

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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No. 142 CUTTACK, MONDAY, JANUARY 17, 2011 / PAUSA 27, 1932

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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 5th January 2011

No. 129–li/1(S)-8/2007–LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th October, 2010 in I. D. Case No. 23 of 2007 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of District Transport Manager, Orissa State Road Transport Corporation, Sambalpur and its workman Shri Ratnakar Bisoi, ex-Driver 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 DISPUTE CASE No. 23 OF 2007

The 30th October, 2010

Present :

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

Between :

The Management of District Transport Manager, Orissa State Road Transport Corporation, Sambalpur. . . First-party—Management

And

Their Workman Shri Ratnakar Bisoi, Ex-Driver, At/P.O. Nilakamani Via. Balimela, P. S. Orkel, Dist. Malkangiri. . . Second-party—Workman

Appearances :

Self . . . For the First party—Management

Shri R. K. Mohanty, Advocate . . . For the Second party—Workman

## AWARD

This matter arises out of the reference made by the Government of Orissa, Labour & Employment Department 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 (14 of 1947) in Memo No. 10325(5), dated the 4th September 2007 for adjudication of the schedule below :-

“Whether the termination of services of Shri Ratnakar Bisoi, Driver with effect from the 15th March 1999 by the District Transport Manager (Admn.), O.S.R.T. C., Sambalpur is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the second party-workman stated as follows :

The second party-workman Shri Ratnakar Bisoi, joined in the O.S.R.T.C., Sambalpur as a Driver since 1996 and he was continuing in service till 14-3-1999. On 10-1-1999 the second workman with an accident and was admitted in the Headquarters Hospital, Sambalpur. While he was admitted in the Headquarters Hospital at Sambalpur, the management sanctioned Rs. 500 only for the treatment of the second party-workman. After recovery from illness, the second party-workman joined in his duty. In the month of March, 1999 when the second party was receiving his salary for the month of January, 1999 he found a sum of Rs. 500 has been deducted from his salary without showing any reason. So the second party-workman protested for such illegal deduction of Rs. 500 from his salary. The second party-workman was misunderstood by the Assistant Transport Manager while the second party asked for the reason of deduction of such amount of Rs. 500 from his salary. Thereafter, the Assistant Transport Manager lodged F. I. R. against the second party-workman and illegally suspended him from his service. The second party-workman was suspended by the first party-management with effect from 15-3-1999. The first-party management terminated the second party from his service from 15-3-1999 with charges of unauthorised absence vide Memo No. 457, Dt. 31-1-2002.

Further it is alleged in the statement of claim of the second party that on 19-4-1999 the second party made a prayer before the District Transport Manager, Sambalpur to supply him copies of the complaint made by the Assistant Transport Manager, Sambalpur and the copy of the F. I. R. to him. After suspension the second party was not given suspension allowance. Basing on the F. I. R. the G. R. Case No. 329 of 1999 initiated against the second party-workman in the Court of the learned S. D. J. M., Sambalpur. The second party-workman was released on bail by the learned S. D. J. M., Sambalpur with a condition that weekly he should appear before the concerned. P. S., Sambalpur. Accordingly, the second party was reporting himself before the employer, the authority everyday as directed by the Heads of the Department. The authority was not taking his signature in the attendance register as a suspended worker. The management has taken a false plea that the second party-workman was absent in the Headquarters just after the suspension, i. e. on 15-3-1999. Further the second party-workman faced trial in the learned J. M. F. C., Sambalpur in G. R. Case No. 329 of 1999 and acquitted in that case. So as per the case of the second party-workman, the first party management has made false allegation against him. The second party-workman took shelter to the Labour Officer, Sambalpur who has taken steps for subsiding the matter but it was in vain. Lastly, the State Government has referred this schedule question for adjudication in this Court. So the second party-workman made a prayer for an order that the impugned order of the first party-management of terminating from service against the second party as improper, unfair, unreasonable, unjustified and void *ab initio*. He also made a prayer to reinstate him in the job with back wages from the date of illegal termination of service from 15-3-1999 till the date of payment to the second

party by the first party and for other reliefs along with the cost for mental agony, harassment, anxiety, sufferings, etc.

