

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1874 CUTTACK, THURSDAY, NOVEMBER 11, 2010 / KARTIKA 20, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th October 2010

No. 9061—li/1(B)-101/2006-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd June 2010 in I.D. Case No. 85 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of St. Xavier's High School, Kedargouri, Bhubaneswar and their workman Smt. Sasmita Samal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 85 OF 2006

The 23rd June 2010

Present :

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

Between :

The Management of .. First-party Management
St. Xavier's High School, Kedargouri,
Bhubaneswar.

And

Their workman .. Second-party Workman
Smt. Sasmita Samal.

Appearances :

Shri M. K. Garnaik, Office Assistant .. For First-party Management
Smt. Sasmita Samal .. Second-party Workman herself

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. 4151—li/1(B)-101/2006-L.E., Dt. 16-12-2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of employment of Smt. Sasmita Samal by the management of St. Xavier’s High School, Kedargouri, Bhubaneswar with effect from 19-7-2006 is legal and/or justified ? If not, to what relief Smt. Samal is entitled ?”

3. The case of the workman in brief is that she was appointed as Class IV employee in the establishment of the management on 7-4-1997. No written appointment order was issued to the workman in respect of her appointment. She immediately joined in her duty on 7-4-1997. Her salary was fixed at the consolidated rate of Rs. 450 per month and being satisfied with her satisfactory work the management enhanced her pay at the rate of Rs. 1700 per month since August 2005. Suddenly the workman fell ill for which she remained absent on 19-7-2006 and 20-7-2006. She had not applied for leave in writing but intimated the management over phone regarding her sudden illness. After recovery from her illness when she reported her duty on 21-7-2006 the management did not allow her to join and verbally intimated that she has been terminated from service with effect from 19-7-2006. But no notice or notice pay and retrenchment compensation has been paid to her by complying the provisions of Section 25-F of the Industrial Disputes Act. So in this back ground she has prayed for reinstatement in service with full back wages.

4. The management appeared and filed written statement denying the plea of the workman. According to him, there was no cause of action to file this proceeding. It is admitted that the workman was engaged as Aaya to look after the montessori student, but she always neglected in her duty. She remained unauthorised absence from duty on 19-7-2006. On 25-7-2006 a registered letter was issued to her calling for an explanation regarding her indisciplined behaviour. Though the workman received the same but not filled any show cause and threatened the management an absence language to see them at Court of law. Several allegations have been received against her prior to it regarding performance in her duty. In spite of repeated warning the workman has not changed her behaviour.

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

ISSUES

- (i) Whether the termination of employment of Smt. Sasmita Samal by the management of St. Xavier’s High School, Kedargouri, Bhubaneswar with effect from 19-7-2006 is legal and/or justified ?
- (ii) If not, to what relief is Smt. Samal is entitled ?”

6. In order to substantiate her plea, the workman as examined herself as W.W. 1 whereas the management has examined the Office Assistant of the establishment of the management as M.W. 1. The workman has proved the documents marked as Exts. 1 to 5 whereas the management has not proved any document on its behalf.

FINDINGS

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

According to W.W. 1, she joined in her duty in the High School of the management on 7-4-1997 as Peon (Aaya). Initially she was getting salary of Rs. 450 per month which was subsequently enhanced to Rs. 1,700 per month and after deduction towards Provident Fund, she was getting Rs. 1,586 per month. She was sick and could not join in her duty on 19-7-2007 and 20-7-2006 and intimated the fact to the management over phone. On 21-7-2006 the management refused her employment. Perused the documents marked as exhibits on behalf of the workman. In the cross-examination this witness admitted about her suspension from 13-10-2004 to

16-10-2004. M.W. 1 deposes admitting that the workman was working as Aaya in the High School of the management but she was not performing her duty regularly. She used to remain absent without filing any leave application. She remained absent from 19-7-2006 without submitting any leave application. So an explanation was called for from her. Subsequently they received a notice from this Court.

8. So in view of the above evidence of the parties it shows that the workman was working under the management for more than 240 days in a preceding 12 calendar months which has not been disputed at all. She remained absent in her duty on 19-7-2006 and 20-7-2006. The management has called for an explanation from her but the case record does not disclose that any domestic enquiry was conducted against the workman for her unauthorised absence. The xerox copy of Medical Certificate filed by the workman proves that she was under the treatment of doctor for two days. According to the settled principle of law termination of service for continuous absence without leave amounts to retrenchment but such retrenchment without complying with the provisions of Section 25-F of the Industrial Disputes Act is illegal. In the instant case Section 25-F of the Industrial Disputes Act is not been complied at all. So on careful consideration of the materials available in the case record as discussed above, I came to the finding that the termination of the service of the workman with effect from 19-7-2006 is neither legal nor justified. Hence she is entitled to be reinstated in service.

9. Regarding back wages admittedly the workman has not worked for the management during the relevant period. According to the settled principle of law when the workman had not worked for the management during the period in question and she had not proved by cogent evidence that she was not gainfully employed elsewhere payment of back wages is not justified. Further it is well settled by reason of catena of decisions of the Hon'ble Supreme Court 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, on careful consideration of all the materials available as discussed above, I am of the opinion that instead of granting full back wages a compensation for a sum of Rs. 10,000 in lieu of back wages will meet the ends of justice. Both the issues are answered accordingly.

10. Hence Ordered :

The termination of employment of Smt. Sasmita Samal by the management of St. Xavier's High School, Kedargouri, Bhubaneswar with effect from 19-7-2006 is neither legal nor justified. The workman Smt. Saml is entitled to be reinstate in her service with a lump sum compensation of Rs. 10,000 (Rupees ten thousand) only in lieu of back wages. The management is directed to implement this Award forthwith.

The reference is thus answered accordingly.

Dictated and corrected by me.

S. K. DASH
23-6-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
23-6-2010
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

P. K. PANDA
Under-Secretary to Government