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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 17th May 2010

No.4031–li/1(S)-78/1999(Pt.)–LE.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd February 2010 in I. D. Case No.18 of 2000 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of SAIL, Central Power Training Institute, Rourkela, Dist. Sundargarh and their workmen represented through Vice-President, Rourkela Shramik Sangha was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE COURT OF

THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR  
INDUSTRIAL DISPUTES CASE No.18 OF 2000

Dated the 22nd February 2010

Present :

Miss Sarojini Mahapatra, M.A., LL.B.,  
Presiding Officer, Labour Court,  
Sambalpur.

Between :

The Managment of SAIL, ... First-party Management  
Central Power Training Institute,  
Rourkela, Dist. Sundargarh.

And

Their Workmen represented through ... Second-party Workmen  
Vice-President,  
Rourkela Shramik Sangha,  
Sector 18, Qrs. No. D/81,  
Rourkela 3, Dist. Sundargarh.

Appearances :

Shri J. K. Dash, Senior Manager (Law)	. . .	For First-party Management
Shri K. C. Rath, Advocate	. . .	For the Second-party Workmen

### AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) vide memo No.3321 (7), dated.6-3-2000 for adjudication of the dispute in the Schedule :

“Whether the action of the Management of M/s Mishra Enterprises and M/s Jai Maa Santoshi Enterprises terminating the services of Sarbashri B. B. Chhatrya, A. Bag, P. K. Rout, D. Mohanty, S. Mishra, P. K. Tandi, G. Suna and B. Mahakud (workers of M/s Mishra Enterprises and Shri D. R. Sen and Shri S. Samal (workers of M/s. Jai Maa Santoshi Enterprises) is legal and justified. If not, what relief they are entitled to and whether they can be regular employees of Central Power Training Institute ?”

2. The case of the second-party workmen in brief is that—

The first-party management opened a Training Institute for the first time at Rourkela on 16-7-1993 although the formal opening of the building was on 21-7-1993 and engaged M/s Mishra Enterprises as its Contractor by work order dated 15-7-1993 to attend the work such as sweeping, cleaning and other jobs including minor electrical maintenance pertaining to the said Central Power Training Institute at Rourkela through Contract Labourers. The M/s Mishra Enterprises engaged eight contract labourers as named in the schedule of reference to clean Toilets, Latrines, Bathrooms, Overhead Tank, Tables, Chairs, other furnitures and the periphery besides attending to other jobs of the said Training Institute with effect from 16-7-1993.

It is further alleged from the statement claim of the workmen that since the inception of the Training Institute at Rourkela, all the eight Contract Labourers being engaged by M/s Mishra Enterprises were performing the duties of cleaning Toilets, Latrines, Bathrooms. Overhead Tanks, Tables, Chairs and other furnitures and the periphery. Some of the labourers were also engaged in distributing office daks and operation of xerox machines and minor electrical maintenance besides other dues as entrusted to them from time to time to the satisfaction of their authorities honestly and sincerely. There was no black spot in their service record at any point of time. The above labourers even though engaged by the contractor M/s Mishra Enterprises were performing their duties directly under the guidance and supervision of the officers of the first-party management, i.e. The Management of SAIL, Central Power Training Institute (CPTI). Shri B. K. Mishra was then the Senior Deputy Director of the C. P. T. I. Shri B. K. Mishra in connivance with M/s Mishra Enterprises issued the work order in favour of M/s S. K. Acharya after the expiry of the Contract period of M/s Mishra Enterprises on 23-10-1997 in order to terminate the services of these eight workmen of M/s Mishra Enterprises and to engage other workers in their place through S. K. Acharya who was the Partner of M/s Mishra Enterprises. These workers (workmen) of M/s Mishra Enterprises approached him and requested to instruct M/s S. K. Acharya to absorb them in their job as usual after expiry of the contract period of M/s Mishra Enterprises. But they did not listen to them and engaged his men for the job. Thereafter the second-party workmen approached the Rourkela Shramik Sangha Union who had challenged the action of the first-party management as illegal with the result that the work order issued by the management in favour of M/s S. K. Acharya was ultimately

