tribunal within a period of two months from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
22-5-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
22-5-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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