

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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No. 1772 CUTTACK, TUESDAY, AUGUST 2, 2011 / SRAVANA 11, 1933

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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 27th July 2011

No. 6384—li/1(B)-51/2009-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 13th July 2011 in I. D. Case No. 26 of 2009 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Orissa Forest Development Corporation Ltd., Kharvelnagar, Bhubaneswar and their workman Shri Rabindra Kumar Panda was referred to for adjudication is hereby published as in the Schedule below.

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 26 OF 2009

Dated the 13th July 2011

*Present :*

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

*Between :*

The Management of ... First Party—Management  
Orissa Forest Development Corporation Ltd.,  
Kharvelnagar, Bhubaneswar

And

Their Workman, .. Second Party—Workman  
Shri Rabindra Kumar Panda .

*Appearances :*

Shri B. K. Pattanaik, Assistant Law Officer . . For the First Party—Management

Shri P. K. Swain, Executive Body Member . . For the Second Party—Workman

## 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. 11523-li/1(B)51/2009–LE., Dated 29th December 2009 of the Labour & Employment Department Bhubaneswar for adjudication.

2. The terms of reference is as follows:

“ Whether the termination of services of Shri Rabindra Kumar Panda, workman by the management of Orissa Forest Development Corporation Ltd., Kharvelnagar, Bhubaneswar with effect from 2-5-2007 is legal and/or justified ? If not, what relief Shri Panda is entitled to ? ”

3. The case of the workman in brief is that he was appointed as Mali with effect from 3rd August 1982 on *ad hoc* basis and continued as such till 9-12-1990. Thereafter his service was regularised as a Watcher with effect from 10th December 1990. Taking into consideration of his performance, he was appointed as a Peon on 5-9-1992. During the time of regularisation the original certificate of the workman was verified by the Committee of the Management. After joining of the present Managing Director, he wanted a suitable Peon for his residence work. The workman came to know that his name has been suggested for the said work for which he met the management and expressed his difficulties and requested to remain him in the Office. But all of a sudden after 26 years of service career, the management draw a proceeding against the workman vide Office Order No. 648, Dt. 14-9-2006 on the charge of submission of false certificate regarding his educational qualification and date of birth, misguiding the higher authority and misconduct. A proceeding has been drawn up on the basis of a certificate bearing No. 24 issued by the Headmaster, Sardar Patel Bidyapitha, Godipada. In reply to the said proceeding, the workman submitted his original certificate bearing No. 35, Dt. 19-7-1978 and stated that the certificate bearing No. 24 is not his certificate and requested the management to ignore the same. But without enquiry the management issued a show cause notice and the workman replied that the original certificate bearing No. 35 is his certificate but not the certificate bearing No. 24. But the management compulsorily retired from the service vide Letter No. 486, Dt. 2-5-2007. The action of the management was arbitrary and against the principle of natural justice. No enquiry was conducted to impose major punishment. The Rules 125 and 121 of the Orissa Forest Development Corporation Rules, 1986 has not been properly followed by the management. So in this background the workman has 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 from the Government and this I. D. Case has been initiated wherein 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, initially the workman was appointed as Mali on *ad hoc* basis with effect from 3rd August 1982 and continued till abolition of Directorate of Plantation and thereafter he was allowed to continue as Watcher on *ad hoc* basis to watch the

office building at Gautam Nagar, Bhubaneswar. While he was working as Watcher, the workman submitted a representation on 18th March 1986 with a prayer for regularisation of his service. Before issuance of further *ad hoc* appointment order, the workman was asked to submit original along with a photo copy of educational qualification certificate in support of his date of birth. On 31st May 1986 the workman submitted such documents including the photo copy of transfer certificate No. 24 issued by the Sardar Patel Vidyapitha, Godipada showing his date of birth as 5th April 1964. However, the Workman continued on *ad hoc* basis and finally appointed on regular basis with effect from 10-12-1990. His Service Book was opened on 4th December 1991 in his presence and the workman had also signed on the first page of the Service Book after making necessary entries regarding his date of birth. The workman had submitted a representation for change of designation and accordingly he was designated as Peon. While working as Peon, the workman submitted an application on 1st February 2006 for sanction of time bound advancement of pay scale on completion of 15 years in the post of Peon. While examining his application for sanction of time bound advancement of pay the copy of educational certificate submitted by the Workman was sent to the Headmaster, Sardar Patel Vidyapitha, Godipada School, Nayagarh, who had issued the same on 10th March 1982 for proper verification with regard to date of Birth and educational qualification. The verification of certificate was occasioned due to detection of number of cases of forged certificate submitted by the employees as well as one Personnel Officer with regard to their date of birth. The Headmaster of Sardar Patel Vidyapitha replied in writing that on verification of the admission register of the School, it is noticed that no such student, namely Shri Rabindra Kumar Panda was admitted in the School. So it was difficult to issue any particulars regarding the transfer certificate. From the above reply of the concerned Headmaster, it was clear that the educational qualification certificate submitted by the Workman at the time of appointment appears as to be a forged one. A disciplinary proceeding was initiated against the workman vide Order No. 648, Dt. 14th September 2006 and charges were duly framed against him for submission of false certificate, misleading the higher authorities and misconduct. The workman submitted his written show cause reply on 23-9-2006 admitting the charge of submitting false certificate bearing No.24 of 10-3-1982. He also discloses that his actual date of birth is 4-10-1958 which is evident from the transfer certificate No.35 of 19-7-1978 of Narayan High School, Sarankul of Puri District. When the workman has admitted his guilt, the disciplinary authority as given him another opportunity of personal hearing on 1-11-2006. The workman appeared before the Managing Director-*cum*- Disciplinary Authority and again admitted the submission of false certificate. His statement was recorded during the time of personal hearing. The disciplinary authority issued second show cause notice disclosing the proposed punishment of compulsory retirement from service with immediate effect. Which was received by the workman. The Workman submitted his written reply on 2nd March 2007 reiterating the same facts admitting the charge with a prayer to excuse him for the mistake he has made. However, the disciplinary authority finally passed the order of punishment of compulsory retirement since the charges are fully established by virtue of his admission. Thereafter the workman filed a mercy petition before the disciplinary authority with a prayer for reinstatement him in service admitting his guilt also. According to the workman, he was guided by some seniors and experienced employee he had committed the

