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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 23rd October 2010

No. 8933—li/1(B)-16/2004-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st July 2010 in I.D. Case No. 27 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Text Book Production and Marketing, Bhubaneswar and its Workman Smt. Parbati Ojha was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 27 OF 2004  
The 31st July 2010

Present :

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

Between :

The Management of .. First-party Management  
M/s Text Book Production and Marketing,  
Bhubaneswar.

And

Their workman .. Second-party Workman  
Smt. Parbati Ojha.

Appearances :

Shri S. K. Sahoo, Deputy Director .. For First-party Management  
Smt. Parbati Ojha .. 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 have referred the

matter in dispute to this Court vide Order No. 3131—li/1(B)-16/2004-L.E., Dt. 27-3-2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the Director, Text Book Production and Marketing, Satyanagar, Bhubaneswar in terminating the service of Smt. Parbati Ojha, Daily Wager (Binding Section) with effect from 19-4-2001 is legal and/or justified ? If not, what relief is Smt. Ojha entitled to ?”

3. The case of the workman in brief is that she was appointed as a Binder on rehabilitation ground due to death of her husband vide letter No. 3849, Dt. 15-12-1994. She has performed as Binder for the period from 20-10-1994 to 18-4-2001 and had completed more than 240 days continuous employment in 12 calendar months preceding to the date of her termination. She was getting salary at the rate of Rs. 1,260 per month on the basis of vouchers. Due to want of funds and increase of minimum wages from time to time the management suddenly terminated her service with effect from 19-4-2001. Her juniors namely Sasmita Malia, Sipra Manjudar, etc. were given employment without following the principle for last come first go. So in this background she has raised an industrial dispute before the labour authority and when her all attempts praying to the management to consider her case failed and when the conciliation before the labour authority failed, this I. D. Case has been initiated wherein 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 the management, the workman was engaged as daily wage worker in the organisation of the management on the humanitarian ground after death of her husband. She was disengaged for her misconduct and imposition of austerity measures as per the instruction of the Government in Finance Department. The workman was working in Binding Section and her performance was found unsatisfactory in that section. In case of a temporary voucher paid worker no further enquiry, charge sheet, etc. was necessary. The persons found surplus were to be disengaged as per the instruction of the Government and the workman was one among them. For non-availability of work she was disengaged and it can not be termed as bad in law. So in this background the workman is not entitled to get any relief as prayed for.

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

#### ISSUES

- (i) “Whether the action of the Director, Text Book Production and Marketing, Satynagar, Bhubaneswar in terminating the service of Smt. Parbati Ojha, Daily Wager (Binding Section) with effect from 19-4-2001 is legal and/or justified ?
- (ii) If not, what relief is Smt. Ojha entitled to ?”

6. In order to substantiate her case, the workman herself has examined as W.W. 1 but has not proved any document. Similarly the management has examined one Junior Production Officer of the management as M.W. 1 but has also 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.

It has been argued by the workman that she was working as Binder in place of her husband after his death vide appointment Order No. 3849, Dt. 15-12-1994 and was getting salary at the rate of Rs. 1,260 per month. She was working continuously for more than 240 days in 12 calendar months preceding to the date of her termination. She was terminated with effect from 19-4-2001 without following the mandatory provisions of Section 25-F of the Industrial Dispute Act. No chargesheet was framed against her for any misconduct and no domestic enquiry was also held

against her and the action of the management was totally contrary to the law. On the other hand, it has been argued by the management that as per the direction of the Government, the services of the workers have been disengaged and the present workman is out of them. As she was getting her payment by voucher no enquiry or charge was required. No appointment order has been filed by either parties. But it is an admitted fact that the workman was working under the management. The period of work is from 20-10-1994 to 18-4-2001. According to the settled principle of law as reported in AIR 2010 SC 1236 the workman would have difficulty in having access to all official documents, muster rolls, etc. in connection with her service which the workman claimed and deposed that she had worked for 240 days which the statutory requirement. Burden of proof shifts to employer to prove that she did not complete 240 days of service in requisite period to constitute continuous service. In the instant case the management is silent on this point rather he took the plea that as she was a voucher paid employee, no enquiry is required. On careful consideration of all the materials available in the case record as discussed, I found that the provisions of Section 25-F of the Industrial Disputes Act has been clearly violated by the management in terminating the service of the workman who has seemed to have completed 240 days of continuous service in 12 calendar months preceding to the date of her termination. Therefore she is entitled for reinstatement in service.

8. As regards back wages, the workman has taken the plea that she has not gainfully employed in any establishment and she is an unemployed one. But no substantial evidence has been proved in support of her plea. 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 the Hon'ble Supreme Court in catena of decisions have 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, on careful consideration of all the materials available in the case record as discussed, I am of the opinion that instead of granting full back wages, a lump sum amount of Rs. 25,000 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 :

That the action of the Director, Text Book Production and Marketing, Satyanagar, Bhubaneswar in terminating the service of Smt. Parbati Ojha, Daily Wager (Binding Section) with effect from 19-4-2001 is neither legal nor justified. The workman Smt. Ojha is entitled to be reinstated in service with a lump sum amount of Rs. 25,000 (rupees twenty-five thousand) only as compensation 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  
31-7-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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31-7-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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