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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 10th September 2010

No. 9439—li/1(Pt.)124/1997-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th September 2010 in Industrial Dispute Case No. 47/98 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Officer, Bhubaneswar Municipal Corporation, Bhubaneswar and its Workman Shri Kabi Behera was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 47 OF 1998

Dated the 16th September 2010

Present :

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

Between :

The Management of Executive  
Officer, Bhubaneswar  
Municipal, Corporation,  
Bhubaneswar.

.. First Party—Management

And

Their Workman  
Shri Kabi Behera

.. Second Party—Workman

Appearances :

Shri B. P. Sarangi,  
Deputy Commissioner

.. For the First Party—Management

Shri K. Behera

.. For the Second Party—Workman himself

## 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. 7120– li/1-(B)-124/1997-L.E., dt. 14-7-1998 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

“Whether the termination of services of Shri Kabi Behera D.L.R. workman by way of verbal refusal of employment with effect from 1-4-1991 by the Executive Officer, Bhubaneswar Municipal Corporation, Bhubaneswar is legal and/or justified ? If not, what relief the workman is entitled to ?”

3. The case of the workman in brief is that he was working as D.L.R. under the management continuously for the period from 24-11-1987 to 31-3-1991 without any gap with utmost satisfaction of the management. While on 1-4-1991 the workman reported for his duty, he was not allowed to work even when his junior employees were allowed and at present they have been working under the management. The workman has completed for more than 240 days of continuous work in a twelve calendar months preceeding to the date of termination, but his service was terminated by way of refusal of employment without compliance of mandatory provisions of the Industrial Dispute Act. The workman has not been gainfully employed elsewhere and continued to be unemployed. The workman raised an industrial dispute basing on this fact before the labour authority and when the conciliation failed, the matter has been referred to the Government and this reference is received from the Government and this industrial disputes 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 partly admitting and partly denying the plea of the workman. The management has admitted that the workman was working as a casual labour under him from 24-11-1987 to 31-3-1991 with regular intervals and his work was of a casual in nature. But the workman abandoned his work wilfully from 1-4-1991 without knowledge/permission of the management for reasons best known to him. The management had not terminated the services of the workman as alleged. Therefore compliance of provisions of the Industrial Disputes Act is at all not required. The workman has never reported for duty before the management on 1-4-1991. The allegation of resumption of his duty is quite false and baseless. So in this background the management has prayed for dismissal of the reference.

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

## ISSUES

- (i) “Whether the termination of services of Shri Kabi Behera, D.L.R. workman by way of verbal refusal of employment with effect from 1-4-1991 by the Executive Officer, Bhubaneswar Municipal Corporation, Bhubaneswar is legal and/or justified ?
- (ii) If not, to what relief the workman 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 4. Similarly the management has examined one 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

M.W.1 deposes that he was working as D.L.R. Khalasi continuously for the period from 24-11-1987 to 31-3-1991 and has completed more than 240 days of continuous service in a twelve calendar months, but his employment was refused by the management with effect from 1-4-1991 without complying the mandatory provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. His last pay was Rs. 750 per month. He was receiving his wages by signing in the monthly pay bill register for such period. The management has not followed the principle of last come first go while terminating the service of the workman with effect from 1-4-1991. Perused the documents marked as exhibits on behalf of the workman. M.W.1 deposes in support of his written statement. In the cross-examination, he admitted that from the year 1987 to 1991 the workman was working under the management as D.L.R. Thereafter he remained absent. But nothing has been shown by the management to show that the workman had voluntarily abandoned his job as no action was taken by the management against the workman in this regard. According to the settled principle of law when the workman admitted that he was working continuously for the relevant period and when there is no contrary evidence regarding his absence from duty for the said period, it can safely be concluded that the workman has completed 240 days of service in a twelve calendar months preceding to the date of termination. Further according to the settled principle of law when the workman claimed and deposed that he had worked for 240 days which is the statutory requirement, burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. In the instant case the management has failed in this regard. Further the management has not complied the mandatory provision of Section 25-F of the Industrial Disputes Act while terminating the service of the workman by way of verbal refusal of employment. Principle of natural justice has also not been followed in this case. So on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that the termination of service of the workman by way of verbal refusal of employment with effect from 1-4-1991 by the management is neither legal nor justified. Therefore the workman is entitled for reinstatement in service.

8. As regards back wages, according to the settled principle 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. Further according to the settled principle of law when the workman had not worked for the management during the period in question and had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. So on careful consideration of all the materials available, I am of the opinion that instead of granting 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. Hence both the issues are answered accordingly.

9. Hence Ordered :

That the termination of services of Shri Kabi Behera, D.L.R. Workman by way of verbal refusal of employment with effect from 1-4-1991 by the Executive Officer, Bhubaneswar Municipal Corporation, Bhubaneswar is neither legal nor justified. The workman Shri Behera is entitled to be reinstated in service with a lump sum amount of Rs. 25,000 (Rupees twenty-five thousand) only in lieu of back wages. The management is directed to implement this Award within a period of one month from the date of its publication in the Official Gazette, failing which the 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  
16-9-2010  
Presiding Officer  
Labour Court  
Bhubaneswar

S. K. DASH  
16-9-2010  
Presiding Officer  
Labour Court  
Bhubaneswar

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By order of the Governor

P. K. PANDA  
Under-Secretary to Government