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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 23rd December 2010

No. 10791—li/1(B)-174/1998-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th November 2010 in Industrial Dispute Case No. 38/1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Orissa Remote Sensing Application Centre, Bhubaneswar and its workman Shri P. K. Das was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 38 OF 1999

Dated the 30th November 2010

Present :

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

Between :

The Management of Orissa Remote Sensing Application Centre,  
Bhubaneswar. .. First Party—Management

And

Shri P. K. Das .. Second Party—Workman

Appearances :

Shri B. P. Tripathy, .. For the First Party—Management  
Advocate

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Shri Susant Dash, .. For the Second Party—Workman.  
Advocate

## 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. 4770-li/1(B)-174/1998-LE., Dt. 7-4-1999 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the Management of M/s Orissa Remote Sensing Application Centre (ORSAC), Bhubaneswar in not regularising the services of Shri Prasant Kumar Das, Cartographer is legal and/or justified ? If not, what relief and from when Shri Das is entitled to ?”

3. The case of the workman in brief is that he was engaged by the management as Tracer with effect from 4-2-1991 on wages at the rate of Rs. 30 per day paid on monthly pay day. His service was extended from time to time with different wages as applicable. He was assigned with work of Cartographer. His performance, conduct, zeal and skill were quite appreciable and his service career was without any blemish, and a certificate from the competent authority of the management has been issued in his favour. The workman was a full fledged staff member of the management. He was in continuous service in the management since 4-2-1991 and therefore he is entitled for regular absorption in service with time scales of pay ascribed to the post of Cartographer Assistant instead of prescribed minimum wages wrongfully paid to him violating the principles of equal pay for equal work. The management constituted a committee for considering the employees of the management for regular absorption by assigning the relatable time scale of pay for them. The workman was directed to furnish the personal particulars in the prescribed format supplied by the management. The workman furnished the same which was considered by the said Service Regularisation Committee. However the report of the committee remains an official secret. The workman by representing the Union of the management has been demanding for allowing appropriate time scales of pay to all the employees of the management who were paid at consolidated monthly salary or daily minimum wages irrespective of their post/work being available in core establishment in the headquarters office or project modes in the field, etc. At the behest of the local Conciliation Officer, the District Labour Officer, Khurda, Bhubaneswar, a bipartite agreement was held on 1-1-1997 on the said demand. The settlement contains the decision of the management for regularisation the services of the employees of the management. A new staffing pattern has been accepted according to which all posts in the management will be in regular pay scales and the incumbents would be fitted against appropriate posts being allowed time scales as per the guidelines adopted by the Governing Body on the recommendation of the Technical Committee set up for the purpose by the management. It was assured therein that the implementation process had been initiated and it would take a month for issuing order regularising the services of the workman except the daily wagers who were employed from time to time intermittently. It was expected that the workman would be given the appropriate time scale ascribed for the Cartographer/Carto Assistant. But the management did not allow appropriate time scales to the workman on certain plea or other. The management wrongfully treated the workman as not an employee of the management, and illegally disengaged the workman from work with effect from 30-1-1997, i.e. just 30 days after the settlement without any written order and other terminal benefits as per law. According

to the management, as the workman was a daily wager he was not an employee of the management. The workman has stated that 18 posts were created at different spells and in course of events, 14 incumbents were appointed by initial recruitment or promotion from the feeder grades, 5 posts were vacant by that time, so the workman could be given time scales with regularisation of service as has been the case with rest of the employees in Cartographic Section. All the employees of Cartographic Section were initially engaged on daily wage rates then prevailing under Minimum Wages Act. Subsequently some were favoured with consolidated wages and ultimately all were allowed the revised scales of pay with effect from 1-1-1997 except the workman. The Government has also formulated a scheme for absorption of N.M.Rs./D.L.R./Job Contract workers under regular establishment, but the management did not regularise the service of the workman instead of two numbers of employees namely Shri Saroj Kumar Das and Shri Bijaya Kumar Ray were brought over to the Cartography Section for regular absorption though they did not possess requisite qualification whereas Shri Das fulfilled all criteria for regularisation in service in Carto Section. So the workman raised an industrial dispute before the labour authority and when the conciliation failed, the matter was referred to the Government and the reference is received from the Government for adjudication and this Industrial Dispute Case was initiated wherein the workman has prayed for regular absorption in service with relatable time scale of pay since his joining in the management.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the Government of Orissa in the Department of Science, Technology and Environment by resolution, Dt. 14/15 May, 1984 realising the importance of remote sensing technology for survey, planning and monitoring the natural resources for their optimum use established the Orissa Remote Sensing Application Centre (ORSAC) so that all centralised facilities could be made available for interpretation of space borne as well as air borne data for use of various departments of Government. It was duly registered under the Societies Registration Act, 1960 having its registered office at Bhubaneswar. It is a non-profit making research and application institute dealing with space application in general and remote sensing application in particular. It is not engaged in a commercial industrial activities. It is a scientific organisation purely engaged in research and training activities and hence it is not an industry as per the Industrial Disputes Act for which the reference is not maintainable. The nature of work in the management is such that there is need to engage some daily wage labourers in the field while the scientists carry out their field verification of Maps and Collection of vital informations on the field during the course of their work. The workman was engaged from time to time on daily wage basis from 4-2-1991 to do the cartography work of various sponsored projects of the management depending upon the availability and duration of work and he was paid the minimum daily wages as per the rate fixed by the Government from time to time. The engagement of the workman remained intermittent in nature depending upon the availability of work. So the question of regularisation of service of the workman never arose. The committee recommended the service of all employees except the daily wagers who are engaged from time to time intermittently are to be regularised and to continue irrespective of number of posts in a particular area. The workman being a daily wager and engaged intermittently his case never come to the zone of consideration for regularisation. A tripartite settlement was arrived at on 1-1-1997 between the parties in the presence of the Conciliation Officer. As per recommendation of high level committee pertaining to the regularisation of service of the employees was executed basing on such terms and conditions. In such view the Union being a party to the said settlement where the regularisation of daily wagers was specifically excluded has no

