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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 4th January 2011

No. 86-li/1(BH)-113/1995-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd August 2010 in I. D. Case No. 109 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Orissa Agro Industries Corporation Ltd., Dhenkanal and their Workman Shri Bharat Chandra Das was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

#### INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 109 OF 2008 (Previously Registered as  
I.D. Case No. 8/1996 in the file of P.O., Labour Court, Bhubaneswar)

The 23rd August 2010

Present :

Shri Raghubir Dash, O.S.J.S.(Sr. Branch)  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

Between :

The management of Orissa Agro Industries Corporation Limited.,  
Dhenkanal. . . . . First party-Management

And

Their workman Shri Bharat Chandra Das,  
C/o Dhruba Charan Das,  
At Madhupur, P.O. Alanahat,  
Dist. Jagatsinghpur. . . . . Second party-Workman

Appearances :

Shri N. K. Mishra, Advocate . . . . . For the First party-Management

Shri T. Lenka, Advocate . . . . . For the Second party-Workman

## AWARD

This is a reference of an industrial dispute made by the Government of Orissa in Labour & Employment Department vide their Order No. 456-II/1-(BH)-113/1995-LE., dated 8-1-1996 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138-II/21-32/2007-LE., dated 4-4-2008. The schedule of reference runs as follows :-

“Whether the termination of employment of Shri Bharat Chandra Das, Amin, with effect from the 27th March 1993 in form of refusal of employment by the Project Manager, Orissa Agro Industries Corporation Ltd., Dhenkanal is legal and/or justified ? If not, to what relief he is entitled ?”

2. In his claim statement the workman has pleaded that initially he was engaged as an Amin on daily wage basis and continued as such till 24-8-1989 when he was again appointed as Sales In-charge on daily wage basis. He was allowed to continue as such till 31-3-1990 when he was verbally terminated. The workman raised a dispute before the local Labour Officer and during pendency of the conciliation proceeding a tripartite settlement was arrived at. As per the terms of the settlement the workman was agreed to be engaged under the first party as long as work was available for him against the scheme called “Harijan Welfare Dugwell Energisation Scheme” and on completion of the Scheme his re-engagement should be considered on priority basis in any other scheme having employment scope for him to work. Accordingly, he was re-engaged by the management and he continued to work under the scheme. When the matter stood thus, the workman applied for leave from 18-2-1993 to 5-3-1993 on health ground. He underwent an operation being admitted in Government Hospital at Angul. On doctor's advise to take rest he made another application for extension of leave. On 27-3-1993 he submitted joining report but the first party refused to engage him in the work.

3. In the written statement the management admits that the workman used to work with the first party on daily wage/casual basis and he was being engaged intermittently subject to availability of work under different schemes. In terms of the tripartite settlement he was engaged to work against Harijan Welfare Energisation Scheme. He continued as such from 27-12-1991 till January, 1993 when the work covered by the scheme got completed. Thereafter, on the approach of the workman the first party on humanitarian ground allowed him to continue during the month of February, 1993. From 18-2-1993 he remained absent. On 26-3-1993 he reported for duty but, by then the management having disengaged all daily wage employees as per the direction of the Managing Director of the first party-Corporation, the second party was not given any engagement. It is further pleaded by the management that the workman having voluntarily abandoned the job with effect from 18-2-1993, the question of termination of his service does not arise and for that the workman is not entitled to any relief.

4. As per the terms of the reference and pleadings of the parties, the following issues have been framed :-

## ISSUES

- (1) Whether the termination of employment of Shri Bharat Chandra Das, Amin with effect from 27-3-1993 in form of refusal of employment by the Project Manager, Orissa Agro Industries Corporation Ltd., Dhenkanal is legal and/or justified ?
- (2) If not, what relief he is entitled to ?

5. Both parties have adduced evidence. The workman has examined himself as W. W. No. 1. He has exhibited five documents. The District Manager, Orissa Agro Industries Corporation Ltd., Dhenkanal is examined by the management as its sole witness and as many as nine documents have been exhibited.

## FINDINGS

6. *Issue No. 1* : The validity of the alleged post-tripartite retrenchment dated 27-3-1993 (Ext. 4/Ext. B) is required to be decided in this reference. Admittedly, the workman had worked under the management from 27-12-1991 to 18-2-1993. It appears that during this period he had been engaged continuously without any break. According to the management, the workman had been engaged to work under a specific scheme which got completed in January, 1993. The workman also does not dispute that he was employed to work for a specific scheme. The management has not exhibited any document to prove as to when the work under the scheme got completed. However, the management admits to the extent that even after completion of work under the scheme the workman was allowed to work till 18-2-1993. The management has not exhibited the copy of the order giving such further employment to the second party. However, from the pleadings of the first party and the suggestions put by it to the workman it becomes quite clear that work was available by the time the alleged retrenchment/voluntary abandonment took place.