3. The first party-management contested the case and filed written statement denying the averments made by the second party-workman in the statement of claim.

The case of the first party-management stated as follows :

On 12-3-1999 the second party-workman scolded and assaulted the Assistant Transport Manager (Admn.), O.S.R.T.C., Sambalpur for which F. I. R. was lodged on 12-3-1999 before the Inspector in-charge, Town Police Station, Sambalpur. The Departmental proceeding was initiated against the second party-workman and he was placed under suspension with effect from 15-3-1999. A departmental proceeding was also initiated against the second party on 5-4-1999.

4. It is further alleged from the case of the first party-management that from the date of suspension i.e. from 15-3-1999 the second party-workman absconded and remained absent unauthorisedly. So, a show cause notice was issued on 4-12-2001 against the second party-workman for unauthorised absence. The said notice was issued to his home address at Malkangiri but the second party did not submit any reply. So, the D. T. M., Sambalpur after enquiry terminated the second party-workman from service with effect from Dt. 31-1-2002. The Proceeding No. 1991 Dt. 5-4-1999 which was received by the second party on 6-4-1999 was also disposed of without any explanation from him treating the period of suspension as such and imposing fine of Rs. 3,000. The second party-workman has not filed any appeal till the date. Further it is alleged that the second party intentionally avoided to join in the service and has voluntarily left the service. The first party-management made a prayer to pass order in favour of the first party-management.

5. Rejoinder filed by the second party-workman denying all the averments made by the first party-management in the written statement. He further stated that the first party did not pay any subsistence allowance to the second party-workman during the period of suspension. The second party-workman being a poor person lead his life along with the family members with great hardship. So the second party-workman approached before the first party to help him but it was in vain. The second party-workman went on starvation without getting any job from anywhere for his livelihood. He further stated that the domestic enquiry conducted by the first party-management is not fair nor proper.

6. Out of the pleadings of the parties the following issues have been framed for adjudication.

#### ISSUES

- (i) Whether the domestic enquiry conducted by the management is fair and proper ?
- (ii) Whether the termination of services of Shri Ratnakar Bisoi, Driver with effect from 15-3-1999 by the District Transport Manager (Admn.), O.S.R.T.C., Sambalpur is legal and/or justified ?
- (iii) If not, what relief he is entitled to ?”

7. In order to prove the case, the workman was examined himself as W. W. 1 and he has filed some documents in support of his case.

The management has altogether examined three witnesses. M. W. 1 Shri Ramesh Kumar Chotaray, D. T. M. (A), O.S.R.T.C., Sambalpur, M. W. 2 Basanta Kumar Pattanaik, Assistant Transport Manager (Admn.), O.S.R.T.C., Sambalpur, M. W. 3 Sukanta Kumar Sethi, D.T.M., O.S.R.T.C.,

Sambalpur. M. W. 2 and M. W. 3 adduced evidence relating other issues whereas M. W. 1 adduced evidence regarding the domestic enquiry. The management also has filed documents in support of their case.

#### FINDINGS

8. *Issue No. (i)*—This issue was taken up as the preliminary issue and as per order Dt. 10-8-2010 it was held that the domestic enquiry conducted by the first party-management is not fair nor proper.

