

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1708 CUTTACK, MONDAY, OCTOBER 18, 2010/ASWINA 26, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th September 2010

No. 8385—li/1(BH)-7/2005-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th March 2010 in I. D. Case No. 62 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of the Executive Engineer, Jaleswar Electrical Division, Jaleswar and their workman Shri Debendra Nath Jena was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 62 OF 2005

Dated the 19th March 2010

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of Executive Engineer, .. First Party—Management
Jaleswar Electrical Division, Jaleswar.

And

Their Workman .. Second Party—Workman
Shri Debendra Nath Jena.

Appearances :

Shri S. K. Behera, Executive Engineer. .. For the First Party—Management

Shri D. N. Jena .. For the Second Party—Workman,
himself.

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court vide Order No. 9286—li/1(BH)-7/2005-LE., dated the 29th October 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Debendra Nath Jena, N. M. R. workman by way of refusal of employment with effect from the 15th March 1991 by the Executive Engineer, Jaleswar Electrical Division, At/P. O. Jaleswar, Dist. Balasore (formerly the Executive Engineer, Balasore Electrical Division, Balasore) is legal and/or justified ? If not, what benefit Shri Jena is entitled to get ?”

3. The case of the workman in brief is that he was working as a N. M. R. in Dehurda Electrical Section under the Subdivisional Officer, Electrical, Bhograi which comes under the jurisdiction of the Executive Engineer, Jaleswar Electrical Division, Jaleswar (NESCO). Formerly it was under the Executive Engineer, Balasore Electrical Division, Balasore. He had worked for the period from March, 1987 to March, 1991 but the management all of a sudden refused his employment with effect from the 15th March 1991 and struck off his name from the muster roll without assigning any reason and without complying the Section 25-F of the Industrial Disputes Act. Being aggrieved by it he took shelter of the labour machinery, Balasore and as the conciliation failed the matter was referred to the Government and this reference has been received from the Government for adjudication. The workman has obtained an experience certificate from the Subdivisional Officer, Electrical, Bhograi and Lineman ‘B’ of Dehurda Electrical Section on the 15th October 1991. Except these documents, he has no other document like appointment order or termination order as those were not issued to him. The workman has prayed for reinstatement of his service with back wages.

4. The management appeared and filed written statement denying the plea of the workman. According to the management the workman had never worked as N. M. R. under Dehurda Electrical Section. The N. M. R. register maintained in the office does not disclose the name of the present workman. One seniority list was published in respect of the N. M. Rs. working wherein the name of the present workman was also not found place. The workman has never submitted any complaint in support of his engagement as N. M. R. under the management. The N. M. Rs. who had completed 400 days as on the 1st October 1986 were regularised in the post of Helper. So when the workman was never working under the management at any point of time, he is not entitled to get any relief as prayed for. So the management has prayed for dismissal of the present case with cost.

5. In view of the pleadings of the parties, the following issues have been settled :—

ISSUES

- (i) “Whether the termination of services of Shri Debendra Nath Jena, N. M. R. workman by way of refusal of employment with effect from the 15th March 1991 by the Executive Engineer, Jaleswar Electrical Division, At/P. O. Jaleswar, Dist. Balasore (formerly the Executive Engineer, Balasore Electrical Division, Balasore) is legal and/or justified ?
- (ii) If not, what benefit Shri Jena is entitled to get ?”

6. In order to substantiate his plea, the workman has examined two witnesses altogether. Out of the witnesses examined W. W. 1 is the workman himself and the W. W. 2 is the then Subdivisional Officer, Electrical, Bhograi and proved the document marked as Ext. 1 only the experience certificate. Similarly the management has examined himself as M. W. 1 and proved documents marked as Exts. A to C.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion being co-related.