cancelled by the management. Thereafter the management engaged three old employees of Rourkela Steel Plant, one as Messenger-cum-Office Attendant, second as Electrician and the third one as Xerox Machine Operator, Sweeping and Cleaning work, etc. Thereafter the management issued work order to Sulabha International to perform the jobs through Contract Labourers and since then Sulabha International is attending to Sweeping and Cleaning works of the Institute. The jobs like Sweeping and Cleaning, distribution of Daks, Operation of Xerox Machine, Minor Electrical Maintenance are not only indispensable for C. P. T. I. but also permanent and perennial in nature for the management of SAIL. So the Contract Labourers of M/s Mishra Enterprises could not have been removed from service as they are deemed to be in regular employment of the first-party management. The second-party workmen were never charge-sheeted for any misconduct nor were given one month notice nor paid one month wages in lieu of notice. No compensation was paid to them. So the second-party workmen claim that their termination from service is illegal and unjustified. The contract between C. P. T. I. (R. S. P.) and its Contractors are all Sham Transaction and the Contractors are mere name lenders. So the second-party workmen prayed that they be taken back in employment as regular employees of the management paying them their legal dues and wages.

3. The first-party management of SAIL, C. P. T. I., R. S. P. has filed the written statement stating that there does not exist any master servant relationship between the second-party workmen and this party for which the reference is not maintainable. This party being not employer the name of party may be struck off from the proceeding. The second-party workmen nor the Union are entitled to raise the dispute in question.

4. The first-party is an Educational Institute which is constituted to train and develop human resources working in the area of power. The first-party engaged M/s Mishra Enterprises a Contractor Establishment for a period of one year to render supporting services including the job of cleaning vide Work Order No.036/01/93-94, dated 7-7-1993 which came into operation with effect from 15-7-1993. After the expiry of the work order the tender was invited vide Enquiry No. CPTI/036/21/94-95, dated 13-6-1994 for maintenance and to clean the C. P. T. I. building and surroundings. Amongst the various bidders, rate submitted by M/s Mishra Enterprises was the lowest and accordingly the work order was issued for the period from 16-8-1994 to 15-8-1995. The Contractor was executing the job assigned to its own Supervisor. Since a new contract was not finalised the contract work was extended till October 1995. Through subsequent work order M/s Mishra Enterprises was assigned the job for six months from 17-10-1995 to 16-4-1996 which was extended up to 17-10-1996 on the same terms and conditions. As a lowest bidder, M/s Mishra Enterprises was again awarded with the contract effective from 25-10-1996 to 24-10-1997. A tender enquiry was issued vide notice, dated 2-9-1997 in response to which various contractors submitted their Quotations. The Quotations offered by M/s S. K. Acharya, Contractors and Engineers was the lowest and as such Letter of Intent (LOI) was issued on 22-10-1997, in terms of which M/s S. K. Acharya was to confirm its acceptance by 27-10-1997 but they neglected and failed to tender their acceptance as a result the L. O. I. was revoked and the tender was cancelled. There is no master and servant relationship in between the first-party management and the second-party workmen nor the Contractor who engaged them in the contract work.

5. Further, it is alleged from the written statement that the workers (second-party) being engaged by the Contractor were discharging their duties assigned to them by the Contractor and the first-party management was not supervising their work nor the second-party workmen were

discharging any work beyond the scope of the work order. It is denied that M/s S. K. Acharya was dancing to the tune of B. K. Mishra. So in this respect the allegation made by the second-party workmen against M/s S. K. Acharya is false. The officials of the Union without following the bye-law of the Union has raised the dispute. The first-party management had no role to play for the selection of workmen by the Contractor and the incoming Contractor is under no obligation to absorb the workmen of the outgoing Contractor. As the M/s S. K. Acharya was issued with L. O. I. being the lowest bidder and as he failed to perform the L. O. I., the L. O. I. was revoked and the tender was cancelled. The first-party management was availing the services of one Air Conditioning System Operator, one Electrician-cum-Operator and one Messenger-cum-Office Attendant on transfer from Rourkela Steel Plant. So a voluntary organisation is carrying on the cleaning job. The Contractor has never failed to pay the legal dues to his workers during his tenure of job. The second-party workmen are not entitled to get any relief.