9. *Issue No. (ii)*—It is an admitted fact that the second party-workman was working as a Bus Driver in the O.S.R.T.C., Sambalpur. It is alleged from the evidence on record that M. W. 1 and M. W. 3 were not present at the time of occurrence. M. W. 1 adduced evidence basing on the documents. M. W. 2, by that time, was working as Assistant Transport Manager (Admn.), O.S.R.T.C., Sambalpur. The second part- workman was also working as Driver. It is alleged from the evidence of M. W. 2 that on 12-3-1999 the second party came to him and scolded using unparliamentary words alleging that a sum of Rs. 500 has been deducted from his salary illegally. At that time M. W. 2 was in charge of garage and looking after repair and maintenance of the vehicles. The incident took place on 12-3-1999 at 4.50 P.M. While M. W. 2 was sitting in his office, the second party again rushed him and manhandled him without any reason. So, M. W. 2 lodged F. I. R. at Town P.S., Sambalpur as well as intimated this fact to D. T. M. (A), O.S.R.T.C., Sambalpur. On this ground the second party-workman was placed under suspension. At the time of incident Shri Satya Sahu, Assistant Foreman, O.S.R.T.C., Sambalpur, Shri R. C. Samal, Junior Clerk and other staff were present in the office premises. Although the office staff were present but none came to depose regarding the incident. As alleged M. W. 2 was working as A. T. M. at Sambalpur O.S.R.T.C. Office from 1998 to 2000. While the second party-workman was discharging his duty, he sustained fracture of his leg and was admitted in the Headquarters Hospital, Sambalpur for treatment and D. T. M., Sambalpur has sanction Rs. 500 for his preliminary treatment. But M. W. 2 expressed his ignorance about deduction of Rs. 500 from the salary of the second party-workman. However, M. W. 2 lodged F. I. R. and a G. R. Case No. 329 of 1999 was initiated against the second party-workman which ended in acquittal by the learned J. M. F.C., Sambalpur.

10. The second-party workman denied all the allegations made by the first party-management against him. As per his case, while he was verified about the deduction of Rs. 500 from his salary by putting questions to M. W. 2 (A.T.M.), with *mala fide* intention A. T. M. (M.W.2) lodged F. I. R. against him with false allegations. However, as per the case of the management, two charges were initiated against the second party. One is for suspension from 15-3-1999 for misbehaving the authority and the second charge is unauthorised absence from 15-3-1999. So, the management submitted that both the charges are serious in nature and the second party did not submit any explanation regarding the unauthorised absence in the Headquarters. So as per the case of the management, there is no other scope before the Disciplinary Authority except to terminate the service of the second party. The learned advocate on behalf of the second party submitted that the second party is very much present in the Headquarters, Sambalpur since 15-3-1999. Admittedly, the second party-workman belongs to village Nilakamani under P.S. Orkel, Dist. Malkangiri. As he was driving the vehicle from Sambalpur to Cuttack during that period, he was residing at Sambalpur with his family members. Moreover, in order to prove the above fact, the second party-workman has submitted some documents which should be scrutinised in a careful manner. Ext. W. 1 is the certified copy of judgement in G. R. Case No. 329 of 1999, Dt. 18-4-2005. Ext. W. 2 is the extract of order of S. D. J. M., Sambalpur in G. R. Case No. 329 of 1999. Ext. W. 3 is the miscellaneous

receipt No. 40 Dt. 9-3-1999. Ext. W. 4 is the letter to D. T. M., O.S.R.T.C., Sambalpur Dt. 19-4-1999 by the second-party workman alleging that the A. T. M., O.S.R.T.C., Sambalpur has falsely implicated him in this case. Ext. W. 5 is the postal receipt. Ext. W. 6 is the A. D. Card. Ext. W. 7 is the copy of appeal before the D. M., O.S.R.T.C., Sambalpur Dt.8-4-2002. It is alleged from the evidence on record and documents i. e. Ext. W. 2 that the learned S. D. J. M., Sambalpur released the second party-workman on bail in G. R. Case No. 329/1999 with the condition that the second party-workman Shri Ratnakar Bisoi "shall release on bail subject to condition that he shall appear at P. S. on each Sunday till submission of F. F.". Admittedly, the learned J. M. F. C., Sambalpur disposed of this G. R. Case No.329/1999 on Dt. 18-4-2005. Accordingly, being directed by the learned S. D. J. M., Sambalpur the workman appeared on each Sunday at Town P.S., Sambalpur. In this regard there is no document filed by the management that he was absent during that period in the Headquarters. Moreover, it is the case of the second party that since Dt. 15-3-1999 he used to visit to office but he was not allowed to put his signature in the attendance register. However, from the evidence on record it is clear that the workman was very much present in the Headquarters at Sambalpur after the incident.

