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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 11th June 2010

No. 4903–li/1(J)-13/2009–L.E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st December 2009 in I. D. Case No.13 of 2005 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of the Executive Engineer, Orissa Lift Irrigation Corporation Division, Berhampur, Dist. Ganjam and its workman Shri Simanchal Sahu was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTES CASE No.13 OF 2005

Dated the 21st December 2009

Present :

Shri P. K. Jena, O.S.J.S.(Jr. Branch),  
Presiding Officer, Labour Court,  
Jeypore, Dist. Koraput.

Between :

The Executive Engineer, ... First-party Management  
Orissa Lift Irrigation Corporation Division,  
Berhampur, Aska Road,  
At/P.O. Berhampur,  
Dist. Ganjam.

And

Its Workman Shri Simanchal Sahu ... Second-party Workman  
C/o Shri Kailash Ch. Mishra, Nehru Nagar-7  
Berhampur-3  
At/P.O. Berhampur  
Dist. Ganjam.

## Appearances :

Shri Galak Sundara Sabat, Advocate . . . For the Management  
Berhampur.

Shri Kailash Chandra Mishra, Advocate. . . For the Workman  
Berhampur.

Date of Argument . . . 19-12-2009

Date of Award . . . 21-12-2009

Under Sections 10 and 12 of the Industrial Disputes Act, 1947.

## AWARD

The Government of Orissa in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their memo No.9121 (4), dated 27-10-2005 for adjudication of the following disputes :-

## SCHEDULE

“Whether termination of the services of Shri Simanchal Sahu, N. M. R., Pump Helper by way of refusal of employment with effect from 4-10-2000 by the Executive Engineer, O.L.I.C. Division, Aska, Berhampur, Ganjam is legal and/or justified ? If not, what relief is Shri Simanchal Sahu entitled to ?”

2. The case of the second-party workman is that he was working as a N. M. R. Pump Helper from 11-7-1990 in the office of the Assistant Engineer under the O.L. I. C. Division, Berhampur, Ganjam and continued in his service without any break. He availed leave from 1-9-1998 to 30-11-1998 for sickness of his wife and joined in duty on 1-12-1998. He also again availed leave from 4-9-2000 to 3-10-2000 on the same ground and joined in duty on 4-10-2000 when he was refused employment by the management. Prior to his termination by the management he has not been given one month pay nor paid one month notice pay in lieu of notice along with compensation of required u/s. 25-F of the I. D. Act, 1947. On the above *mala fied* action of the management, retrenching him from his service or terminating is quite illegal and he prays the Court for reinstatement in his service with full back wages. He was called upon to submit his explanation by the then Junior Engineer of O. L. I. C., Digapahandi under whom he was doing work by then for the reason of his unauthorised absence from his duty from 14-9-2000 to 3-10-2000 and in response to the letter, he submitted his explanation in which he denied the allegation of unauthorised absent from his duty. As against the illegal termination, he complained before Conciliation Officer-*cum*-District Labour Officer, Ganjam, Berhampur. But due to non-appearance of the management the conciliation failed and the matter was referred to Government and thereafter the same was referred to this Court for adjudication.

3. On the other hand the management filed his W. S. at too belated stage i.e. in the year 2009 and admitted that the second-party workman was provided with engagement as the N. M. R. Pump Helper and he was entitled for daily wages at the rate prescribed by the Government. As per the pleadings of the management, the workman remained absent in the work from 1-9-1998 till 30-11-1998 totaling 91 days in violation to the agreed terms for his engagement. Due to his

unauthorised absent in the year 1998 and in the year 2000 the management called upon the explanation from the workman for his unauthorised absence in duty. Again as per the decision of the Orissa State Government for restructuring the Orissa Lift Irrigation Corporation in the State Government Cabinet decided to dispense with 7,341 numbers of employees as per the list given along with vide letter No.38298-WR., dated 26-10-2002 of the Commissioner-*cum*-Secretary to Government to the first-party management. In the above circumstances, the second-party workman is not entitled to any compensation u/s. 25-F of the I. D. Act, 1947 and accordingly the claim statement filed by the workman is liable to be dismissed.

