

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

---

No. 510 CUTTACK, THURSDAY, APRIL 15, 2010 / CHAITRA 25, 1932

---

---

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 22nd March 2010

No. 2357-li/1(B)-21/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st October 2009 in Industrial Dispute Case No. 51 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Disputes between the Management of M/s Premier Threads Pvt. Limited, 47, IDCO Industrial Estate, At/P. O. Bhagabanpur, Dist. Khurda and their workman represented through the Bhagabanpur Industrial Complex Shramik Union, Bhagabanpur was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER  
INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 51 OF 2008

Dated the 21st October 2009

*Present :*

Shri P. C. Mishra, o.s.J.s. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Managing Director .. First Party—Management  
M/s Premier Threads Private Limited  
47, IDCO Industrial Estate  
At/P.O. Bhagabanpur  
Dist. Khurda.

And

The President/ General Secretary .. Second Party—Workman  
Bhagabanpur Industrial Complex  
Shramik Union, At/P.O. Tamando  
Dist. Khurda.

*Appearances :*

For the First Party—Management	..	S. T. Ullah Authorised Representative.
<hr/>		
For the Second Party—Workman himself	..	Shri Bhagaban Nath

## AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 13951—li/ 1(B)-21/1994-LE., dated 2nd November, 1994 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-LE., dated the 4th April 2008.

“Whether the termination of services of Shri Bhagaban Nath, Reeler by the Managing Director M/s Premier Threads Private Limited, Bhagabanpur is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the second party-workman in brief is that he was working as a Reeler under the first party management since the 5th January 1992. It is stated that he was a permanent workman and was an active member of the Bhagabanpur Industrial Complex Shramik Union. It is alleged that while continuing so, all of a sudden the management refused him employment with effect from the 31st March 1993 without any reason or rhyme. According to the workman, the refusal of his employment amounts to termination of his service and the same being contrary to the provisions of the Industrial Disputes Act, he is entitled to reinstatement in service with full back wages. It is averred in the claim statement that since the date of his refusal of employment the workman is moving unemployed and is facing financial hardship to maintain his family.

3. Controverting the averments made in the claim statement the management has asserted in its written statement that the workman was engaged as a Reeler under it on the 28th July 1992 and he worked as such up to the 31st March 1993. It is specifically pleaded by the management that after the 31st March 1993 the workman remained absent from his duties without submitting any leave application for such absence and on the 10th April 1993 he came to the factory and received his salary for the month of March, 1993 but declined to join his duty. In the aforesaid circumstance, the management has asserted that it has neither refused employment to the workman nor terminated his service by any order or letter. It is stated that during the period of his employment i.e., from the 28th July 1992 to the 31st March 1993 since the workman has not rendered 240 days of continuous service, there is absolutely no contravention of the provisions of the Industrial Dispute Act by the management, as alleged. With the aforesaid averments the management has prayed to answer the reference in the negative as against the workman.

4. In his rejoinder to the written statement filed by the workman, the workman disputed his date of engagement and stated that he was engaged under the first party with effect from the 5th January 1992. It is alleged that for his union activities he was refused employment.

5. On the basis of the pleadings of the parties, the following issues have been framed :—

### ISSUES

- (1) Whether the termination of services of the second party workman by the first party management is legal and/or justified ?
- (2) If not, what relief the workman is entitled to ?

6. Both parties in order to substantiate their respective stand have examined one witness each. The workman while examined himself and got marked a document Ext. 1, the management examined a witness on its behalf and filed and proved documents which have been marked as Exts. A, B, B/1 and C.

7. Issue Nos. (1) and (2) :— Both the issues are taken up for consideration simultaneously for convenience.

It is the settled principle of law that in order to get the protection of Section 25-F of the Industrial Disputes Act, 1947, the burden of proof lies on the claimant who claim to have worked continuously for 240 days in the preceding twelve months under his employer. It is therefore, first to be seen whether the workman in the instant dispute has satisfactorily proved the aforesaid aspect by adducing cogent evidence.

8. The evidence on record discloses that the workman in order to substantiate his stand has examined himself to be the sole witness and deposed that he worked under the management as a Reeler from the 5th January 1992 to the 28th March 1993 and in that connection he has proved only one attendance card issued in his favour by the management for the month of March, 1993, marked Ext. 1. The consistent stand of the management is that the workman was not in its employment for a continuous period of 240 days and thus the requirement of compliance of the provisions of Section 25-F of the Industrial Dispute Act was not at all desired. The management admitting the period of employment of the workman under it the period from the 28th July 1992 till the 31st March 1993 has produced the Attendance register, Ext. B which is maintained from April, 1992. Ext. B/1 is the attendance sheet for the month of July, 1992 and a perusal thereof discloses that the workman was employed under the management with effect from the 28th July 1992. Ext. A, the original payment sheet for the month of July, 1992 also reveals that by working for four days only in the month of July, 1992 the workman has received his wages of Rs. 65 by acknowledging the same in Ext. A. Ext. C is yet another payment sheet for the month of June, 1992 which indicates that the workman was not under the Pay Roll of the management as on June, 1992. Ext. B further reveals that during the year, 1992 i. e., from the 28th July 1992 till the end of December, 1992 the workman had rendered 113 days of work under the management and even on adding therewith the full working days of January, February and March, 1993 still the required number of working days i.e. 240 falls short by 37 days. On the face of the documents produced by the management marked Exts. A, B and C and in absence of any positive evidence from the side of the workman, it can be said that the workman has failed to establish the fact that he had rendered continuous employment under the management for a period of 240 days preceding the date of his alleged refusal of employment. The own statement of the workman and the attendance card for the

month of March, 1993, Ext.1 cannot be regarded as sufficient evidence to come to the conclusion that he had infact worked for 240 days, as claimed by him. Excepting his own statement, no corroborative piece of evidence is available on record to support his stand.

In view of what has been stated above, there is no other option before this Tribunal than to hold that the workman is not at all able to establish the fact of his rendering 240 days continuous service under the management preceding the date of his alleged refusal of employment i.e. on the 31st March 1993 and as such the management cannot be said to have contravened the provisions of Section 25-F of the Industrial Disputes Act, which imposes certain condition on the employer to retrench a workman, who has been in continuous service under it for a period of 240 days.

9. In the result, therefore, it is held that the workman is not entitled to any relief in the present proceeding as there has been no termination of his service by the management.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA  
21-10-2009  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

P. C. MISHRA  
21-10-2009  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

---

By order of the Governor  
K. C. BASKE  
Under-Secretary to Government