It is alleged from the written statement that the C. P. T. I., SAIL is an Educational Institute to train and develop human resources working in the area of power. The institute was formally inaugurated in July, 1993. For Cleaning/Sweeping and upkeeping of the C. P. T. I. building tender was invited from interested registered contractors vide Notice, dated 28-4-1993. The Contractor M/s. Mishra Enterprises being the successful lowest tenderer was awarded with the contract for a period of one year vide work order, dated 7-7-1993 which commenced with effect from 15-7-1993. The contract was subsequently extended for one month which expired on 15-8-1994. The fresh tender was invited on dated 13-6-1994 for the said job amongst the various bidders and as M/s Mishra Enterprises was the lowest the work order issued in his favour on 25-7-1994 which was valid for a period of one year with effect from 15-7-1993. The contract was subsequently extended for one month which was expired on 15-8-1994. As alleged the fresh Notice dated 30-9-1995 inviting tender for execution of similar job and several tenderer participated and the lowest tender of M/s Mishra Enterprises was accepted and a fresh contract was awarded for a period of six months and he was doing work order till 17-10-1996 including the extended period. After the closure of the contract, a fresh tender for the said job and M/s Mishra Enterprises being the successful tenderer was awarded the job contract commencing from 25-10-1996 to 24-10-1997. Since M/s S. K. Acharya neglected and failed to tender their acceptance the tender was cancelled. So no further contract was awarded to M/s S. K. Acharya. Thereafter the said job was entrusted to M/s Sulabha International which is not a Contractor, but a voluntary Non-Government Organisation which enjoys certain privileges and committed in the development and economic upliftment of a class of people engaged in traditional job has rehabilitated such persons who have come forward as volunteers were accepted for doing such type of work. The Contractor M/s Mishra Enterprises engaged the second-party workmen for execution of job under the contract awarded by SAIL, C. P. T. I. The contractor made payment to his labourers who were engaged by him for execution of the job. The contract awarded to M/s Mishra Enterprises from time to time are genuine contracts which came to an end by efflux of time. The SAIL, R. S. P. never supervised nor exercise any control over the affairs of the said labour contract. The job involved in the said contract is neither permanent nor perennial in nature. The SAIL, C. P. T. I., R. S. P. being a Central Public Sector Undertaking have its own rules and regulations for recruitment in which absorption is not permissible and for employment in R. S. P. one has to pass the qualification test as well as interview subject to vacancy. The contract awarded to M/s Mishra Enterprises being genuine contract came to an end by efflux of time, i.e. on expiry of contract period, the claim of the second-party workmen that the contract is sham and the contractors are name lender and the contract labourers are deemed to be an regular establishment of the

first-party management is totally misconceived and not permissible in law. So the claim of the second-party workmen is not maintainable. Hence the first-party management prayed that the second-party workmen are not entitled to get any relief.

6. Shri Subodha Kumar Mishra, Proprietor of M/s Mishra Enterprises has filed the written statement stating that this case is not maintainable in law nor the workmen are entitled to get any relief. As alleged Shri S. K. Acharya was the Proprietor of M/s S. K. Acharya and one proprietor cannot be a partner of the another Proprietor, so far as the registration in SAIL, R. S. P., Rourkela is concerned. M/s Mishra Enterprises being the employer and after expiry of the contract period he advised eight numbers of workmen to receive their full and final settlement wages from him on 5-11-1997 as per their Notice dated 24-9-1997 but none turn up to receive their dues. The second-party workmen are entitled to get their wages such as payment of leave salary, payment of retrenchment compensation, payment of bonus, payment of monthly wages for the period from 1-10-1997 to 24-10-1997. The contractor M/s Mishra Enterprises in his written statement admitted that the engagement of the second-party workmen to carry out the contract awarded to him by the first-party management as per the work order till completion of the contract period on 24-10-1997. As alleged after expiry of the contract period the contractor M/s Mishra Enterprises advised the second-party workmen to receive their full and final settlement dues and he sent several Notices, dated 24-9-1997 and dated 16-11-1997 on the workmen. The second-party workmen neither turn up to receive their dues nor convey their opinion although the contractor M/s Mishra Enterprises was ready to pay and final settlement of dues to the workmen. So, he brought this fact to the notice of the A. L. C./D. L. C., Rourkela and intimated this fact to the Principal Employer C. P. T. I. So the Proprietor of M/s Mishra Enterprises, Shri Subodha Kumar Mishra prayed for an order directing the second-party workmen to receive their dues as per the then prevailing rule of the C. P. T. I.

