

The Orissa Gazette

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 1875 CUTTACK, THURSDAY, NOVEMBER 11, 2010 / KARTIKA 20, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd October 2010

No. 8923—li/1(B)-37/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award dated the 16th June 2010 in Industrial Dispute Case No. 59 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Assistant Executive Engineer, R.W. Division, Nayagarh and its workman Shri Pramod Kumar Nanda, Ex-D.L.R. was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 59 OF 2006

Dated the 16th June 2010

Present :

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

Between :

The Management of
Assistant Executive
Engineer,
R.W. Division,
Nayagarh.

.. First Party—Management

And

Their Workman .. Second Party—Workman
 Shri Pramod Kumar Nanda, Ex-D.L.R.
 At/P.O. Nayagarh (Near Police Field)
 Dist. Nayagarh.

Appearances :

Shri R. K. Mohanty	.. For the First Party—Management
Shri P. K. Nanda	.. Second Party—Workman himself

A W A R D

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. 4836–li/1(B)-37/2006-LE., dt. 17-6-2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference may briefly be stated as follows :

“Whether the refusal of employment of Shri Pramod Kumar Nanda by the Assistant Executive Engineer, Rural Works Subdivision, Nayagarh with effect from 1-4-2003 is legal and/or justified ? If not, to what relief Shri Nanda is entitled ?”

3. The case of the workman in brief is that he was working in the official work as Phone Attendant D.L.R. in the office of the management with effect from 4-1-1993 to 31-3-2003 at the rate of Rs. 1,440 per month. He had completed more than 240 days continuous employment in 12 calendar months. He was removed from service by the management from 1-4-2003 without complying the relevant provisions of the Industrial Disputes Act and the principle of last come first go has also not been followed. On 1-4-2003 while he was reporting for duty the management refused employment to him illegally. He has submitted series of representations to the higher authorities but it was invain. Some of the juniors namely Shri Laxmidhar Sahu, Shri Jogi Pradhan, Smt. Subhashree Mishra, Charulata Mohapatra, Shri Durga Charan Barik and Shri Birabar Behera were allowed to work in the establishment of the management. So in this background the workman 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 the management, the workman was never working as official and Phone Attendant D.L.R. for the period from 4-1-1993 to 31-3-2003 at the rate of Rs. 1,440 per month. He has also not completed 240 days continuously in 12 calendar months. The management is not an industry and the workman is not a workman. So in this background the management has prayed to answer the reference in his favour.

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

ISSUES

- (i) Whether the refusal of employment of Shri Pramod Kumar Nanda by the Assistant Executive Engineer, Rural Works Subdivision, Nayagarh with effect from 1-4-2003 is legal and/or justified ?
- (ii) If not, to what relief Shri Nanda is entitled ?

6. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved documents marked as Exts. 1 and 2. The management has not examined any witness and has also not proved any document on their 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 joined as D.L.R. with effect from 4-1-1993 under the management at the rate of Rs. 1,440 per month. He was refused employment by the management with effect from 1-4-2003. He has worked for more than 240 days during the period of 12 months preceding to the date of termination of his service. The management did not comply the provisions of Section 25-F of the Industrial Disputes Act, at the time of termination of his service. His juniors namely, Laxmidhar Sahoo, Jogi Pradhan, Subhashree Mishra, Charulata Mohapatra, Durga Charan Barik and Birabar Behera are still working under the management. He has proved the xerox copy of telephone Log Book marked as Ext. 1 and the xerox copy of the attendance register of October, 2001 marked as Ext.2. The management has declined to cross-examine the W.W.1. So the evidence of the W.W.1 remained unchallenged. The management himself has not adduced any evidence in support of his plea. The documents marked as Exts.1 and 2 disclose about working of the workman under the establishment of the management. It is for the period of the year 1999 and 2001 respectively. As the evidence of W.W. 1 is remained unchallenged, it is safely concluded that he has completed 240 days of work in a preceding 12 calendar months of his service under the management and the management has refused the employment of the workman without following the provisions of Section 25-F of the Industrial Disputes Act. Therefore on careful consideration of all the materials available, I am of the opinion that it is a fit case to reinstate the workman in service by the management.

8. Regarding back wages admittedly the workman has not worked for the management for the relevant period. According to the settled position of law when the workman had not worked for the management during the period in question and had not proved any cogent evidence that he was not gainfully employed elsewhere payment of back wages is not justified. Further it is now well settled by reasons 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 the entire materials available in the case record, I am of the opinion that instead of allowing any back wages, a lump sum of Rs. 5,000 as compensation in lieu of back wages will meet the ends of justice in this case. Hence both the issues are answered accordingly.

9. Hence Ordered:

The refusal of employment of Shri Pramod Kumar Nanda by the Assistant Executive Engineer, Rural Works Subdivision, Nayagarh with effect from 1-4-2003 is illegal and not justified. The workman Shri Nanda is entitled to be reinstated in service with a lump sum amount of Rs.5,000 (Rupees five thousand) only as compensation in lieu of back wages. The management is directed to implement this Award forthwith.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
16-6-2010
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
16-6-2010
Presiding Officer
Labour Court
Bhubaneswar

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