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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th October 2010

No. 9017-ii/1(BH)-4/2006-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th August 2010 in I. D. Case No. 31 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Mayurbhanj District Co-operative Milk Producers' Union Ltd., and its Workman Shri Tarakanta Haboda was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.31 OF 2006

The 30th August 2010

Present :

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

Between :

The Management of M/s. Mayurbhanj District Co-operative Milk Producers' Union Ltd. . . . First party-Management

And

Its Workman Shri Tarakanta Haboda, Ex-Driver. . . . Second party-Workman

Appearances :

Shri N. Senapati, General Manager . . . For the First party-Management

Shri T. Haboda . . . 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. 2907– li/I (BH)-4/-2006-LE., Dt. 31-3-2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the retrenchment of Shri Tarakanta Haboda from service with effect from 2-4-2004 by the management of M/s Mayurbhanj District Co-operative Milk Producers’ Union Ltd., Chancha, Baripada, Dist. Mayurbhanj is legal and/or justified ? If not, to what relief Shri Haboda is entitled ?”

3. The case of the workman in brief is that he was appointed as Driver under the management and joined on 10-2-1993 and continued in his service without any break. But on 2-4-2004 his service was terminated by the management without following the mandatory provisions of Section 25-F of the Industrial Disputes Act. So he raised an industrial dispute before the labour authority and when the conciliation failed, a reference has been received from the Government and this I. D. Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement by partly admitting and partly denying the plea of the workman. The management has admitted that the workman was working as a Driver under him. According to him, due to intervention of the Central Government, the OMFED has taken over the present management from 6-4-2004. The headquarters of the management was closed and the same was opened in the peripheral areas. Due to heavy expenses and reduce in milk production the OMFED closed the Unit at Baripada. After closure of the Baripada Unit, staff of the said Unit were asked to join at B. M. C. Unit and accordingly extra staff were adjusted at BAMUL’ Balasore. After closure of the Unit the workman was asked to work at Balasore but he did not join there. The workman was also irregular in his duty and he intentionally and wilfully remained absent from April, 2004 from service. The management has not any bad intention to retrench the workman from service. On this background the management has prayed for answering the reference in his favour.

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

## ISSUES

- (i) Whether the retrenchment of Shri Tarakanta Haboda from services with effect from 2-4-2004 by the management of M/s Mayurbhanj District Co-operative Milk Producers’ Union Ltd., Chancha, Baripada, Dist. Mayurbhanj is legal and justified ?
- (ii) If not, to what relief Shri Haboda is entitled ?”

6. In order to substantiate his plea, the workman has examined himself as W. W. 1. and proved the documents marked as Exts. 1 to 4. Similarly the management has examined three witnesses altogether on his behalf who are the employees of the management. 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.

It is an admitted fact that the workman was working under the management as a Driver. According to W. W. 1, he joined in duty on 10-2-1993 and continued in service without any break till 2-4-2004. He has claimed for reinstatement in service with full back wages from 2-4-2004. According to the reference he was terminated from service on 2-4-2004. In the cross-examination, W.W.1 admitted that he was verbally directed to work at Balasore and when he went there, he was not allowed to work. He has proved some experience certificates issued by the management and some letters. Perused the said documents marked as exhibits on behalf of the workman. M. W. 1 is the D. E. O. of the management. He admitted that the workman was working as a Driver under the management but he cannot say when the workman was retrenched from service. M. W. 2 is the General Manager of the management who deposes that the workman had voluntarily abandoned his service when working as a Driver under the management. The management has not terminated his service. M. W. 3 is the General Manager of K. M. N. R., Regional Milk Union, Jeypore. He was the then General Manager of the present management. According to him, the Unit Office at Baripada was shifted to Balasore for shortage of milk production. The workman was orally directed to join at Balasore but he failed to do so. On the basis of no work no pay he was not paid any wages during the absence of the workman in his duty. He was a daily wage earner under the management and he did not turn-up to join in his duty. The management is ready to reinstate the workman in his service whenever the work is required.

8. Basing on these evidences of the parties, the workman has argued that the workman has completed 240 days of continuous service in 12 calendar months preceding to the date of his termination. So he is entitled to get the benefit of Section 25-F of the Industrial Disputes Act which has not been complied with by the management. According to the settled position of law if the workman had completed such 240 days of service under the management, it is mandatory on the part of the management to comply the provisions of Section 25-F of the Industrial Disputes Act. The plea of the management that the workman had voluntarily abandoned his service as not been substantiated by any other evidence available in the case record. So the plea of the management that the workman had voluntarily abandoned the service cannot be accepted as the management is silent as to what step was taken by the management after the workman remained absent in duty. So it is against the principle of natural justice also. According to the settled principle of law as reported in 2001 L.L.R. 54 SUPREME COURT OF INDIA, even when a workman fails to report for duty the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls. According to the settled principle of law as reported in A. I. R. 2010 SUPREME COURT 1236 that the workman would have difficulty in having access to all official documents, muster rolls, etc. in connection with his service to prove that he was in continuous service for 240 days. When the workman claimed and deposed that he had worked for 240 days which the statutory requirement, burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. Admittedly no domestic enquiry was made against the workman and he was also not found guilty of any charge. So basing on the materials available in the case record and on consideration of the same I am of the opinion that the retrenchment of the workman from service with effect from 2-4-2004 by the management is illegal and unjustified and he is entitled for reinstatement in service.

9. Regarding back wages, according to the settled position of law 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. In the instant case taking into consideration of service period rendered by the workman in the management and the materials available in the case record, I am of the opinion that instead of back wages a lump sum amount of Rs.30,000 as compensation will meet the ends of justice.

10. Hence Ordered :

That the retrenchment of Shri Tarakanta Haboda from service with effect from 2-4-2004 by the management of M/s. Mayurbhanj District Co-operative Milk Producers' Union Ltd., Chancha, Baripada, Dist. Mayurbhanj is neither legal nor justified. The workman Shri Haboda is entitled to be reinstated in service with a lump sum compensation of Rs. 30,000 (rupees thirty thousand) only in lieu of back wages. The management is directed to implement this Award forthwith from the date of its Notification in the Official Gazette failing which the compensation amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH  
30-8-2010  
Presiding Officer  
Labour Court  
Bhubaneswar

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30-8-2010  
Presiding Officer  
Labour Court  
Bhubaneswar

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