7. Out of the pleadings of the parties, the following issues have been framed :-

#### ISSUES

- (i) "Whether the action of the management of M/s Mishra Enterprises and M/s Jai Maa Santoshi Enterprises terminating the services of Sarbashri B. B. Chhatria, A. Bag, P. K. Rout, D. Mohanty, S. Mishra, P. K. Tandi, G. Suna and B. Mahakud (workers of M/s Mishra Enterprises) and Shri D. B. Sen and Shri S. Samal (workers of M/s Mishra Enterprises) is legal and justified ?
- (ii) To what relief they are entitled and whether they can be regular employees of Central Power Training Institute ?"

8. On behalf of the workmen second-party one of the workmen namely, Bipin Bihari Chhatria has been examined as W.W. 1. He has filed the documents which are marked as Ext. A to Ext. M.

9. On behalf of the first-party management three witnesses have been examined M. W. 1 Bijaya Kumar Mishra, the Senior Deputy Director, C. P. T. I., Rourkela, M. W. 2 Sunanda Manohar Mahapatra, Deputy General Manager, C. P. T. I., Rourkela and M. W. 3 Narendra Prasad Ray, A. G. M., C. P. T. I., Rourkela. The first-party management has relied upon some documents which are marked as Ext. 1 to Ext. 18 and all these documents marked without objection from the other side.

Shri Subodha Kumar Mishra on behalf of the M/s Mishra Enterprises has examined as M. W. 1 for the Contractor Management No.2. He has filed some documents which are marked as Ext. I to Ext. XIV.

## FINDINGS

10. *Issue No.(i)* – Bipin Bihari Chhatria along with other workmen second-party have filed this present case praying that they may be taken back in employment as a regular employees of the management as well as for their legal dues and wages. As per the case of the second-party the first-party management opened a training institute on 16-7-1993 and engaged M/s Mishra Enterprises as its Contractor by its work order, dated 15-7-1993 to attend the work such as Sweeping, Cleaning and other jobs including Minor Electrical Maintenance pertaining to the said Central Power Training Institute at Rourkela through Labourers. The second-party workmen have no claim nor stated regarding to M/s Jai Maa Santoshi Enterprises or its two workmen namely, D. R. Sen and S. Samal. The workman W. W. 1 has not stated anything against the said Contractor.

11. The admitted facts of both the parties stated as follows :-

The second-party workmen were working under M/s Mishra Enterprises during the validity of the contract period, M/s Mishra Enterprises was successful tenderer and the contract was awarded in his favour and the contract came to an end on 24-10-1997. The contract order was for cleaning, sweeping and upkeep of the C. P. T. I. building and the payment to the labourer was linked with volume of work executed for the entire building area and its premises. It is also admitted fact that the contractor was regularly paying wages and other dues to the labourer being engaged and there was no dispute on payment of wages and other dues to the labourer during the contract period. It is admitted fact that M/s Mishra Enterprises was a registered contractor having its independent E. S. I. number and E. P. F. Code and successful tenderer in different tender notice issued by the first-party management No. 1 C. P. T. I. The contract came to an end on 24-10-1997 and M/s Mishra Enterprises called upon all the workers as named in the reference to receive their final dues vide Notice dated 24-9-1997 and dated 6-11-1997 but the second-party workmen did not attend his office on the date fixed. It is also admitted fact that the Notices dated 19-9-1995 and dated 17-9-1996 were issued on closure of its earlier contract and payments have not been received by the second-party workmen. As alleged M/s Mishra Enterprises was prepared to pay the dues but the second-party workmen refused to receive their dues.

12. M. W. 1 in his evidence stated that the workmen were working under C. P. T. I. from very inception till 24-10-1997 for Sweeping, House Cleaning, etc. Prior to opening of C. P. T. I. being engaged they started their cleaning work within the premises with effect from 15-7-1993 through M/s S. K. Mishra Contractor. As alleged their work was supervised by the Executive Officer of the C. P. T. I. but not by the Contractor. He admitted in his evidence that the term of agreement of work order of M/s S. K. Mishra, Contractor completed on 24-10-1997. Thereafter M/s S. K. Acharya took the contract order of the said work in place of M/s. S. K. Mishra, Contractor. They approached to M/s S. K. Acharya to engage them in work but he refused. Then the workmen filed their representation before C. P. T. I. through their Union (R. S. P.) for their engagement in their previous work. At this stage the documents filed by the workmen should be scrutinised in a careful manner. Ext. A is the xerox copy of agreement, dated 22-10-1997 of C. P. T. I. addressing to M/s S. K. Acharya. Ext. B is the xerox copy of the letter of Rourkela Shramik Sangha, dated 24-10-1997 addressing to Director, C. P. T. I. requesting him to engage these workmen by the incoming contractor M/s S. K. Acharya. Ext. C is the xerox copy of reply dated 7-11-1997 by the Joint Director, C. P. T. I. Ext. D is the xerox copy of Circular dated 12-11-1997 of Union to C. P. T. I. Ext. E is the xerox copy of Circular dated 17-12-1997 of R. S. P. inviting application from regular employees of Rourkela Steel Plant. Ext. F is the xerox copy of Gate Pass issued to Shri P.K. Rout. Ext. G to Ext. G/11 are the annual membership