*locus standi* to re-agitate a settled issue and no industrial dispute would be raised on the self same issue and so the present reference is not maintainable. Being a daily wage earner the workman was not subjected to administrative and disciplinary control of the management. The nature character and duration of job and also responsibility assigned to the workman cannot be equated with the regular employees. The workman was never in continuous engagement under the management. There was no illegality committed by the management in disengaging the workman from service from 30-1-1997 and there was no work for the workman to discharge. Though in the management many employees started as daily wager but at the relevant time of regularisation process only those engaged either on pay scales or on consolidated pay were considered for their regularisation. The management cannot be compelled to fill up uneconomical posts merely on pleading of existence of vacancies. Both Shri B. K. Ray and Shri S. K. Das have been engaged in the management entirely on different service conditions and both of them were engaged much before the workman who was engaged on daily wage basis. When the workman is not in service he cannot claim for his regularisation in service and as such the initiation of the present proceeding is bad in law and not tenable and as such the present reference is not maintainable. So in this background the management has prayed for answering the reference in negative.

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

#### ISSUES

- (i) “Whether the action of the management of M/s Orissa Remote Sensing Application Centre (ORSAC), Bhubaneswar in not regularising the services of Shri Prasant Kumar Das, Cartographer is legal and/or justified ?
- (ii) If not, what relief and from when Shri Das is entitled to ?”

6. In order to substantiate his plea, the workman has examined there witnesses altogether out of which W.W.1 is the workman himself and W.Ws.2 and 3 were working under the management. The workman has proved the documents marked as Exts. 1 to 27 series. Similarly the management has examined his Section Officer Accounts as M.W.1 and has proved the documents made as Exts. A to L.

#### FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience. It has been argued by the advocate for the workman that though the workman was given appointment with some artificial breaks, he was working continuously under the management as per the provisions of the Industrial Disputes Act for which he is entitled for absorption in the regular post as per scale prescribed in view of the settlement in Form ‘K’ vide Ext.4 as well as Ext.F. But on the other hand, it has been argued by the advocate for the management that the workman was working on daily wage basis and was employed from time to time intermittently for which in view of the said settlement he is not entitled for holding the regular post under the management. In the initial stage the management has challenged that as the management is not engaging in commercial and industrial activities and when it is a scientific organisation purely engaged in research and training activities, it cannot be said to an industry for which this reference is not maintainable. On the other hand, it

has been argued by the advocate for the workman that from the activities of the management basing on the materials it can be safely concluded to be an industry and the dispute raised by the workman is an industrial dispute for which this Court is competent to adjudicate the same and the reference is maintainable. The industry has been defined in Section 2(j) of the Industrial Disputes Act which reads as follows :

“Industry” means any business, trade, undertaking manufacturer or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen.”

Further in view of the authority reported in 1978 (2) SCC 213 it has been held that the industry as defined in Section 2(j) and explained in the settled principle of law has a wide import as follows :

(a) Where (i) systematic activity, (ii) organised by co-operation between employer and employee ( the direct and substantial element is chimerical) (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, e.g. making, on a large scale prasad or food), *prima facie*, there is an ‘industry’ in that enterprise.