mistake which was not intentional. But the mercy petition was rejected. Thereafter the workman filed appeal before the Chairman-*cum*-Appellate Authority against the order of major punishment. The Appellate Authority after going through the petition and the oral submission of the workman along with the disciplinary proceeding records finally rejected the appeal. When the workman on several occasions has admitted his guilt before the different authorities, his present plea is a after thought one and cannot be accepted in absence of any supporting documents. When the workman admitted is guilty, no further enquiry is required to be proved. So in this back ground, 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.

#### I S S U E S

- (i) “ Whether the termination of services of Shri Rabindra Kumar Panda, Workman by the management of Orissa Forest Development Corporation Ltd., Kharvelnagar, Bhubaneswar with effect from 2nd May 2007 is legal and/or justified ?
- (ii) If not, what relief Shri Panda is entitled to ? “

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 to 6. Similarly the management has examined its Section Officer as M.W.1 and proved documents marked as Exts. A to W.

#### F I N D I N G S

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

According to W.W,1 he was working as Mali under the Management since 1982 on *ad hoc* basis and subsequently his service was regularised as Watcher on 10-12-1990 and subsequently as a Peon. The then Managing Director wanted the workman to work as Peon in his residence and when he expressed his difficulties, the Managing Director became angry and draw a proceeding against him on the ground of false certificate after 25 years of his service. But without any enquiry and following the principle of natural justice, he has been compulsorily retired from the Govt. service which is illegal. On the other hand, it has been argued by the management that the workman had submitted a forged transfer certificate at the time of entry into the service and it came to the knowledge of the management that the transfer certificate submitted by all the employees were verified from the Schools which issued such transfer certificates. The transfer certificate submitted by the workman was sent to the Headmaster, Sardar Patel Bidyapitha under Ext. Q for proper verification. The xerox copy of transfer certificate produced by the workman has been duly marked as Ext. N. The said Headmaster submitted his reply vide Ext. S wherein it has been mentioned that on verification of the admission register he found that there was no such student taking admission in his school, Hence it is impossible to issue any particulars regarding the transfer certificate of Shri Rabindra Kumar Panda. So a Chargesheet enclosed with the disciplinary