11. The first party-management has filed some documents i.e. Ext. M.1 is the xerox copy of the order under Memo No.1478, Dt. 12-3-1999. It is apparent from Ext. M.1 that the second party-workman rushed to M. W. 2 and scolded him with some unparliamentary language by asking as to how advance of Rs. 500 has been deducted from his salary. Subsequently, the workman assaulted M. W. 2 and threatened to kill him. M. W. 2 has not stated anything in his evidence regarding the above factor. Only he stated that the second party came to him and manhandled him without any reason. So the contents of his evidence is completely different from the contents of Ext. M.1. Besides that the evidence of M. W. 1 and M. W. 2 does not corroborate the evidence of M. W. 3 so far as the occurrence is concerned. However, the management has filed some other documents i.e. Ext. M.3 is the xerox copy of Order Dt. 15-3-1999. Ext. M.4 is the xerox copy of proceeding Dt. 5-4-1999. Ext. M.5 is the xerox copy of telegram. Ext. M. 6 is the xerox copy of show-cause. Ext. M. 7 is the xerox copy of final order. Ext. M.8 is the xerox copy of first page of service book. Ext. M.9 is the xerox copy of postal acknowledgment. Although the second party-workman was very much present at Headquarters, Sambalpur to the knowledge of the management and the office staff of O.S.R.T.C., Sambalpur, there is nothing to send any letter to the native village of the second party- workman. In spite of presence of the second party-workman in the Headquarters, Sambalpur, the management has sent letters and telegrams to the native village (Malkangiri) of second party- workman. So the plea taken by the management is not at all believable.

12. The management further pleaded that the second party-workman was terminated from service from Dt. 31-1-2002. He was engaged as a Driver in a Private Bus plying from Sambalpur. He was silent from 2002 to 2006 and at the belated stage filed this case. So the A.T.M., O.S.R.T.C., Sambalpur submitted that the workman is not entitled to get any relief during such period. Admittedly, this reference received by the Court on Dt. 12-9-2007. On receipt of the complaint petition by the Conciliation Officer-*cum*-Assistant Labour Officer, Sambalpur, he called both the parties to appear for joint enquiry on Dt. 24-7-2006. So the second party-workman made a complaint petition before the Conciliation Officer prior to Dt. 24-7-2006. The A.T.M. further submitted that the being a subordinate employee the second party-workman used some obscene words in a working premises which is a serious misconduct as well as affects working culture and honesty. So far as the occurrence is concerned there is no clear evidence in the record alleging that the workman used some obscene words and assaulted A.T.M. in the office premises. The second party-workman, rather in his evidence stated that when he enquired from in charge officials (A.T.M.), he became furious and misbehaved the second party with dire consequences using filthy language and subsequently with ulterior motive

and *mala fide* intention made F. I. R. against him at Town P. S., Sambalpur. Thereafter the second party-workman was suspended with effect from Dt. 15-3-1999 vide their Memo No. 1494. So the charge initiated against the second party for misbehaving the authority is also doubtful and this part of charge has not been clearly proved by the management. The second charge i.e. unauthorised absence from duty from Dt. 15-3-1999 is also a concocted facts. Since the second-party workman was present at the Headquarters, Sambalpur and visiting the office on each date to the knowledge of the management but the management neglected to take his attendance in the attendance register. So, the management has failed to prove this case basing on this above points.

13. It is an admitted fact that there was muster and servant relationship in between the management and the second party-workman. The D.T.M., O.S.R.T.C., Sambalpur (the first party-management) submitted that he is not interested to reinstate the workman in service. The service of the second party-workman is not depends upon the interestedness of the concerned authority i.e. the D. T. M., O.S.R.T.C., Sambalpur. When the management has made allegation against the second party-workman, he should come with a clean hand to prove this case. But in the instant case, the management has failed to establish his case against the workman.

