

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1889 CUTTACK, FRIDAY, NOVEMBER 12, 2010 / KARTIKA 21, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th October 2010

No. 9012—li/1(B)-24/2005-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th August 2010 in Industrial Dispute Case No. 18 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Chief Executive, Cuttack Municipal Corporation, Cuttack and its workman Shri Gyanaranjan Pattnaik was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 18 OF 2005

Dated the 17th August 2010

Present :

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

Between :

The Management of Chief Executive,
Cuttack Municipal Corporation,
Cuttack.

.. First Party—Management

And

Their Workman
Shri Gyanaranjan Pattnaik,
Ex-D.L.R. Mate

.. Second Party—Workman

Appearances :

Shri R. K. Samal, Advocate } Shri S. Patanaik, Advocate }	.. For the First Party—Management
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Shri T. Lenka, Advocate } Shri N. Mallick, Advocate }	.. For the Second Party—Workman
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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. 2991—li/1(B)-24/2005-LE., dt. 19-3-2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Gyanaranjan Pattnaik, D.L.R. Mate with effect from 1-6-2002 by the Chief Executive, Cuttack Municipal Corporation, Cuttack by way of refusal of employment is legal and/or justified ? If not, to what relief Shri Pattnaik is entitled ?”

3. The case of the workman in brief is that he was working under the management as D.L.R. Mate and joined in service on 1-11-1998. He was working at the rate of Rs.1,500 per month and rendered continuous service under the management for about five years for a period from 1-11-1998 to 1-6-2002 to the best satisfaction of the authorities. The nature of work assigned to him was a regular and continuous in nature. As the workman was working continuously for more than the statutory period, he represented and approached several times to the management for increasing his wages like other regular employees in the category of Mate but the management did not pay any heed to it. On the other hand, the management by grudge terminated his service by refusing employment on 1-6-2002 without following the mandatory provisions of Section 25-F of the Industrial Disputes Act. Therefore, the workman raised an industrial dispute before the labour authority and when the conciliation failed the reference has been received from the Government and the present I. D. case has been initiated. The workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement denying the plea of the workman though he admits that the workman was working as D.L.R. Mate under the management. According to the management the workman was engaged on 1-11-1998 illegally under the management without Government approval as well as without following proper procedure of law. The Government in Housing & Urban Development Department vide Order No. 36051, Dt. 15-12-2000 directed to disengage the N.M.Rs. /D.L.Rs. engaged after 19-5-1997. So in view of the Government Order and provisions of Section 73(B) of Orissa Municipal Act, 1950 the workman was disengaged from service. Hence the workman is not entitled to get any benefit as prayed for.

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

ISSUES

- (i) "Whether the termination of services of Shri Gyanaranjan Pattnaik, D.L.R. Mate with effect from 1-6-2002 by the Chief Executive, Cuttack Municipal Corporation, Cuttack by way of refusal of employment is legal and/or justified ?
- (ii) If not, to what relief Shri Pattnaik 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 to 5. Similarly the management has examined one of the Junior Assistant of the management as M.W.1 but 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.

The workman filed his affidavit evidence in support of his pleadings. According to him, he was working as N.M.R. Mate under the management at the rate of Rs.1,500 per month as his wages. He joined in duty on 1-11-1998. He served under the management from 1-11-1998 to 1-6-2002 with such wages. On 1-6-2002 the management stopped the work of the workman and directed him not to join in duty. His service was terminated by way of refusal of employment which was illegal, unjustified, motivated with *mala fide* intention as the provisions of Section 25-F of the Industrial Disputes Act, is not at all complied with. Perused the documents marked as exhibits, on behalf of the workman. The workman has not filed his appointment order in this Court but the management has admitted that the workman was working as N.M.R. Mate. The management has put a suggestion about non-issuance of appointment order to him to which the workman answered in negative. In the cross-examination the workman has admitted that he was working continuously under the management for the period from 1-11-1998 to 1-6-2002 but the service of the workman was terminated on 1-6-2002 which means he was working under the management from 1-11-1998 to 31-5-2002. M.W.1 deposes that the workman was engaged as Mate on daily part-time basis as per need of job in Ward No. 32 but never in continuity. But this plea has not been taken initially at the time of filing of written statement. As per the policy decision of the Government in Housing & Urban Development Department communicated in Order No. 36051, Dt. 15-12-2000 the workman was dis-engaged from service alongwith others who were engaged in service after 19-5-1997. Though the management has filed the xerox copy of such document but has not proved and marked as exhibit on his behalf. However, I perused the same and take judicial notice of it. It is a ban order of the Government as stated above. M.W. 1 in his cross-examination has also admitted that the workman was taking his wages on pay card. The workman has proved some pay cards vide Ext. 4 series. The management has not proved any documents regarding receipt of the wages by the workman. However on the materials available it clearly shows that the management has admitted that the workman was working as N.M.R. Mate but his service was terminated by way of refusal of employment basing on the ban order of the Government.

