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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 16th January 2009

No. 340—li/1(J)-3/1999-(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th October 2009 in Industrial Dispute Case No. 63 of 1999 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the Industrial Dispute between the Management of District Rural Development Agency, Nuapada, At/P. O./Dist. Nuapada and their Workman Shri Durga Prasad Sahu, C/o. Jurinath Sahu, Nuapada was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER  
LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 63 OF 1999

Dated the 27th October 2009

*Present :*

Shri P. K. Jena, o.s.J.s. (Jr. Branch)  
Presiding Officer, Labour Court  
Jeypore, Dist. Koraput.

*Between :*

The Management of .. First Party—Management  
District Rual Development Agency  
Nuapada.  
At/P.O. Nuapada  
Dist. Nuapada.

*Versus*

Its Workman .. Second Party—Workman  
Shri Durga Prasad Sahu  
C/o. Jurinath Sahu  
Revenue Colony, Nuapada  
At/P.O. Nuapada  
Dist. Nuapada.

Under Sections 10 & 12 of the Industrial Disputes Act, 1947.

*Appearances :*

For the First Party—Management	.. Self
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For the Second Party—Workman	.. Self
Date of Argument	.. 20-10-2009
Date of Award	.. 27-10-2009

## AWARD

The Government of Orissa in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 6625 (5)-LE., dated the 18th May 1999 for adjudication of the following disputes :—

## SCHEDULE

“Whether the termination of services of Shri Durga Prasad Sahu by the management, District Rural Development Agency, Nuapada with effect from the 1st April 1998 is legal and/or justified ? If not, what relief Shri Sahu is entitled to ?”

2. The case of the second party-workman is that he was appointed as a Typist under the establishment of the first party-management on daily wage basis. Initially he was engaged for a period of one month from the 1st August 1996 to the 31st August 1996 and subsequently the term of appointment was extended from time to time and he was thus allowed to work continuously till the 5th April 1998. He was getting Rs. 35 per day towards his wages and later on came to know that a skilled labour Typist is entitled to get Rs. 42 per day as per Government Notification No. 10127, dated the 14th August 1996. When he demanded to get his wages Rs. 42 per day instead of Rs. 35, the first party-management terminated his service with effect from the 5th April 1998 verbally without observing the mandatory provisions laid down under the Industrial Dispute Act, although the last continuation of his service was up to 31st August 1998. After termination of his service, he complained the matter before the Conciliation Officer-*cum*-Assistant Labour Officer, Khariar Road, but due to failure of the conciliation, the matter was referred to Government, Labour & Employment Department and subsequently the same was referred to this Court for adjudication.

3. On the other hand, the first party-management filed his W. S. and stated that the workman was engaged intermittently on temporary basis from the 1st August 1996 to the 31st August 1996 as a Typist on daily wage basis at the rate of Rs. 35 per day with the condition that the engagement is purely temporary and terminable at any point of time without notice or assigning any reason thereof. Time to time his engagement was extended by the management to manage the workload for preparation of the fair copies. After the 20th March 1998; his service were no more required and in view of Finance Department Order No. 11172 (40)-F., dated the 20th March 1998 imposing ban on appointment of persons on daily wages, he was not given any further engagement order after the 31st March 1998. It is also pleaded by the management that it is not an Industry as defined under the Act.

4. Previously in this court the award was disposed of on contest in favour of the second party-workman on the 22nd February 2000. But the workman being aggrieved such award preferred a writ before the Hon'ble High Court with a plea of non-available of certain documents with him, for which the Hon'ble High Court in W. P (c) No. 367 of 2008, dated the 11th February 2009 set aside the award passed by Labour Court, Jeypore, dated the 22nd February 2000 and remitted back the matter to the Labour Court, Jeypore for fresh disposal in accordance with law by giving opportunity to both parties to adduce further evidence in support of their respective case and also directed Labour Court to dispose of the same as expeditious as possible. In accordance to the Orders of the Hon'ble High Court, dated the 11th February 2009, this Court issued notice to both parties to appear and to adduce further evidence, if any, in support of their respective case. After getting notice from this Court, both parties appeared and produced certain documents.

5. In this aspect, the workman Shri Durga Parsad Sahu in support of his case examined himself as sole witness and filed certain documents in his favour under Exts.1 to Exts.16. On the other hand, the management in support of his case has examined two (2) witnesses out of which, on behalf the management, P.D.D.R.D.A. examined himself as M. W. 2 and one Junior Clerk, D.R.D.A. Nuapada as M. W. 1, who was examined previously on behalf of the management. The management in support of his case has filed several documents under Exts. A to Ext. L/2.

6. As per the schedule referred by the Government, it is to be considered whether the termination of service of Shri Durga Prasad Sahu by the management, District Rural Development Agency, Nuapada with effect from the 1st April 1998 is legal and/or justified ? If not, what relief Shri Sahu is entitled ?

