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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 30th September 2010

No. 8404—li/1(BH)-75/1997-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th July 2010 in I. D. Case No. 47 of 1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of Divisional Forest Officer (Territorial), Baripada Division and its workmen Shri Harekrushna Tung & Shri Pratap Chandra Dhal was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

#### IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 47 OF 1999

The 6th July 2010

*Present :*

Shri S. K. Dash, o. s. J. s. (Jr. Branch)  
Presiding Officer  
Labour Court, Bhubaneswar.

*Between :*

The management of Divisional Forest Officer (Territorial), Baripada. . . First Party—Management

*And*

Its workmen . . . Second Party—Workmen  
Shri Harekrushna Tung and  
Shri Pratap Chandra Dhal

*Appearances :*

For the First Party—Management . . . Shri R. K. Swain

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For the Second Party—Workmen themselves . . . Shri H. K. Tung  
Shri P. C. Dhal

## 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. 6502—19/1(BH)-75/1997-LE., dated the 14th May 1999 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the refusal of employment of Shri Harekrushna Tung and Shri Pratap Chandra Dhal, Watcher with effect from the 1st May 1996 by the Divisional Forest Officer (Territorial), Baripada is legal and/or justified ? If not, what relief the workmen are entitled to ?”

3. The case of both the workmen in brief basing on the failure report of the Conciliation Officer-*cum*-Assistant Labour Officer, Baripada is that both were engaged as Watcher by the management in the plantation field at Bari Village under Deuli Forest Range in the year 1993-1994 on daily wage basis at the rate of Rs. 25 per day and continued up to April, 1996. They were refused employment by the management from May, 1996 without giving any reason of notice or retrenchment benefits as required under law for which they raised an industrial dispute before the labour authority and on being failure of the conciliation proceeding this I. D. Case has been initiated. In the initial stage after receipt of the reference from the Government, as both the workmen and management did not turn up, no Award possible was passed and subsequently after appearance of the workmen and on their prayer it was set aside. Thereafter also the workmen though attended the Court did not file any statement of claim and took part in the hearing directly.

4. The management appeared but not filed any written statement but took part in the hearing. His case according to such failure report is that the Forest Department particularly the territorial wing at times undertakes plantation work for a specific period in a particular place and after completion of the said plantation the scope of continuance of the workers engaged for the purpose becomes very bleak and the claim for reinstatement is not adequate and genuine.

5. In view of the above plea of the parties, the following issues are to be decided :—

### ISSUES

- (i) “Whether the refusal of employment of Shri Harekrushna Tung and Shri Pratap Chandra Dhal, Watcher with effect from the 1st May 1996 by the Divisional Forest Officer (Territorial), Baripada is legal and/or justified ?
- (ii) If not, what relief the workmen are entitled to ?”

6. In order to substantiate their plea, the workman Shri Harekrushna Tung has been examined as W. W. 1 on behalf of the workman and proved the documents marked as Ext. 1. Similarly the management has examined the Assistant Conservator of Forest, Baripada as M. W. 1 but the management has not proved any document on his behalf.

### FINDINGS

7. *Issue Nos. (i) and (ii)* :—Both the issues are taken up together for discussion for convenience.

According to W. W. 1. he was working as Watcher at Suliapada under the management to watch the plantation of the Forest Department in the year 1993 on a monthly salary of Rs. 650. But his service was terminated with effect from the 1st May 1996 on verbal refusal of employment. During such period of his working, he had worked for more than 240 days in the years 1993-1994, 1994-1995 and 1995-1996. He had worked for more than 240 days in the last 12 calendar months preceding to the date of his termination from service. While refusing employment to them, the management has not followed the procedure under Section 25-F of the Industrial Disputes Act. He has proved the xerox copy of the document regarding receipt of his salary from the management till termination of his service. It was issued by the Forest Range Officer, Deuli Range and it discloses that in every month he was working for 26 days and it is taken in to calculation he was working for more than 240 days in 12 calendar months preceding to the date of termination. This witness has been cross-examined by the management but nothing substantial has been brought out from his mouth to disbelieve his statement. On the other hand, M. W. 1 has admitted that the workmen were engaged under the management as Watcher on daily wage basis but they were relinquished their job without any notice to the management. But nothing has been proved by the management to show that the management has taken any step against them to show that provisions of Section 25-F of the Industrial Disputes Act was not applicable to them. According to the settled principle of law when the workmen deposed that he was working for more than 240 days, the burden of proof shifted to the management as it would have difficult on the part of the workmen having access of all official documents like muster roll in connection with the service. So the burden of proof shifted to the management to disprove the same. But in the instant case, the management is silent and has not taken any step in this regard. So now on careful consideration of all the materials available in the case record coupled with the document marked as Ext. 1 it clearly shows that both the workmen have worked for more than 240 days in a 12 calendar months preceding to the date of their refusal of employment and they were retrenched from service without following the mandatory provisions of Section 25-F of the Industrial Disputes Act for which both the workmen are entitled to be reinstated in service.

8. As regards the back wages, the workman has not specifically prayed for it. According to the settled principle of law, when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. Similarly now the Hon'ble Supreme Court in catena of decisions held that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. However in the instant case taking into consideration of all the materials available in the case record, I am of the opinion that it is not a fit case to grant any back wages to the workman. Therefore, I come to the finding that both the workmen are not entitled to get any arrear back wages. Both the issues are answered accordingly.

9. Hence Ordered :

That the refusal of employment of Shri Harekrushna Tung and Shri Pratap Ch. Dhal, Watcher with effect from the 1st May 1996 by the Divisional Forest Officer (Territorial), Baripada is illegal and unjustified. Both the workmen are only entitled to be reinstated in their service but without any back wages. The management is directed to implement this Award forthwith.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH  
6-7-2010  
Presiding Officer  
Labour Court  
Bhubaneswar

S. K. DASH  
6-7-2010  
Presiding Officer  
Labour Court  
Bhubaneswar

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