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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 24th May 2011

No. 4751—li/1 (BH)-27/1995-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th April 2011 in Industrial Dispute Case No. 422 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, O. S. E. B. Electrical Division, Angul and its Workman Shri Rabinarayan Moharana, represented through the General Secretary, O.S.E.B. Workers Union, Angul was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 422 OF 1995

The 20th April 2011

Present :

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

Between :

The Management of Executive Engineer, . . . First-party Management  
O. S. E. B., Electrical Division,  
Angul.

And

Its Workman Shri Rabinarayan Moharana, . . . Second-party Workman  
represented through the General Secretary,  
O. S. E. B. Workers Union, Angul.

Appearances :

NONE . . . For the first-party Management  
Shri Rabinarayan Moharana . . . 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, have referred the matter in dispute to this Court vide Order No. 17283—li/1 (BH)-1-27/1995-L.E., dated the 2nd December 1995 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

"Whether the termination of services of Shri Rabinarayan Moharana, ex. N. M. R., Chhendipada Electrical Section by the Executive Engineer, Electrical Division, Angul with effect from the 4th May 1994 is legal and/or justified ? If not, what relief Shri Moharana is entitled to ?"

3. The case of the workman in brief is that he was working as a N. M. R. Helper under the management with effect from the 13th December 1976 and continued as such in service till the 4th May 1994. In course of his duty faced a non-fatal accident on the 13th July 1991 when he was working in the field and sustained loss of his earning capacity up to 50%. The workman filed a claim case for workman compensation before the Assistant Labour Commissioner-*cum*-Compensation Commissioner, Angul vide W. C. No. 24 of 1992. The Assistant Labour Commissioner-*cum*-Commissioner, Workmen Compensation, Angul awarded Rs. 30,026 as compensation which was disbursed to the workman on the 16th November 1992. The workman was allowed to work as usual in the said post and was directed to work. But he received a notice vide letter No. 3432 dated the 31st March 1994 from the management that as he was paid compensation for his injury he would be discharged from service after one month from dated the 31st March 1994. After receipt of the notice, the workman made representation to the management not to discharge him from service. But without considering his case, the management terminated his service. While terminating the service, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act. So the workman raised an industrial dispute before the labour authority and when the conciliation failed, the matter was informed to the Government and this reference has been received and this I. D. Case has been initiated where in 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. According to the management the workman has not been terminated from service. Due to his invalidation of the workman on physical grounds, his case was not considered for regularisation of service along with other workers who had completed 400 days in service. The Commissioner for Workmen's Compensation, Angul considered 50% invalidation awarded compensation of an amount of Rs. 36,026. On sympathetic ground, the workman was allowed to attend the office of the Junior Engineer for some time without giving him any work. Since he was invalidated he was not at all fit for N. M. R. Worker. So the workman is not entitled to get any relief in view of the provisions of Section 2(oo) (c) of the Industrial Disputes Act.

5. Initially due to absence of both the parties, a No Dispute Award was passed and subsequently in the Restoration Misc. Case No. 6/2006 the said Award was set aside and the parties were given chance to proceed with the case, as per law. But thereafter the management did not turn up and was set *ex parte*.

6. In view of the above pleadings of the parties, the following issues are settled :

## ISSUES

- (i) "Whether the termination of services of Shri Rabinarayan Moharana, ex. N. M. R., Chhendipada Electrical Section by the Executive Engineer, Electrical Division, Angul with effect from the 4th May 1994 is legal and/or justified ?
- (ii) If not what relief Shri Moharana is entitled to ?"

7. In order to substantiate his plea, the workman has examined two witnesses altogether out of which W. W. 1 is the workman himself and W. W. 2 is a retired Lineman B of the management but no document has been marked as exhibit of behalf of the workman.

## FINDINGS

8. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience

According to the workman, he was working under the management as N. M. R. He joined in the management on 13th December 1976. But his service was terminated by the management with effect from the 4th May 1994 without complying the mandatory provisions of the Industrial Disputes Act and without any reason. Further W. W. 1 deposes that he was serving under the management continuously till termination. W. W. 2 deposes that the workman W. W. 1 faced non-fatal accident on the 13th July 1991 while working in the field by which he sustained loss of his earning capacity up to 50% and he was Awarded compensation by the Assistant Labour Commissioner-*cum*-Commissioner, Workmen Compensation, Angul amounting to Rs. 30,026. After payment of compensation the workman was allowed to work as usual in the said post. In view of the above evidence from the side of the workman it shows that he was working continuously under the management and his services was terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act. After facing accident while on duty he has received the required compensation as per the direction of the Competent Authority. But no document has been proved on behalf of the workman. Though the management has taken the plea that the workman is not entitled to get any relief in view of Section 2 (oo) (c) of the Industrial Disputes Act, nothing has been proved in this case and the evidence of the workman remained unchallenged. I found no material on record to disbelieve the sworn testimony of the workman witnesses. So on careful consideration of all the materials available in the case record, I came to the finding that the termination of services of the workman by the management with effect from the 4th May 1994 is neither legal nor justified. He is entitled for reinstatement in service.

9. Regarding back wages admittedly the workman has not worked for the management from the date of his termination. As per 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 authority reported in 2004 (Supp.) O. L. R. 694 when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However, on careful consideration of all the materials available in the case record, I am of the opinion that instead of granting full back wages a lump sum amount of Rs. 30,000 as compensation will meet the ends of justice in this case.

10. Hence Ordered :

That the termination of services of Shri Rabinarayan Moharana, ex. N. M. R., Chhendipada Electrical Section by the Executive Engineer, Electrical Division, Angul with effect from the 4th May 1994 is illegal and unjustified. The workman Shri Moharana is entitled to be reinstated in service with a lump sum amount of Rs. 30,000 (Rupees thrity thousand) only as compensation 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 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 *ex parte*

Dictated and corrected by me.

S. K. DASH  
20-4-2011  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. DASH  
20-4-2011  
Presiding Officer  
Labour Court, Bhubaneswar

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