14. Further points raised by the management lead to fact that the reference is not maintainable either in law or in fact. The reference is wrong and the reference was referred to this Court challenged the termination Dt. 15-3-1999, but the termination order has been issued on Dt. 31-1-2002. It is alleged that he was not terminated from Dt. 15-3-1999. Unauthorised absence on duty from Dt. 15-3-1999 was treated to be loss of pay. Since there is no termination order with effect from Dt.15-3-1999, the reference is not maintainable unless it is corrected by the concerned authority. There is no termination from Dt. 15-3-1999. On perusal it is seen from the documents filed by the management i.e. Ext. M.6 that the management has issued show cause notice to the workman by Regd. Post with A.D. for unauthorised absence from duty alleging "you have been remaining unauthorisedly absence from your duties without the grant of leave from Dt.15-3-1999 to Dt. 3-12-2001, and the management called for an explanation from the second party-workman as per Ext. M.6. Ext. M.7 is the office order Dt. 31-1-2002 discloses that " the Disciplinary Authority came to the conclusion that his further continuance in service will be detrimental to the interest of the Corporation. As such the Disciplinary Authority has no other alternative than to terminate the service of the delinquent Driver second party-workman from the Corporation's service from the date of issue of this order i.e. the 31st January, 2002". It is further alleged from Ext. M.7 that "the management passed order to terminate the service of Shri Ratnakar Bisoi (the second-party workman) Driver, O.S.R.T.C., Sambalpur from the date of issue of this order by treating the entire period of his unauthorised absence from duty from Dt.15-3-1999 till the date of issuance of termination order as loss of pay with break of service". So in view of such above order passed by the management i.e. the date of termination as per the reference is corrected. So, in this regard, the points raised by the management is not at all helpful to the case of the management. In view of the contents in Ext. M.7 the date of termination as per the reference is corrected.

15. The management relied on the reported decision A.I.R., 2006 SC-615- the power under 11-A is to be exercised in case where punishment is wholly and shockingly disproportionate to the degree of guilty of worker. It is not an evaluation of evidence or the Tribunal cannot sit as a Court of appeal over the power of disciplinary authority. This above decision is not applicable for the present case.

The management also relied on the reported decision A.I.R. 1996 S.C.W. 4427-using of abusing language against a superior justify punishment of dismissal. Punishment of dismissal for using abusing language cannot be held to be disproportionate. In the instant case the management has

failed to prove the allegation levelled against this workman. So this above decision is not applicable to his case. The management also relied on the reported decision A.I.R. 1959 SC-529-there should have been an application for leave. But he cannot claim as a matter of right. This was gross violation of discipline. The order of Tribunal in directing to take back the employee into service is totally in error.

16. In the instant case it is established by the second party-workman that since Dt. 15-3-1999 he was present at Headquarters and used to visit to his office for attendance but the management did not allow him and failed to take his attendance. Besides that being directed by the learned S.D.J.M., Sambalpur he was attending the Town P.S., Sambalpur on each Sunday. So, the above decision of the Hon'ble Court is not helpful for the case of the management. In view of such facts and circumstances, it can safely be concluded that the management has failed to establish his case against the second party-workman. Hence the termination of service of Shri Ratnakar Bisoi, Driver with effect from 15-3-1999 by the District Transport Manager (Admn.), O.S.R.T.C., Sambalpur is not legal nor justified.

16. *Issue No. (iii)*—It is alleged from the record that the workman is leading his life alongwith his family members with great hardship without getting any job from anywhere. Admittedly, the second party-workman was discharging his duty honestly and sincerely. He was a good Driver. M.W. 1 in his evidence stated that there was no such previous allegations against him. So, taking all the facts into consideration and for the interest of justice, it can be concluded that the second party should avail opportunity to do his duty under the management. Hence, he is entitled to get the relief. So, he is entitled to get the back wages as per the settled law. Accordingly, this issue is answered. Hence, the Award.

#### AWARD

The reference is answered on contest but without any cost. The termination of service of Shri Ratnakar Bisoi, Driver with effect from Dt. 15-3-1999 by the District Transport Manager (Admn.), O.S.R.T.C., Sambalpur is not legal nor justified. The second party-workman is entitled to get the relief. Hence, the first party-management is directed to reinstate the second party-workman in service with back wages within two months from the date of publication of the award in the *Orissa Gazette*.

Dictated and corrected by me.

S. MAHAPATRA  
30-10-2010  
Presiding Officer  
Labour Court  
Sambalpur

S. MAHAPATRA  
30-10-2010  
Presiding Officer  
Labour Court  
Sambalpur

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