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

(c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organisation is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

So basing on the materials available and in view of the above authority I came to the conclusion that the establishment of the management is an ‘industry’ and the reference is maintainable on this point.

8. Perused the documents marked as exhibits by both the parties as well as the evidence of both the parties. It is an admitted fact by both the parties that the workman was working on daily wage basis being engaged from time to time in Cartographic Section under the management. After settlement in Form ‘K’ the sole question now arises whether the present workman comes under the category of daily wage employee from time to time intermittently, if so, then the workman has no case in view of such settlement. But it has been argued by the advocate for the workman that from the work card containing 38 sheets marked as Ext. 10 as well as Ext. B and Ext. 9 it clearly show that though he was appointed with different appointment orders but he was working continuously under the management in every month with certain break which is an artificial one. From such artificial break it cannot be said that he was working intermittently. The settlement was held on 1-1-1997. But after 30 days of the settlement instead of regularising the service of the workman he was terminated from service with effect from 30-1-1997 for which the workman has raised another industrial dispute which is subjudice. Merely because he has been terminated from service the present reference cannot be said to be not maintainable, as argued by the advocate for the

management as because if the workman would have been regularised in the service the question of reinstatement him not to be arose and if the workman could have been regularised in the service in view of the settlement in Form 'K' he could have got the regular post. So on that ground regarding subjudice of another dispute regarding termination and when the service of the workman has already been terminated it cannot be said that this reference is not maintainable in my opinion. So I hold that the reference is also maintainable on this point.

9. Ext. B and Ext. 10 are the work cards regarding appointment of the workman as mentioned earlier. Ext. 9 series are also some work cards. The workman joined in the establishment of the management on 4-2-1991 and continued till 30-1-1997 as per work cards. The continuous service has been defined in Section 25-B of the Industrial Disputes Act. In the instant case it shows that the workman has completed 240 days in every year. His appointment was in continuous with artificial break. There is no reason from the side of the management for such artificial break though there was sufficient work for the workman. In the authority reported in AIR 2001 SC 706 it has been held that :

“XX XX XX XX XX XX if work is taken by the employer continuously from the daily wage workers for a long number of years without considering their regularisation for its financially gain as against employees legitimate claim, has been held by this Court repeatedly as an unfair labour practice. In fact, taking work from a daily wage worker or an *ad hoc* appointee is always viewed to be only for a short period or as a stopgap arrangement, but we find that a new culture in growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with sword of Damocles hanging over their heads or to continue with favoured one in the cases of *ad hoc* employees withstanding competent and legitimate claimants. Thus we have no hesitation to denounce this practice. If the work is of such a nature, which has to be taken continuously and in any case when this pattern becomes apparent, when they continue to work for year after year, the only option to the employer is to regularise them. Financial viability no doubt is one of the consideration but then such enterprise or institution should not spread its arms longer than its means. The consequent corollary is, where work is taken not for a short period or limited for a season or where work is not of part time nature and if pattern shows work is to be taken continuously year after year, there is no justification to keep such persons hanging as daily rate workers. In such situation a legal obligation is cast on an employer if there be vacant post to fill it up with such workers in accordance with rules if any and where necessary by relaxing the qualifications, where long experience could be equitable with such qualifications. If not post exists then duty is cast to assess the quantum of such work and create such equivalent post for their absorption.”

In the instant case the management has taken the plea that the workman was working intermittently on daily wage basis from time to time. But no sufficient evidence has been adduced by the management to show that the workman was working intermittently. Moreover from the work card and from the above authority it clearly shows that the workman was working continuously for a long period and he is entitled for absorption in regular post. Other co-workers namely Shri B. K. Ray and Shri S. K. Das who were working on daily wage basis in Cartographic Section were also absorbed

in regular post. So on careful consideration of all the materials available in the case record as discussed above, now I came to the finding that the action of the management in not regularising the service of the workman, Cartographer is neither legal nor justified. He is entitled to be regularised in service in the Cartographic Section as per the settlement in Form 'K', Dt. 1-1-1997. Hence, both the issues are answered accordingly.

10. Hence Ordered :

That the action of the management of M/s Orissa Remote Sensing Application Centre (ORSAC), Bhubaneswar in not regularising the services of Shri Prasant Kumar Das, Cartographer is illegal and unjustified. The workman Shri Das is entitled to be regularised in his service as per settlement in Form 'K', Dt. 1-1-1997.

The reference is answered accordingly.

Dictated and corrected by me.

S. K DASH  
30-11-2010  
Presiding Officer  
Labour Court  
Bhubaneswar

S. K. DASH  
30-11-2010  
Presiding Officer  
Labour Court  
Bhubaneswar

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