

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2256 CUTTACK, SATURDAY, OCTOBER 1, 2011/ASWINA 9, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th September 2011

No. 8834—li/1(B)-43/2008-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd January 2011 in I. D. Case No.304 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Orissa Forest Development Corporation Ltd., Bhubaneswar and its Workman Shri Bhaskar Ch. Beura was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 304 OF 2008

Dated the 22nd January 2011

Present :

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

Between :

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

And

Shri Bhaskar Ch. Beura, . . Second Party—Workman
S/o Late Jadunath Beura,
At Sabalsinghpur, P.O. Sana Adhanga,
P.S. Patkura, Dist. Kendrapara.

Appearances :

Shri B. K. Pattanaik, A.L.O.	.. For the First Party— Management.
<hr/>	
Shri B. C. Beura	.. For the Second Party Workman himself.

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of their power under Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act'), have referred the present dispute for adjudication by this tribunal vide their Order No. 6130—li/1(B)-43/2008-L.E., dated the 27th May 2008. The Schedule of reference runs as follows:—

“ Whether the termination of services of Shri Bhaskar Ch. Beura, Ex-Plantation Watcher by the Management of Orissa Forest Development Corporation Ltd., Bhubaneswar with effect from the 14th September 1993 is legal and/or justified ? If not, what relief Shri Beura is entitled to ? ”

2. The second party-workman in his claim statement has taken the stand that in 1983 he was first engaged as a Plantation Watcher in the Afforestation Division, Cuttack with wages Rs. 210 per month. Subsequently, the said division merged with the Orissa Plantation Development Corporation. The workman continued to work even after such merger. On the 1st October 1990 Orissa Forest Development Corporation (first party) came into being and all the staff of the erstwhile management including the workman were taken to the present management. In January 1991 the first party issued a letter for regularisation of those employees who had been in employment for a number of years. The Divisional Manager, Plantation Division, Cuttack sent names of all employees including those who were much junior to the workman but the workman's name was omitted. Therefore, on the 9th July 1991 the workman made a representation to the Chairman of the first party Corporation. As he did not get any relief he filed a writ application in the Hon'ble High Court of Orissa (O.J.C. No. 9100/93) for his regularisation. On receipt of notice from the Hon'ble Court in the said O.J.C. the First party refused employment to the workman with effect from the 14th September 1993 and thereby terminated his services without complying with the provisions contained in Section 25-F and 25-G of the Act. After disposal of the Writ Petition on the 8th February 2006 the workman raised the present dispute before the Local Labour Officer.

3. In the written statement the first party has taken the stand that the workman was originally engaged as a casual labourer with effect from the 1st December 1983 on daily wage basis . He used to be engaged as and when work was available. He was never engaged continuously. He had worked in different spells as mentioned below :

Year	Period
1984	1-5-1984 to 31-12-1984
1985	For 273 days
1986	1-1-1986 to 31-1-1986 & 1-12-1986 to 31-12-1986.

1987 to 1989	No engagement
1990	31 days in August & 26 days in December
1991	82 days during March, August & September
1992	312 days
1993	53 days till 13-3-1993

Further contention of the management is that with effect from the 14th September 1993 the workman did not report for duty. The management has denied to have refused employment to the workman. Further case of the management is that after merger of three forest based Corporations to form the first party Corporation there was surplus manpower even in the case of regular employees. The management decided to gradually phase-out the excess staff. Vide Letter No. 23856 dated the 10th September 1996 instructions were imparted to retrench all the daily wagers who had been working after the 1st January 1990. Accordingly those employees have been retrenched with effect from the 30th September 1996. In the meantime eight Plantation Divisions including the Cuttack Division where the workman was working at the time his services were allegedly terminated have been transferred back to the State Government's control with effect from the 1st March 1997 but all the daily wagers working in those Divisions were left to remain under the first party Corporation. Because of non-availability of work all the left-over daily wages employees working under the Plantation Divisions have been retrenched with effect from the 31st March 1997. The management has denied that employees junior to the second party have been retained. According to the management, the employees who are even senior to the second party have also been retrenched.

4. Following issue is framed:

ISSUES

- (i) Whether the termination of services of Shri Bhaskar Ch. Beura, Ex-Plantation Watcher by the Management of Orissa Forest Development Corporation Ltd., Bhubaneswar with effect from the 14th September 1993 is legal and/or justified? If not, what relief Shri Beura is entitled to?

5. The workman has examined himself as W.W. No. 1. Exts. 1 to 9 have been marked on behalf of the workman. From the side of the management two witnesses have been examined. M.W. No. 1 is a Lower Division Assistant working in Dhenkanal (C) Division of the first party and M.W. No. 2 is a Senior Assistant working in the office of the D.F.O., Cuttack Forest Division, Cuttack. Exts. A to M have been marked on behalf of the management.