subscription receipt of the Union. Ext. H is the xerox copy of roaster duty chart of C. P. T. I. officials. Ext. J. to J/3 are the xerox copies of Attendance Card. Ext. K. is the memorandum of settlement dated 26-11-1983. Ext. L is the xerox copy of Gate Pass.

13. The learned Advocate on behalf of the second-party workmen submitted that the workmen were engaged by C. P. T. I. but not by the Contractor M/s Mishra Enterprises (Shri S. K. Mishra) who was the mere labour supplier. So the second-party workmen claim that their termination by the C. P. T. I. by violation of rules is illegal. The Contractor was only sham lender/transaction. The learned Advocate on behalf of the second-party workmen further submitted that the dispute is in between the C. P. T. I. and the workmen and the Contractor showing in the picture and subsequently the contractor was impleaded as party in this case. The learned Advocate further submitted that the termination of service of the second-party workmen is illegal as per Section 25-F of the I. D. Act as the workmen cannot be terminated from service unless they were given one month notice as well as they were paid one month wages and compensation. In this case neither the notice was given nor any payment was made to the workmen. So the learned Advocate further submitted that the workmen should be reinstated with their back wages as per rules. Further he admitted that C. P. T. I. has not issued any letter of appointment to any worker. Moreover no appointment letter is there. The workmen worked in C. P. T. I. being supplied by the contractor. So the learned Advocate submitted that the case of the second-party workmen fully depends upon the circumstantial evidence and the contractor is a labour supplier. M. W. 1 was the administrative head of C. P. T. I. who has admitted in his evidence that the second-party workmen were employed by C. P. T. I. through the contractor. As per Ext. 10 the duration of the contract was for one year. So as per the case of the second-party workmen, the C. P. T. I. was looking after all the activities/ action/work of the workmen and the contractor was only mobilising the labourers. In their job, the cleaning and sweeping was the contract work. Further he submitted that C. P. T. I. was maintaining their Attendance Register (Ext.L) and Attendance Card (Ext.J to Ext.J/3). The Attendance Register and Attendance Card which was produced by the workmen as they were possessing the same. Rather the Contractor said that he was maintaining the Attendance Register and the card to show his control over the workmen. Further they claim that these above Registers were being maintained by C. P. T. I. and the officer of C. P. T. I. put their signature on the said Registers. The C. P. T. I. was maintaining the Attendance Register and Attendance Card as well as issued Identity Card to all the workmen. The Attendance Register contains no signature of the contractor nor the signature of Supervisor in the Attendance Register. So the learned Advocate on behalf of the workmen submitted that the second-party workmen will be deemed to be the workers of C. P. T. I.

14. It is the common evidence of M.Ws. that the C. P. T. I., SAIL is an Educational Institution which imparts training to the employees working in the area of Power Sector. It was functioning under Management Training Institute, Ranchi another Unit of SAIL. The building and assets including establishment were transferred to Rourkela Steel Plant in the year July, 2004. In order to render support the service like maintenance and upkeeping of the C. P. T. I. building and its surroundings including supply of various Electrical and sanitary items, Sealed Tender were invited from time to time from the interested registered contractors of SAIL, R.S.P./Government/P.S.U., parties were required to submit the Quotation of their lowest item rates. In response to tender enquiry issued, various registered contractors participated. Their tender papers were scrutinised by the Tender Committee. The lowest Quotation by M/s Mishra Enterprises was accepted and the contract awarded to him. The Contractor M/s Mishra Enterprise was the lowest bidder among the six contractors participated in the tender against the tender notice on dated 20-9-1996 for the job of maintenance

and upkeep of C. P. T. I. building and the job contract was awarded to M/s Mishra Enterprises. The contract awarded to M/s Mishra Enterprises was in conformity with the procedure and practice prevalent in Rourkela Steel Plant from time to time and are routine contracts which came to an end by efflux of time, i.e. on 24-10-1997. As alleged from their evidence M/s Sulabha International Social Service Organisation, a voluntary Non-Governmental Organisation (NGO) offered to execute work of cleaning the toilets, etc. at C. P. T. I. building which was accepted by MoU was signed by them in the year June, 1988. M/s. Sulabha International used to execute the job through their volunteers and claims exemption under Labour Laws.