4. The workman in support of his case has examined himself as W. W. No.1 and filed an affidavit evidence. On the other hand though the management has cross-examined the workman but he has not examined any witness on his behalf. The workman in support of his case has filed several documents under Exts-1 to Ext-6. The management has not filed any of the documents in his favour.

5. The workman in his affidavit evidence has stated that he was appointed as N. M. R. Pump Helper under the O. L. I. C. Division, Berhampur and joined in duty on 11-7-1990. During his tenure of his service he was also working under Lift Irrigation Section of Digapahandi which was under O. L. I. C. Division, Berhampur. While he was working under the O. L. I. C. Section, Digapahandi he availed leave from 1-9-1998 to 30-11-1998 due to sickness of his wife and joined in duty on 1-12-1998. Since he was not paid his wages from 1-12-1998 to 31-12-1998 an order was passed by Superintending Engineer, O. L. I. C. Division, Berhampur for payment of Rs.972 towards his wages vide office order Memo No.2362, dated 13-9-2000. And accordingly the workman was directed to receive the wages and to attend in duty of Lift Irrigation Section, Digapahandi. As per the evidence of the workman the then Junior Engineer, Digapahandi served a notice on him vide letter No. 73, dated 4-10-2000 alleging there in that he was remained absent in duty from 14-9-2000 to 3-10-2000 and called for explanation from the workman. But to that letter of explanation he replied that he remained present on duty for these periods. The allegation made against him for non-attending to duty is false. Again Assistant Engineer of O. L. I. C., Digapahandi also called for explanation from him and accordingly he submitted his explanation on 9-10-2000. Subsequently the then Junior Engineer being in custody of the Attendance Register did not allow the second-party workman to sign in the Attendance Register and subsequently he was refused employment with effect from 4-10-2000. As per the evidence of the workman he was in continuous service from 6-6-1990 to 3-10-2000 i. e. for more than 10 (ten) years under the management. The management has not challenged the continuous service of the workman in any manner nor dispute the same. Since the workman was in continuous service from 6-6-1990 to 3-10-2000 i. e. more than a period of 240 days, so no doubt, he will come under the purview of the Section 25-F of the I. D. Act, 1947 which has not been complied by the management at the time of termination of the workman. It is also stated by the workman that no enquiry has been conducted by the Enquiring Officer before termination of his service. It is further stated by him that the management has not paid the retrenchment compensation to him nor has given one month pay in lieu of notice before his termination. The workman proves Ext.-1 to be his engagement given by the management. He also proves Ext-2 to be the xerox copy regarding receive of his wages from 1-12-1998 to 31-12-1998 as per the letter of Superintending Engineer of O. L. I. C. He has also proved Ext.-4 to be his reply as against that

explanation letter. He has also proved Ext-6 to be the xerox copy of the deduction slip of G. I. S. by the management. He during his cross-examination has admitted to have received payment from 1-1-1999 to 13-9-2000 towards his wages. He denied to have remained absent in duty from 14-9-2000 to 3-10-2000. From the above version of the workman and on the strength of several documents under Exts-1 to Ext-6 filed by him it clearly goes to show that he was in continuance of his service for more than 240 days in a year under the management for which Section 25-F of the I. D. Act is applicable to the workman. In that aspect, the management at the time of termination to the workman has violated the provision of Section 25-F of the I. D. Act by not giving him one month notice pay as well as retrenchment compensation. Due to non-compliance of the Section 25-F of the I. D. Act by the management the refusal of employment to the workman is illegal and unjustified and he is entitled to be reinstated with full back wages. Hence order.

### ORDER

In view of the above observation the termination of the service of Shri Simanchal Sahu, N. M. R. Pump Helper by way of refusal of employment with effect from 4-10-2000 by the Executive Engineer, O. L. I. C. Division, Aska, Berhampur, Ganjam is illegal and unjustified. The management is directed to reinstate the workman in his former post and to pay the full back wages within three months of passing of the Award, failing which the workman is at liberty to take shelter before the appropriate authority.

Dictated and corrected by me.

P. K. JENA  
21-12-2009  
Presiding Officer  
Labour Court  
Jeypore

P. K. JENA  
21-12-2009  
Presiding Officer  
Labour Court  
Jeypore

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