The A. W. 1 deposes that he was working as N. M. R. in Balasore Electrical Division from 1982 to 1991 but his employment was refused with effect from the 15th March 1991 by the management without any reason for which he is entitled to be reinstated in service with full back wages. The Subdivisional Officer, Electrical, Bhograi had given an experience certificate for his work vide Ext. 1. W. W. 2 deposes that he was working as Subdivisional Officer, Electrical for the period from the 1st November 1983 to the 17th December 1991. He had appointed the workman as N. M. R. who was working under the Junior Engineer, Electrical Section, Dehurda, Chandaneswar, Kamarda. He had issued an experience certificate in favour of the workman vide Ext. 1. M. W. 1 deposes in corroborating his written statement. According to him, the workman was never working as N. M. R. under the management. He has proved three documents on his behalf. Ext. A is the xerox copy of N. M. R. register and it is for the period from the 1st October 1984 to the 31st May 1987. This register also includes the attendance register for the N. M. Rs. working at that time. Nowhere the name of the present workman found place in such documents. Ext. B is the xerox copy of seniority list prepared vide Letter No. 2882, dated the 30th April 1991 inviting complaints from the N. M. Rs. if any. Ext. C is the xerox copy of the Office Order vide No. 6284, dated the 19th September 1995 regarding appointment of N. M. Rs. who had completed 400 days as on the 1st September 1981 and the 1st October 1986 in continuous service as Helper as unskilled category. These two documents also do not disclose the name of the present workman. So basing on his evidence it has been argued by the workman that as his experience certificate discloses that he was working under the management for the period from March, 1987 to March, 1991 and

the management without any notice has terminated him from service. So he is entitled to be reinstated in service with full back wages. On the other hand it has been argued by the management that the workman is a stranger to the establishment of the management. The document filed by the management does not disclose the name of the present workman working as N. M. R. under the management. It has been argued by the workman that the management has produced Ext. A which for the period from the 1st October 1984 to the 31st May 1987 but has not produced any document for the period from the 1st June 1987 to the 15th March 1991. The management has also silent on this regard. The workman totally relies upon the experience certificate issued in his favour by W. W. 2 vide Ext. 1. Perused both the xerox and original of Ext. 1. In Ext. A there are attendance register of N. M. Rs. for the period from March, 1987 to May, 1987 along with the attendance register for other period. In the cross-examination of W. W. 2 he has admitted that though this register was being maintained by him for such period from March, 1987 to May, 1987 it does not disclose the name of the present workman. Such attendance register has been prepared by W. W. 2. When he deposes that the workman was working under the management from March, 1987 to March, 1991 the document filed in the Court prepared by W. W. 2 for the period from March, 1987 to May, 1987 does not disclose the name of the workman working as N. M. R. W. W. 2 has not clarified about such ambiguity. So it has been argued by the management that the experience certificate Ext. 1 is not a genuine one and has prepared only for the purpose of this case. Furthermore it has been argued by the management that W. W. 2 has no authority to issue such certificate in his official capacity as he is not the competent person to issue such certificate. The workman has taken the plea in his statement of claim that the Lineman 'B' of Dehurda Electrical Section has also issued the working certificate but the workman has neither proved such certificate nor examined such Lineman 'B'. There is also no explanation from the side of the workman for non-examination of such Lineman 'B' in his favour.

8. The affidavit evidence of M. W. 1 deposes that Jaleswar Electrical Division was newly created in May, 2000. Prior to that Bhograi Electrical Subdivision was under the control of the Balasore Electrical Division, Balasore. In order to get the relief, the workman has to work 240 days continuously preceding the date of refusal of employment, i. e. the 15th March 1991 as per the provisions of the Industrial Disputes Act. To come to such conclusion no material is available in the case record except the experience certificate issued to the workman by W. W. 2. The management has not produced the relevant register for rest of the periods for the reason best known to them. The workman has also not taken any step to call for such documents from the possession of the management in order to prove the case. So in this background when the genuineness of Ext. 1 is doubtful basing on the materials available as discussed above and specially when no other materials is available in the case record so as to believe that the workman was working under the management, it cannot be said that the workman was working for the alleged period. It is settled principle that it is the duty bound of

the workman to prove that he was working under the management for a period of 240 days preceding twelve calendar months from the date of retrenchment or refusal of employment where the management denied about the claim of the workman. So now on careful consideration of all materials as discussed above, I came to the finding that the workman was never working under the management for which there is no question of termination of service with effect from the 15th March 1991 and he is not entitled to get any relief as prayed for.

Hence, the reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
19-3-2010
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
19-3-2010
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
P. K. PANDA
Under-Secretary to Government