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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 28th September 2010

No. 8280—II/1(BH)-10/2001-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th August 2010 in Industrial Dispute Case No. 251 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Shri Krishna Cinema, Karanjia and its workman Shri Subash Chandra Mohanty was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 251 OF 2008  
(previously registered as I. D. Case No. 26/2001  
in the file of the P.O., Labour Court, BBSR).

The 30th August 2010

#### *Present :*

Shri Raghubir Dash, o.s.j.s. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

#### *Between :*

The Management of Shri Krishna Cinema, .. First-Party—Management  
Karanjia, Dist. Mayurbhanj.

*And*

Its workman Shri Subash Chandra Mohanty, .. Second-Party—Workman  
At/P.O. Rasantala, Via Karanjia,  
Dist. Mayurbhanj.

#### *Appearances :*

For the First Party—Management .. Shri A. K. Sahu  
Authorised Representative

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The Second Party—Workman himself .. Shri S.C. Mohanty

## AWARD

This is a reference of an industrial dispute made by the Government of Orissa in Labour & Employment Department vide their Order No. 12194—li/1-BH-10/2001-LE., dated the 31st August 2001 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-LE., dated the 4th April 2008. The Schedule of reference runs as follows :—

“Whether the termination of service of Shri Subash Chandra Mohanty, Ex-Operator with effect from the 11th August 1997 by the management of M/s Krishna Cinema, Karanjia, Dist. Mayurbhanj is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. The plea advanced by the second party-workman in his claim statement, in short, is that he had been working in the first party-Cinema Hall continuously from the 28th December 1977 to the 13th August 1997 as an Operator but he was disengaged from such employment with effect from the 14th August 1997. To have a valid termination of service the management did not comply with any statutory provisions nor any disciplinary proceeding was started against him. It is claimed that when the workman demanded minimum wages of a skilled workman the management became vindictive and terminated his employment.

3. The management in its written statement has taken the plea that the second party was neither employed continuously from 1977 to 1997 nor was he employed for a period of 240 days in any of the years. Therefore, the alleged retrenchment does not come within the purview of the Industrial Disputes Act, 1947 (for short 'the Act'). On the alleged disengagement the management has taken the plea that the second party voluntarily abandoned his job by remaining long absent and not joining his duties despite of notice served by the management.

4. The following issues have been framed :—

## ISSUES

- (i) “Whether the termination of service of Shri Subash Chandra Mohanty, Ex-Operator with effect from the 14th August 1997 by the management of M/s Krishna Cinema, Karanjia, Dist. Mayurbhanj is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?”

5. The workman has examined himself as W.W. No. 1. One of the partners of the first party firm has been examined as M.W. No. 1. Both sides have exhibited some documents.

## FINDINGS

6. *Issue No. (i)* :— The workman while adducing evidence has reiterated his plea taken in the claim statement. The management though takes the plea that the workman was never engaged continuously in between 1977 and 1997 it has not taken any specific plea about the initial date of his

engagement nor has it produced any document to show the actual days of work rendered by the workman during the entire period of his engagement. The workman has taken a plea that the management had not paid his wages for the period from June 1997 to August 1997. The management while replying to that plea has taken the stand that during the said period the workman had remained absent for which the question of payment of wages does not arise. Since no register/record has been brought on record an adverse inference is to be drawn against the management and it is to be presumed that the workman had been continuously engaged from the 28th December 1977 till his disengagement/abandonment of service.

M.W. No. 1 has stated that the management had only one regular Operator and the workman used to be engaged as a daily wagger as and when the regular Operator was not available. Such a plea is not there in the written statement. The management firm is a Cinema Hall and the presumption that services of an Operator is continuously needed is available. In absence of pleadings that one regular Operator was available and the second party used to be engaged as and when the regular Operator was not available. The oral evidence of M.W. No. 1 is not to be accepted and it is to be presumed that the workman as a regular Operator used to work uninterruptedly.

7. Now the plea of voluntary abandonment may be examined. The management has pleaded that from June 1997 to August 1997 the second party absented from duties but it is not shown whether any disciplinary action was taken against the workman. The management has contended that despite of notice served on the workman the latter did not report for duties. No such notice is shown to have been served on the workman. Ext. A is a copy of a notice which is said to have been served on the workman. This notice purports to have been signed by the Managing Director of the first party on the 25th July 1998. In the said notice it is mentioned that the workman had been remaining absent with effect from the 14th August 1997 without leave or prior permission of the management. It is not explained as to how such a notice was sent about one year after the alleged unauthorised absence. In this notice the workman was not asked to resume duties. Rather he was asked to show-cause why his services should not be terminated. It appears, when the management felt that the workman would raise a dispute over the disengagement, such a notice was served at a belated stage. The contents of the notice and the plea taken by the management in its written statement are inconsistent with each other. The management's plea is that the workman remained absent from June 1997 to August 1997. No disciplinary proceeding was initiated. His wages for the said period was not paid. One year after the alleged long absence the management sent a notice to the workman to show-cause as to why his services should not be terminated. From all these it transpires that the services of the workman was neither terminated nor was he dismissed from services till the date of alleged retrenchment which is under reference. Under such circumstances, the plea of voluntary abandonment on account of long absence is found to be unacceptable. In absence of any disciplinary proceeding for the alleged unauthorised absence the plea of abandonment of service does not appear to be *bona fide*.

8. In view of the discussions *supra* this Tribunal is of the considered view that the workman did not abandon his job. Rather, he was refused employment with effect from the 14th August 1997. It is not claimed that the statutory provisions to be followed to effect a valid retrenchment have been complied with. Consequently, the termination of service with effect from the 14th August 1997 is found to be illegal as well as unjustified.

9. *Issue No. (ii)* :—The workman had worked under the first party continuously for a period of twenty years. He was a Cinema Machine Operator. The skill he had acquired could not have been utilised by him in any other job, he might have undertaken after termination of his service. He has attained the age of superannuation in the meanwhile. While adducing evidence he has stated that since he has attained the age of superannuation he be paid compensation of Rs. 5,00,000. In view of his attaining the age of superannuation, the relief of reinstatement can not be granted. On the 7th April 2009 he has stated his age to be 58. Thus, from August 1997 till 2009 he was out of employment. In his claim statement he has mentioned that the management had paid his last wages @ Rs. 1055 per month but it is pleaded it was not according to the minimum wages fixed by the State Government.

In *Jagbir Singh vrs. Haryana State Agriculture Marketing Board*, reported in AIR 2009 (S.C.) 3004, the workman had rendered service as a daily wager between the 1st September 1995 and the 18th July 1996 with intermittent interruptions and he was asked by the Hon'ble Supreme Court to be paid a compensation of Rs. 50,000.

10. Taking into consideration the nature and period of the workman's appointment and the availability of the job, this Tribunal is of the considered view that had the workman not reached the age of superannuation, he would have been asked to be reinstated in service with full back wages. Taking him to be a 'skilled' workman and having referred to different notifications of the State Government prescribing the minimum wages for skilled workman this Tribunal making a rough calculation comes to a conclusion that the workman would have received little more than Rs. 2,00,000 during the period commencing from the date of his retrenchment till he reached the age of superannuation. Therefore, this Tribunal decides that the workman be paid a sum of Rs. 2, 00, 000 (Rupees two lakh only) towards back wages/compensation.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
30-8-2010  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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30-8-2010  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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By order of the Governor

P. K. PANDA  
Under-Secretary to Government