7. Previously in this case, award was passed on contest in favour of the workman with a direction to the management to pay compensation of Rs. 5,000 (Rupees five thousand) to the workman and to give first preference to the workman to be engaged on temporary basis whenever the management engages a Typist on temporary basis. But the workman being aggrieved such award preferred writ in Hon'ble High Court and submitted that opportunity should be given to him to produce certain relevant document in support of his claim as the said document as per Annexure-6 was not available at the time of hearing of the matter before the Labour Court, with him. Considering the contention of the workman, the Hon'ble Court had given opportunity to both parties to adduce further evidence in support of their respective cases.

8. Admittedly in this case, the workman was engaged to work as Typist on daily wage basis with effect from the 1st August 1996 under the management and his work was extended time to time with certain breaks by the management for certain periods. The last appointment of the workman was for the period from the 1st March 1998 to the 31st August 1998 as per the claim of the workman, whereas the claim of the management is that the last appointment was from the 1st March 1998 to the 31st March 1998 and the workman was terminated orally with effect from the 5th April 1998. As per the evidence of the workman, when he demanded the enhanced wages of Rs. 42 per day as against Rs. 35, the management being aggrieved terminated him from service without any written order. The workman proves Ext. 5/b to be his

last extension order of his appointment. According to him, that extension order was continued till the 31st August 1998. It is also, the evidence of the workman that though his extension periods of engagement was in force till the 31st August 1998, but due to demand of enhanced wages, management terminated him from his service on the 5th April 1998. As per the workman, the management removed him from his service with a plea that they have received an order from the Government not to appoint any daily wagger further more. It is also stated by the workman that the management without removing the other 9(nine) employees removed him from service. He proves Ext. 6 to be the Order No. 2964, dated the 10th December 2008 regarding the names of the other 9(nine) daily workers who were working under the management and out of them, some daily wagger appointed prior to him as well as, after his appointment. As per the agenda made by the Governing Body, dated the 24th May 1999, it was decided to consider his case for further reappointment due to abolition of Government ban order. He proves Ext. 7 to be the xerox copy of the said agenda. But the management intentionally rejected his representation with a plea of no such vacancy post of Typist available with them. He files the copy of resolution, dated the 26th May 1999 under Ext. 8. As per his evidence although two(2) posts of Junior Clerk-*cum*-Typist were lying vacant in the office, but the management refused to accept his representation or further appointment to him. By virtue of R.T. I. Act, he sought for information regarding staff position of D.R.D.A. as on the 15th November 2008 under Ext. 9 and filed the said copy of the document under Ext. 9. Again it is stated by him that although 40 posts of Multipurpose Assistant were advertised on the 8th September 2008 in daily newspaper, but they did not appoint him in the said post, although previously Court passed an award, dated the 22nd February 2000 to give preference to him. He proves Ext. 10 to be the said xerox copy of the advertisement. He has also filed Ext. 12 which is the copy of the letter of Finance Department regarding fill up/creation of posts in Government office. But by violating the Court's order in Industrial Dispute Case No. 63/1999, the Governing Body appointed other daily wages workers in their office without giving him any preference of appointment. He proves Ext. 13 to be the said xerox copy of the resolution, dated the 22nd June 2001. Although his post was approved by the Governing Body on the 4th November 1996, but the management terminated his service. He proves Ext. 14 to be the xerox copy of the said resolution regarding approval of the post in his favour. During suggestion by the management, he denied to have manipulated the order under Ext. 5/b, i. e period of engagement as the 31st August 1998 instead of the 31st March 1998. It is also his evidence that after his removal from his service, the management appointed one Sudarsan Moharana in the post of Typist by ignoring him. He files Ext. 15 in his favour which shows that P.D.D.R.D.A. in his Letter No. 570, dated the 28th February 2001 has addressed the same to the Joint Secretary to Government regarding representation of the workman Shri Sahu (Ex-Typist). Ext. 15 further shows that the vacancy post Junior Clerk has been filled up by one Sudarsan Moharana, a Class-IV employee on promotion Ext. 15 does not disclose that, Shri Sudarsan Moharana, a Class-IV employee got promoted to the post of Typist. So the plea taken by the workman regarding promotion of Sudarsan Moharana, a Class-IV employee to the post of Typist appears to be incorrect.