15. Further it is apparent from the evidence of M.Ws. that for execution of the contract job, the Contractor M/s. Mishra Enterprises engaged its own labourer. SAIL, Rourkela Steel Plant has neither supervised nor exercise any control over the affairs of the said contract labourers. The contract work was being supervised by the contractor and in his absence his Supervisor Shri Uttam Kumar Sahu and P. K. Mishra who were also supervised the work of the labourers (second-party workmen). The Contractor was making wage payments to his labourers who were engaged by him for execution of the contract job. The bill of contract was settled from time to time after he produced documents, to the effect that he has complied with statutory responsibility, as employer each contractor in respect of his labourers. As alleged the appropriate Government has not prohibited the engagement of contract labour in the establishment of SAIL, C. P. T. I. as per the provision of the Contract Labour (R & A) Act, 1970.

It is further alleged that the Contractor M/s. Mishra Enterprises had arranged Gate Passes for its employees/workmen, obtained from C. I. S. F. authorities by submitting application to C. I. S. F. through C. P. T. I. The Contractor also was providing personal productive equipments such as safety shoes, hand gloves to his labourers and observing safety standards. The Contractor supplied consumable materials, toilets, tools and tackles for execution of the contract. In this respect the evidence of M.Ws. are corroborated to each other and the management has relied upon the documents Ext. 1 to Ext. 18. The Contractor M/s. Mishra Enterprises also relied upon the documents which are marked as Ext. I to Ext. XIV.

The learned representative on behalf of the management submitted that the claim of the workmen second-party is absurd one. In view of such facts and circumstances the second-party workmen were never on the control of the C. P. T. I. nor they were under the supervision of C. P. T. I. The second-party workmen were engaged by the Contractor M/s. Mishra Enterprises and were disengaged by him on closure of its contract with the C. P. T. I. with effect from 24-10-1997. So, the allegations made by the second-party workmen against Shri B. K. Mishra, the then Senior Deputy Director of the said Training Institute is false. He never with any *mala fide* motive, hatched a plan in connivance with M/s. Mishra Enterprises to terminate these second-party workmen from their job nor issued a work order in favour of M/s. S. K. Acharya after expiry of the contract period of the Contractor M/s. Mishra Enterprises with an intention to terminate the service of the second-party workmen. So there is no question of *mala fide* intention or ulterior motive of Shri B. K. Mishra, the then Deputy Director of SAIL, C. P. T. I. The first-party management has absolutely no role to play any selection or appointment of those second-party workmen. M/s. S. K. Acharya who become the lowest bidder in the tender, the said contract being an independent contractor has not executed the work. So there was no scope for engaging any workmen. It is an admitted fact that the second-party workmen were engaged by the Contractor M/s. Mishra Enterprises and terminated after closure of the contract work with effect from 24-10-1997. So the evidence led by the M. Ws. corroborated



alongwith their documents. The Contractor M/s. Mishra Enterprises stated in his evidence which is corroborated the documentary evidence disclosed that the contractor has issued notice to its labourers one month prior to expiry of each of its contract intimating them to receive their final settlement dues as per the Notice dated 19-9-1995 and 17-9-1996 (Ext.XIV) and Notice dated 24-9-1997 and dated 6-11-1997 (Ext.7) and copies served on the C. P. T. I. Ext.XII and Ext.XIII disclose that the Contractor M/s. Mishra Enterprises has brought this matter to the notice of the Deputy Labour Commissioner, Rourkela from time to time along with statement of final settlement dues like leave wages. Unpaid Wages, Bonus, Retrenchment Compensation, etc. offered by him but the second-party workmen did not turn up to receive these payments which is also clear from the evidence of other witnesses. However as the second-party workmen were not engaged/appointed by the C. P. T. I., they cannot claim their permanent job under the C. P. T. I. So in view of the said facts and circumstances the C. P. T. I. is not responsible for the job of the second-party workmen nor the C. P. T. I. is the Appointing Authority of the second-party workmen . So the second-party workmen being engaged by the contractor M/s. Mishra Enterprises were working under the full control of M/s. Mishra Enterprises and they were also terminated from their job on closure of its contract with C. P. T. I. with effect from 24-10-1997. So the action of the management of M/s. Mishra Enterprises and M/s. Jai Maa Santoshi Enterprises in terminating the services of the second-party workmen (workers of M/s. Mishra Enterprises) is legal and justified.