FINDINGS ON ISSUE No. (i)

6. The affidavit evidence of W.W. No. 1 and M.W. No. 1 is mere repetition of the averments made in the claim statement and written statement respectively. It is found from the written statement that there is no denial that the workman was first engaged in 1983 and his services

came to an end with effect from the 14th September 1993. While the workman claims that in between 1983 and 1993 he had been working continuously, the management takes the plea that the workman used to be engaged as and when work was available and as such the workman was not in continuous employment under the first party. While the workman claims that from the 14th September 1993 onwards he was refused employment, the management takes the stand that from the said date the workman did not report for duty. On the prayer of the workman this Tribunal had asked the management to produce the Muster Roll and Cash Book for the period from 1983 to 1993 and the management has produced the Cash Book for the period from 1990 to the 4th January 1994 taking the stand that other documents are not available with the management. The workman has not used the Cash Book so produced by the Management for which no part of it has been marked as exhibit. On behalf of the workman it is argued that since the Management has not produced the Registers/documents as called for by him, the Tribunal has to draw an adverse inference against the management. This submission has got some force. The management has mentioned in the written statement the details of the actual periods of engagement of the workman. So, it is presumed that with reference to documents/registers available with it the Management had made the averments in the written statement. So, the plea that other documents are not available with management is not to be readily accepted. Since the management admits the workman had been engaged in between 1983 and 1993, though with long and short breaks, it ought to have discharged the burden of proving the actual periods of engagement of the second party. In the absence of such documents there may be a presumption that the workman had worked continuously from the 1st December 1983 till the 13th September 1993. Even without the help of such a presumption and exclusively on the admission of the first party this Tribunal finds that the workman was in continuous service for more than a year immediately before the alleged termination of his service for which compliance of Section 25-F becomes mandatory. According to the management, the workman had worked for 312 days in 1992 and 53 days during the 1st January 1993 to the 13th March 1993. So, it is very clear that workman was engaged for more 240 days during the last twelve calendar months preceding the date of his alleged retrenchment.

7. Though it is alleged that when work was refused to the workman many persons junior to him were retained by the first party, there is no evidence to that effect. So, it is difficult to record a positive finding even if the termination of service of the workman effected on the 14th March 1993 is a 'retrenchment' as defined under the Act, the management has violated the provisions contained in Section 25-G of the Act. Since the management has taken the plea that the workman had voluntarily abandoned the job it ought to have proved the contention by adducing reliable evidence. It is not shown that when the workman abstained from duties any notice was served on the workman either inviting him to report for duties or giving intimation that because of his absence his services would be terminated if he would not report for duties within a specific period. On the other hand, the workman's plea that when he approached the Hon'ble High Court for regularisation of his services he was refused employment appears to be believable. It is not denied that the workman had presented a Writ Application registered

as O.J.C. No. 9100 of 1993 in the Hon'ble High Court. In the same year the alleged retrenchment has taken place. There was no reason for the workman to abandon the job during the pendency of the Writ Proceeding . A few months after the alleged retrenchment he has made a representation (Ext.9) before the Subdivisional Manager, Athagarh Subdivision alleging that even though he had been reporting for duties for several months he was denied employment. In the said representation he has also requested to give him employment. It is not challenged by the management that such a representation was not made by workman. Taking all the facts and circumstances into consideration, this Tribunal arrives at a conclusion that employment was denied to the workman with effect from the 14th March 1993 which amounts to 'retrenchment' as defined in the Act.

8. Since the termination of service of the workman with effect from the 14th March 1993 is in violation of Section 25-F of the Act it is illegal. The services of the workman were terminated even while work was available. This can be inferred from the pleadings contained in the Written Statement. Since abandonments of job has been pleaded it is to be presumed that the management would have given employment to the workman had he turned up for duty. But, as it is found to be a case of retrenchment, the said Act on the part of the management is unjustified.

9. The workman claims for his reinstatement with full back wages. In Jagbir Singh vrs. Haryana State Agricultural Marketing Board, reported in AIR 2009 (S.C.) 3004, the Hon'ble Supreme Court have observed that award of case of daily wagers, is found not proper with further observation that instead of reinstatement with full back wages compensation is to be awarded . In the same decision the Hon'ble Supreme Court have distinguished between a daily wager who doesnot hold a post and a permanent employee. It is further observed that while determining the amount of compensation the Tribunal should consider the nature of employment, method and manner of employment and length of service rendered by the workman concerned. In Sitaram & other Vrs. Motilal Nehru Farmer Training Institute, 2008 LLR 549 (S.C.) it is observed that the nature of appointment, the period of appointment and the availability of job are the relevant factors to be taken into consideration while granting relief.

From the pleadings of the first party so also documents exhibited on its behalf it is found that all the daily wagers working under the first party have been retrenched with effect from the 31st March 1997. Ext.K is copy of Letter No. 22906 dated the 29th August 1996 of the Managing Director of the first party issuing instructions to retrench the daily rated/consolidated rated/*ad hoc*/Muster Roll employees. Ext.C is a copy of Letter No. 6370 dated the 8th April 1994 of the Government of Orissa, Forest & Environment Department wherein a ban has been imposed against recruitment including N.M.R. employees. M.W. No. 1 has stated in his evidence that all the daily wagers/*ad hoc* employees working in the corporation have been retrenched. There is no challenge to this contention. Thus, it is found that from April 1997 no daily wagers have been in the employment of the first party. Had the workman been continued he would have remained in the job till March 1997. Thus, he would have remained in the job for a maximum period of fourteen years.

Taking all these facts and circumstances into consideration, this Tribunal is of the considered view that compensation of a sum of Rs. 75,000 (Rupees seventy-five thousand) only would be just and proper. The management has to pay Rs. 75,000 (rupees seventy-five thousand) only as compensation to the workman against the illegal retrenchment.

The reference is answered accordingly. The management to comply with the Award within a period of two months of the date of publication of the Award in the official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH

22-1-2011

Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH

22-1-2011

Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government