9. On the other hand, P.D.D.R.D.A. who examined on behalf of the management has clearly stated that the workman was engaged in his office since the 1st August 1996 till the 31st March 1998 after several breaks. He during his examination has clearly narrated the

different periods of the engagement and different breaks in every month by the workman working in his office. From the above calculation from the 1st August 1996 till the 31st March 1998, it is found that the workman has worked in his office more than one year which attracts the provision of Section 25-B of the Industrial Dispute Act. As per the provision of 25-B of the Industrial Dispute Act, a workman should not work for less than 240 days in a year. Admittedly, in this case after the calculation it is found that the workman has worked under the management near about 592 days, i.e. more than one year and the same be treated as his continuous service. As he has fulfilled 25-B of the Industrial Dispute Act, so 25-F of the Industrial Dispute Act will be applicable to the workman at the time of his retrenchment. Admittedly, in this case the workman's engagement was terminated without observing provisions laid down U/s. 25-F of the Industrial Dispute Act. On the basis of the management's admission in the W. S. and the evidence adduced by the both parties, it can be safely stated that the workman was in continuous service for not less than one year by the time, his engagement was terminated. The management during his cross-examination has admitted that without assigning any reason, the workman had been terminated and no retrenchment compensation has paid to the workman at the time of termination, So from the evidence of the workman and the evidence of the management, it clearly reveals that at the time of termination to the workman, the management has not followed the mandatory provision of Section 25-F of the Industrial Dispute Act, though he has prepared the bill later on regarding differential wages and retrenchment compensation of the workman as per direction of the Labour Officer on the representation of the workman.

10. Another dispute arises whether the last engagement of the workman was from the 1st March 1998 to the 31st March 1998 or till the 31st August 1998. In this aspect, it is stated by the workman that he was engaged from the 1st March 1998 to the 31st August 1998 by the management for the last time. Whereas M. W. 2 although admits the last engagement from the 1st March 1998 to the 31st August 1998 under Ext. E/5, but the (Management) has clarified that the workman has manipulated that month as the 31st August 1998 instead of the 31st March 1998. According to management after the 31st March 1998, no engagement has been given to the workman to work in their office as Typist. He has categorically stated that in Ext. E/5, the engagement of the workman has wrongly shown as the 31st August 1998 instead of the 31st March 1998. In his evidence, he has clearly stated that as the workman was working as a Typist in their office so he has manipulated the date as the 31st August 1998 instead of the 31st March 1998. In support of the correct position of that month, i. e. the 31st March 1998 he has produced the order of the office file in which it has been mentioned from the 1st March 1998 to the 31st March 1998 under Ext. F. Ext. F is the xerox copy of the office file which clearly shows that, workman D. P. Sahu, an outsider had been engaged for further period of one month i. e., from the 1st March 1998 to the 31st March 1998. It has been signed by the authority along with other employees of his office in proper manner. Further Ext. G filed the management clearly shows that the workman addressed a letter to A. L.O., Nuapada in which he admits, the termination of the service with effect from the 5th April 1998 verbally. Further Ext. K filed by the management clearly shows that the differential wages and the compensation bill has been prepared by the management after calculation, which goes to show, that Rs. 4,351 has been passed for payment to the workman. Further Ext. K shows that extension

of work has been given to the workman for each month with certain breaks and without any breaks for certain periods. The copies of the documents filed by the management clearly show that the workman was given engagement not for more than a month at a time. When there was no necessity of giving engagement for a continuous period of six months to the workman whose service was temporary in nature and when there was clear order in the file for engagement of the workman for another period of one month only, the workman as the then Typist might have intentionally manipulated the last date of the engagement and typed the 31st August 1998 instead of the 31st March 1998 as it was in his favour. It is also astonishing to say that as to how such type of manipulation i. e., wrong typing was held in official record without any detection by the Dealing Assistant, Head Clerk and the Officer concerned.

11. The manipulation of the date (month) in the official record is highly irregular and reprehensible and the management should be vigilant over that matter at the time of scrutiny and signing.

12. The next question arises whether the management has appointed any other daily wagger in their office after termination of the service of the present workman Shri Sahu. In this aspect, the workman has stated that after his removal from service and in spite of the ban order of the Government, the management has appointed other daily wagger by violating the Government ban order. In this aspect, the workman in support of his case has filed Ext. 6 after obtaining the copy of the information of the staff working in the D.R.D.A. as daily wagers on temporary basis from January, 1998 to till date. It is the evidence of the workman that the management removed him from service with a plea that office has received a ban order from the Government not to appoint any daily wagers further more. But the management without removal of the rest 9(nine) employees has removed him from his service. Ext. 6 filed by him, clearly shows that vide Order No. 2964, dated the 10th December 2008, 9(nine) daily workers are working under the management and out of them some of the daily wagger appointed prior to the workman as well as, after his appointment. From Ext. 6 it clearly reveals that the management without removing other 9(nine) employees has only removed the present workman Shri Sahu which is best known to the management. The workman has obtained the copy of the information by virtue of R.T.I. Act from the management. But the said Ext. 6 does not disclose, if the rest 9(nine) daily wagers appointed against the post of Typist. Ext. 7 filed by the workman shows that it is a xerox copy of the agenda in which it was decided to consider the case of the workman for his further reappointment due to abolition of Government ban order. But the management refused to accept the representation of the workman later on. Further Ext. 9 filed by the workman shows that it is the information to know the staff position of D.R.D.A. as on the 15th November 2008. Further as per Ext. 9 it knows that two (2) posts of Junior Clerk-*cum*-Typist are lying vacant under D.R.D.A. Although the workman challenges that a Class-IV employees on promotion was appointed to the post of Typist but as per Ext. 15, it is found that P.D., D.R.D.A. in his letter No. 570, dated the 28th February 2001 wrote a letter to the Joint Secretary to the Government in which it is reflected that one vacant post of Junior Clerk was filled up by promoting one IV Grade employee. From the spirit of that letter under Ext. 15, it is crystal clear that Sudarsan Moharana, a Class-IV employee has never been appointed as against the post of Typist on promotion but he got the post of Junior Clerk on promotion. Further Ext. 15 shows that the workman Shri Sahu did not turn up to receive his