proceeding vide Ext. 3 was issued to the workman to explain the forgery and fraud committed by him. In his defence, the workman has admitted his guilt by submitting a false transfer certificate bearing No. 24 of 10th March 1982 and disclosed that his actual date of birth is 4th October 1958 as evident from the another transfer certificate bearing No. 35 of 9th July 1978 of Nayagarh High School, Sarankul of Puri District and such transfer certificate was enclosed with Ext. D. In view of the admission of the charges, there was no necessity for holding any enquiry as argued. The workman has also admitted is guilty before the Managing Director at the time of personal hearing with reference to Exts. E and F. The disciplinary authority issued second show cause notice vide Ext. 4 indicating the proposed punishment of compulsory retirement from the Corporation service. The workman submitted his reply to the show cause notice praying to excuse the mistake committed by him vide Ext. G. Therefore the disciplinary authority imposed the punishment of compulsory retirement vide Ext. 5. The workman pointed out that in reply submitted by the Headmaster, Sardar Patel Bidyapitha, the name of his father has been wrongly mentioned for which the said reply does not relate to Ext. N. But subsequently that doubt has been clarified by submitting another reply by the said Headmaster with reference to Ext. N wherein he disclosed that the name of the father has been wrongly mentioned as Niranjana Panda in place of Narayan Panda vide Ext. W. So at present there is no doubt regarding the reply of the Headmaster that Ext. N the transfer certificate bearing No. 24 of 10-3-1982 does not belong to his School. The workman has also made a representation to the Managing Director praying to reinstate him in service vide Ext. H which was also rejected vide Ext. J. Thereafter the workman preferred an appeal before the Chairman of the Management vide Ext. K, who after personal hearing also rejected the appeal. It has been argued by the management that even if no enquiry was held the punishment imposed should not be vitiated as per law as the fact admitted need not be proved. When the workman has admitted his guilt no enquiry is necessary in this case as argued and taking into consideration of circumstances under which the workman committed such mistake the punishment of compulsory retirement is quite justified and not disproportionate of serious charges of fraud as admitted by the workman as argued. Further in relying the authority reported in 2008-III LLJ-444 (P & H) it has been argued that when the petitioner himself admitted charges levelled against him. Enquiry is not necessary. But in such case as per Rule 25(4) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 holding of enquiry not necessary when charges are admitted. In the instant case also as per Rule 124 of Orissa Forest Development Corporation Service Rules, on receipt of written statement of defence, the disciplinary authority, may itself enquire into such of the articles of charges as are not admitted or if he consider it necessary to do so, appoint an enquiry authority for the purpose, and where all the articles of charges have been admitted by the employee/ workman in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may deem fit. But in the instant case there is no such material to show that the disciplinary authority has taken any evidence while recording his findings. Perused all the documents marked as exhibits on behalf of both the parties.

8. The workman has admitted vide Ext. D to have received the Memorandum No.648, Dt. 14-9-2006 as per Ext. 3. In such Ext. 3 it has been mentioned that it is proposed to hold an enquiry against the workman under Rule 125 of O.F.C. Rules, 1986. It has been argued on behalf of the workman that when the proceeding has been drawn up under Rule 125, imposing of major punishment like termination of service by way of compulsory retirement is not good in law as Rule 125 deals with procedure for imposing minor penalties and Rule 124 deals with procedure for imposing major penalties. Rules 121 deals with penalty like minor penalties and major penalties and compulsory retirement comes under major penalties. So the procedure adopted by the management has been violated with reference to the Rules as discussed as argued. According to the settled principle of law as reported in 1993-SCC-3-259 procedure prescribed for depriving a person of his livelihood must answer the requirement of Article 14 and in case of termination of service action by employer must be fair, just and reasonable and principle of natural justice are part of Article 14 and the principle of natural justice must be read with the Standing Orders. The representative of the workman in relying the authorities reported in 2010 (125) FLR 485 arguing that compulsory retirement of the workman is a major punishment. Without any enquiry is not valid even if the workman has confessed his guilt and such statement cannot be basis for termination. In such authority it has been held that the Salesman of the Tamil Nadu State Marketing Corporation Ltd., (TASMAC), Madurai has been terminated basing on certain letters said to have been given by the concerned workman admitting his guilt on the spot. In such authority relying upon the authority reported in 2000(1) LLJ 393 in the case of Dharmathamakara Raibahadur Acot Ramaswamy Mudaliar Educational Institution Vrs. Educational Appellate Tribunal and another, it has been held that the case of Professor cannot be compared with the TASMAC Salesman. Therefore, the TASMAC employee, who is not well educated may possibly succumb to pressures in making such statements. Therefore, such a statement alone can not be the basis for termination and in that authority the Hon'ble Court has held that the sole basis of the termination was the letter given by the petitioner and there being no enquiry held against the petitioner, the impugned order as are set aside. So now on careful consideration of all the materials available in the case record as discussed above and with reference to the authority discussed earlier, I am inclined to hold that the termination of service of the workman by the management with effect from dated the 2nd May 2007 is neither legal nor justified. The workman is entitled to be reinstate in service. But with reference to the circumstances under which the workman was terminated from service by way of compulsory retirement I am of the opinion that the management is at liberty to conduct the enquiry against the workman from the stage of filing of show cause by the Workman admitting his guilt in accordance with law.

9. Regarding back wages, admittedly the workman had not worked for the management during the relevant period. According to the 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 as per settled principle of law reported in 2004 (Supp.) OLR 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. In the peculiar circumstances, it is not a fit case to grant any back wages to the workman. Hence both the issues are answered accordingly.

10. Hence Ordered:

That the termination of services of Shri Rabindra Kumar Panda, Workman by the management of Orissa Forest Development Corporation Ltd., Kharvelnagar, Bhubaneswar with effect from 2nd May 2007 is illegal and unjustified. The Workman Shri Panda is entitled to be reinstated in service but without any back wages. However, the management is at liberty to conduct enquiry against the workman from the stage of filing of show cause by the workman admitting his guilt in accordance with law.

The reference is answered accordingly.

Dictated and corrected by me.

S.K. DASH  
13-7-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

S.K. DASH  
13-7-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

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