7. From the pleadings of the first party one can deduce that the management is under a wrong notion that a daily wager can not remain on leave and that since a daily wager is not entitled to avail leave the second party workman's absence on purported leave was at his own choice and risk. The workman has exhibited one discharge certificate (Ext.5) issued by the Medical Officer, Angul Hospital showing that he was admitted in the Hospital from 1-3-1993 to 8-3-1993. The management has also produced copy of the leave application (Ext.G) submitted by the workman seeking leave from 18-2-1993 to 5-3-1993 and copy of another application, dated 26-3-1993 (Ext. H) which is in the form of a joining report. Thus, it is quite clear that the workman had given intimation to his authority that he would not be able to discharge his duties from 18-2-1993 to 5-3-1993 on the ground of his suffering from 'Appendicitis'. His plea of illness finds corroboration from the discharge certificate marked Ext. 5. So, it is proved that on account of his illness the workman could not attend to his duties from 18-2-1993 to 26-3-1993 and that on 27-3-1993 he had reported for duties. So, it cannot be said to be a case of voluntary abandonment of employment. Consequently, the management on the plea of voluntary abandonment of employment can not justify the disengagement with effect from 27-3-1993.

8. According to the management, the work under the Scheme for which the workman was engaged was no more available and therefore, he could not have been re-engaged on and from 27-3-1993. There is no documentary evidence as to when the work under the Scheme against which the workman was engaged came to an end. Be that as it may, the terms of the tripartite settlement are very clear that on completion of the scheme work the workman should be given employment in any other scheme on priority basis. The management has not pleaded that no other scheme work was ever undertaken by it on and from the date of the workman's disengagement. It has taken the plea that during a visit of the Managing Director of the Management-Corporation he had advised the District Manager, Dhenkanal not to engage any person as daily wager in any job whatsoever. It is not clear whether any written instruction was issued and whether it was strictly implemented. It is pleaded by the workman but denied by the management that after the alleged termination the management had given employment to some junior workman as well as new workmen on regular basis, but there is no evidence on that point.

9. There is no dispute that the workman was used to be engaged in scheme work. The management has not proved as to when the work under the scheme (Harijan Welfare Energisation Scheme) came to an end. Since the management takes the plea that as on 18-2-1993 the workman voluntarily abandoned his employment it is to be presumed that the scheme work was still under execution and that had the workman not remained absent because of his illhealth, he would have been continued till completion of that Scheme and also subsequent thereto in any other Scheme work as and when available. Since the workman has proved that he had applied for leave the

management ought to have allowed him leave of absence (without wages) from work and on his getting fit to resume duties he should have been continued in the employment instead of disengaging him by way of refusal of employment taking the plea that the workman had voluntarily abandoned his job. In that view of the matter, the refusal of employment amounts to termination of employment.

10. Admittedly, the requirements of law for a valid termination as laid down under the Industrial Disputes Act, 1947 have not been complied with. Hence, the termination of employment of the workman amounts to illegal retrenchment.

11. *Issue No. 2* : The workman claims for reinstatement and back wages. The management, on the other hand, submits that since the workman used to be engaged in different schemes, the relief of reinstatement can not be extended to him. In *Ashok Kumar Sharma Vrs. Oberoi Flight Services*, reported in AIR 2010 S. C. 502, it is observed that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation, even though the termination of an employee is in contravention to the prescribed procedure. It is further held that compensation instead of reinstatement would meet the ends of justice. In *Sitaram and Others Vrs. Motilal Nehru Farmers Training Institute*, AIR 2008 S. C. 1955, it has been observed by the Hon'ble Supreme Court that the nature of appointment, the period of appointment and the availability of the job are some of the factors which are quite relevant to be taken into consideration while granting relief to a workman. In *Jagbir Singh Vrs. Haryana State Agriculture Marketing Board*, reported in AIR 2009 S. C. 3004, it has been held that the award of reinstatement with full back wages, particularly in respect of daily wagers is not proper and instead compensation is to be awarded. It is further observed that the method and manner of appointment and length of service are also some of the relevant factors to be considered.

In the case at hand, the second party was admittedly a daily wager, who used to be and was supposed to be engaged in work under different schemes. The workman was so engaged from 27-12-1991 to 18-2-1993. It is also seen that prior to that he was engaged for a term from 24-8-1989 to 31-3-1990 (vide Exts. 1 and 2). Admittedly, he was a daily rated worker. The scheme namely, 'Harijan Welfare Energisation Scheme' must have been completed soon after the alleged retrenchment. There is no evidence that work under the management was available under any other schemes. It is also not proved that any other daily rated workers who were junior to the workman or any new worker were engaged by the management after the alleged retrenchment and, if so, what is the length of such engagement. It is also not proved whether the management still engages daily rated workers. Under such circumstances, the relief of reinstatement and back wages can not be given to the workman. It is a fit case where payment of compensation will meet the ends of justice. In the facts and circumstances, the management be asked to pay a sum of Rs. 25,000 (Rupees twenty-five thousand only) as compensation to the workman.

The reference is answered accordingly.

Dictated and corrected by me.

R. B. DASH  
23-8-2010  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

R. B. DASH  
23-8-2010  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

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