8. It has been argued by the Advocate for the management in relying upon the authority reported in 69 (1990) C.L.T. 264 that Section 25-F of the Industrial Disputes Act is not applicable to the present case in view of Section 73(2) and 73-B of the Orissa Municipal Act. In that authority it has been held that when the petitioner's service stood terminated on completion of six months by operation of Section 73(2) of the Act since Municipal Council had no power to continue such temporary appointment beyond the period prescribed and payment of salary to him for service rendered beyond that period is protected under the provisions of Contract Act. Section 25-F of the Industrial Disputes Act is not attracted where statute limits the power of appointing a person temporarily. So it has been argued that when the service of the workman was temporary one, Section 25-F of the Industrial Disputes Act is not applicable to him. But after amendment of Orissa Municipal Act in view of the proviso in Section 73-B of Orissa Municipal Act the Section 25-F of the Industrial Disputes Act is applicable to a workman in case of termination of service. The said proviso reads as follows :

“73-B. Bar for regularisation of services—No person who is appointed on a temporary basis under sub-section (2) of Section 73 and is continuing as such at the commencement of the Orissa Municipal (Amendment) Act, 1997 shall have or shall be deemed ever to have a right to claim for regularisation of his service on any ground whatsoever and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reason thereof:

Provided that in case of workmen falling within the scope of Section 25-F of the Industrial Disputes Act, 1947, one month's wages and such compensation as would be payable under the said Section shall be paid in case of termination of services.”

So in view of such provisions of said statute Section 25-F of the Industrial Disputes Act is applicable to such temporary service holders. So the argument of the management in this regard has no force at all.

9. The workman has taken the plea that he was working continuously for the period from 1-11-1998 to 1-6-2002. In order to get the benefit under Section 25-F of the Industrial Disputes Act the workman has to work 240 days in 12 calendar months preceding to the date of termination. According to the settled Principle of Law as reported in A.I.R. 2010 SC. 1236 that burden of proof that the workman was in continuous service of 240 days initially lies on the workman. When the workman claimed and deposed that he worked for 240 days burden of proof shifts to the employer-management to prove that he did not complete 240 days of service in requisite period to constitute continuous service as the workman would have difficulty in having access to all official documents, muster rolls, etc. in connection with his service. In the instant case the workman deposed and claimed regarding such continuous service for the period from 1-11-1998 to 1-6-2002 and also proved some pay cards but the management has not proved any document in support of his denial plea in this regard. Admittedly the provisions of Section 25-F of the Industrial Disputes Act has not been followed by the management while terminating the services of the workman by way of refusal

of employment which is clearly violation of Section 25-F of the Industrial Disputes Act which is a mandatory one. So on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the termination of service by way of refusal of employment of the workman by the management with effect from 1-6-2002 is neither legal nor justified and the workman is entitled for reinstatement in service.

10. Regarding back wages, when the workman has not worked for the management during the period in question and has not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified, as argued. Similarly in a catena of decisions of the Hon'ble Supreme Court it has been 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. So in the instant case, taking all the materials as discussed above, I am of the opinion that instead of granting full back wages to the workman a lump sum amount of Rs.25,000 as compensation in lieu of back wages will meet the ends of justice in this case. Both the issues are answered accordingly.

11. Hence Ordered :

That the termination of service of Shri Gyanaranjan Pattnaik, D.L.R. Mate with effect from 1-6-2002 by the Chief Executive, Cuttack Municipal Corporation, Cuttack by way of refusal of employment is neither legal nor justified. The workman Shri Pattnaik 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 answered accordingly.

Dictated and corrected by me.

S. K. DASH
17-8-2010
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
17-8-2010
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

P. K. PANDA

Under-Secretary to Government