compensation amount of Rs. 5,000 and differential wages amounting to Rs. 4,351 which are kept ready for payment to Shri Sahu. It has been elicited from the mouth of the M. W. 2 that at present two (2) posts of Junior Clerk-*cum*-Typists are lying vacant in their office as against Government sanction strength of post in 4 in numbers. The genuineness of Ext. 9 filed by the workman has not been challenged in any manner by the management. Rather management in course of his cross-examination admitted that the said Ext. 9 has been issued from their office to the workman which shows that two posts of Junior Clerks-*cum*-Typists are lying vacant in their office. It has also been admitted by M. W. 2 that preference will be given to the workman to appoint him in future vacancy as per Ext. 16. As per evidence of the M. W. 2 as per the direction of the A. L. O., Khariar Road to give differential wages with enhanced rate to the workman, the bill was prepared amounting to Rs. 4,351 for the period from the 15th August 1996 to the 31st March 1998 as differential wages in enhanced rate. He proves Ext. J to be the letter of, A. L. O., Khariar Road, dated the 20th May 1998 and Ext. K to be the bill of differential wages of the workman. According to him, they intimated the workman to receive his differential wages but he did not come to receive the same. In this aspect, several correspondence has been made to the workman vide Ext. L, L/1 and L/2. M. W. 1 also corroborated the evidence of the M. W. 2 regarding engagement of the workman from the 1st August 1996 to the 31st March 1998 as a Typist on daily wage basis. According to him due to ban order of the Government, workman was not given further extension.

13. It is admitted but not disputed that the workman has worked under the management for more than 240 days in a year. So also it is admitted by the management that they have not given him retrenchment compensation at the time of termination. As per evidence of the management coupled with documents, it is crystal clear that at the time of termination, management has not complied the mandatory provision laid down U/s. 25-F of the Industrial Dispute Act. Ext. A may justify the termination of service but it does not authorise an employer to terminate someone's service without following the procedure laid down under the Industrial Dispute Act. For non-compliance of the provision of Section 25-F of the Industrial Dispute Act, the impugned retrenchment is illegal. Further vide Ext. 6, it is clearly stated that the management by violating the Government ban order have kept other 9(nine) daily wagers in continuation of their daily work. They have retrenched the present workman Shri Sahu with a plea of ban order of the Government which is highly irregular on the part of the management. Ext. 6 clearly shows that some other daily wagers have been appointed prior and after to this present workman. Even though Shri Sahu is a daily wager working for the post of Typist naturally in view of filling of Ext. 6 and available of two (2) other vacant posts of Junior Clerk-*cum*-Typist vide Ext. 9, no doubt he has been prejudiced, though the works of Typist are necessary in the office of the management. As per the previous Award, had the management given preference to the present workman on temporary and daily wages basis, then the present dispute would not have arisen at this stage.

14. Keeping in view of the above observation as well as considering the oral testimony of both the parties coupled with documentary evidence, in my considered opinion and in the change of circumstances some modification has been made. The management is directed to reinstate the workman in his former post on daily wage basis and to pay the differential

wages for the periods which has already been worked by the workman amounting to Rs. 4,351 which is legitimate claim of the workman.

ORDER

The reference is answered on contest as per the above observation in favour of the workman. The management is directed to reinstate the workman in his former post on daily wage basis with immediate effect and pay the differential wages of Rs. 4,351 within three months from the date of notification of this Award, failing which the workman is at liberty to take shelter in appropriate authority to execute the same.

Dictated and corrected by me.

P. K. JENA  
27-10-2009  
Presiding Officer  
Labour Court, Jeypore.

P. K. JENA  
27-10-2009  
Presiding Officer  
Labour Court, Jeypore.

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