16. *Issue No. (ii)*– It is alleged from the evidence of the contractor M/s. Mishra Enterprises that he has provided employment cards Ext. J to Ext. J/3 to each of the labourers and was maintaining their Attendance Register through his Supervisor Shri Sahu and used to get the same certified by the officers of the C. P. T. I. for the purpose of billing. So the claim of the second-party workmen that the officials of C. P. T. I. were looking after their job work by putting their signatures in the Attendance Register and Attendance Cards appears to be false. It is further alleged from the evidence of the contractor M/s. Mishra Enterprises that he used to disburse wages to all his labourers in presence of C. P. T. I. authority. E. S. I. No. and E. P. F. sub-code No. RG-585 and E. P. F. contributions in respect of each of the employees engaged by him were being deposited with E. S. I. and E. P. F. authorities from time to time during the period of contract. All his labourers have distinct E. S. I. number and E. P. F. number allotted by the authority concerned from their wages and the total amount was deposited with the E. P. F. authority. He used to raise bills alongwith all necessary documents, i.e. documents showing job completion certificate from C. P. T. I. authority, wage sheet, E. S. I. deposit and E. P. F. deposit to C. P. T. I. and the bills have been settled as per the contract accepting the final bill after expiry of the last contract. As alleged from the evidence on record as well as documentary proof after expiry of each contract the contractor M/s. Mishra Enterprises had issued notice to all his labourers including the second-party workmen to collect their final dues and at the end of expiry of the contract on dated 24-10-1997, he issued notice before one month intimating to all his workers to receive the final payment/dues on 5-11-1997 (A.N.). The labourers did not turn up to receive their final dues. Non-disbursement of wages also witnessed by the C. P. T. I. authority which is apparent from the documents. Thereafter, the contractor M/s. Mishra Enterprises again tendered payment of final dues by Notice dated 6-11-1997 but the workmen did not turn up to receive their final dues. He had intimated this fact to the Deputy Labour Commissioner, Rourkela vide his letter, dated 20-11-1997. As alleged the contractor M/s. Mishra Enterprises closed his establishment in C. P. T. I. on 25-10-1997 after expiry of the contract on 24-10-1997. So there was no scope for him to engage the second-party workmen after 24-10-1997. However he used to send notice to all his labourers to receive their final settlement dues but the workmen did not turn up.

So the second-party workmen have not received their final settlement dues from the contractor M/s. Mishra Enterprises in spite of several notices issued to them. In view of the said facts and circumstances the second-party workmen are only entitled to get their wages from the contractor M/s. Mishra Enterprises but they are not entitled to be reinstated in their job. So they are not the regular employees of C. P. T. I. According issue No.(ii) is answered. Hence the Award.

#### AWARD

The reference is answered on contest but without any cost. The action of the Management of M/s. Mishra Enterprises and M/s. Jai Maa Santoshi Enterprises in terminating the services of Shri B. B. Chhatriya, A. Gag, P. K. Rout, D. Mohanty, S. Mishra, P. K. Tandi, G. Suna and B. Mahakud (workers of M/s. Mishra Enterprises) and Shri D. R. Sen and Shri S. Samal (workers of M/s. Jai Maa Santoshi Enterprises) is legal and justified. They are not the regular employees of C. P. T. I. But all these above workmen are entitled to get their settlement dues from the Contractor M/s. Mishra Enterprises towards their work. The Contractor M/s. Mishra Enterprises is directed to pay the dues to each of the workmen within three months from the date of the publication of this Award, failing which he shall pay interest @ 15% to the second-party workmen on their settlement dues.

Dictated and Corrected by me.

S. MAHAPATRA  
22-2-2010  
Presiding Officer  
Labour Court  
Sambalpur

S. MAHAPATRA  
22-2-2010  
Presiding Officer  
Labour Court  
Sambalpur

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