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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 28th September 2011

No. 8847—li/1(B)-88/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th March 2011 in Industrial Dispute Case No. 78 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Galaxy Medicine Ltd., Mancheswar Industrial Estate, Bhubaneswar and its workman Smt. Suprava Dash was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 78 OF 2003

Dated the 29th March 2011

Present :

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

Between :

The Management of  
M/s Galaxy Medicine Ltd.,  
Mancheswar Industrial Estate,  
Bhubaneswar.

. . First Party—Management

And

Their workman  
Smt. Suprava Dash

. . Second Party—Management

Appearances :

Shri S. K. Pattanaik . . For First Party—Management

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Smt. S. Dash . . Second Party—Workman herself

### 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. 11922—li/1(B)-88/2003-LE., dated the 15th December 2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s Galaxy Medicine Ltd., Mancheswar Industrial Estate, Bhubaneswar in terminating the services of Smt. Suprava Dash by way of refusal of employment with effect from Dt.22-11-2001 is legal and/or justified ? If not, to what relief Smt. Dash is entitled ?”

3. The case of the workman in brief is that she was appointed as a skilled worker in the year 1996 by the management and was discharging her duties in the cutting and packing unit. While continuing as such, on 15-5-1999 the management asked the workman to go on leave on the plea that the management did not have sufficient work to utilise her service and told that she shall be called for the work in future if the work will be available. Thereafter the workman was re-engage on 19-11-2001 by the management and performed her duties as earlier. Initially the wage of the workman was fixed at the rate of Rs. 900 per month and subsequently enhanced to Rs. 1,800 per month which includes house rent and D.A. While discharging her duties sincerely and satisfactorily on 22-11-2001 the workman was refused to work and thereby the management has terminated her from service orally on 22-11-2001 without any reason. From the date of her joining till the date of termination, the workman has worked continuously for more than 240 days and is entitled to get the benefit as defined in Section 25-F of the Industrial Disputes Act. The workman was neither charge sheeted nor any enquiry was initiated against her for any misconduct. The principle of last come first go has also not been followed by the management and some of juniors to the workman are still continuing in employment. The management has also given fresh appointment to outsiders which is in violation of the provision of Section 25-H of the Industrial Disputes Act. After termination, the workman approached the management and during pendency of the matter before this Court, the management offered her the post of Helper. Due to her poor and miserable financial condition the workman joined as such on 5-1-2004 without prejudice to her right and entitlement in this case. The management again terminated the service of the workman with effect from 26-3-2009. However, in the circumstances at initial after termination by way of refusal of employment, 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 wherein the workman has prayed for her 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 was appointed in December 1995 as a Helper. The workman was never refused employment with effect from 22-11-2001, rather the workman is still in service for which the present reference cannot be construed as an industrial dispute under the Industrial Disputes Act and the present I.D. Case is not maintainable. In spite of having been continuing in service, the workman is in the habit of making false complaints before the District Labour Officer, Khurda alleging refusal of employment with effect from 26-3-2009. The establishment of the management is engaged in making surgical products for medical use in the country and also outside. Initially the management on demand used to produce Plaster of Paris Bandages for M/s. Smith and Nephew Medical Ltd., Mumbai and all the said products were purchased by the later. However due to expiry of the agreement with the said company there was shortage of work resulting in reduction of its manpower. Due to shortage of work, the workman was retrenched and was given her full and final settlement on 12-6-1999 which she accepted without any protest. Subsequently the management having acquired some work orders, offered work to many retrenched workman including the present workman in the first week of November 2001. The workman joined in the establishment of management on 19-11-2001. The workman fainted near machine in the shop floor on 22-11-2001. She was immediately given medical attention and was also advised complete rest. When it was found out that she had recently undergone a caesarean surgery on her. The workman was advised to resume duty only after complete recovery and after getting a fitness certificate. But the management was surprised to receive a notice from the office of the Assistant Labour Officer, Khurda regarding termination of the workman from service with effect from 22-11-2001. The management denied the fact of termination of the workman from service before the Assistant Labour Officer, Khurda, However, the workman joined in service under the management on 5-1-2004 without further objection or protest whatsoever. The management has received a petition Dt. 22-8-2005 from the workman addressed to this Court praying for passing a No Dispute Award. There has been no violation of the provisions of the Industrial Disputes Act by the management allowing any part of the claim raised by the workman will disturb the industrial peace and general discipline in the establishment of the management. So in this back ground the reference needs to be rejected as bad in law and not maintainable and 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 :—

#### ISSUES

- (i) “Whether the action of the management of M/s Galaxy Medicine Ltd., Mancheswar Industrial Estate, Bhubaneswar in terminating the services of Smt. Suprava Dash by way of refusal of employment with effect from 22-11-2001 is legal and/or justified ?
- (ii) If not, what relief Smt. Dash is entitled to ?”

6. In order to substantiate her plea, the workman has examined herself as W.W.1 but has not proved any document on her behalf. Similarly the management has examined his Director as M.W.1 and proved documents marked as Exts. A to J.

## FINDINGS

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

W.W.1 deposes that she was appointed as skilled worker in the year 1996 in cutting and packing division of the management. While continuing as such, on 15-5-1999 the management asked the workman to go on leave on plea that the management did not have sufficient work to utilise her and told that she shall be called for the work in future if the work will be available. Thereafter she was re-engaged on 19-11-2001 by the management and performed her duty as earlier. While discharging her duty sincerely and satisfactorily, on 22-11-2001 she was refused to work and thereby the management terminated her from service orally on 22-11-2001 without any reason. It is argued by the management that the workman was appointed as Helper in December 1995 and due to shortage of work, the workman was retrenched and was given her full and final settlement which she accepted without any protest. Thereafter when the management acquired some work orders, offered re-employment to the workman in November, 2001 and accordingly the workman joined in her duty on 19-11-2001 by suppressing the facts that she was unwell at that time. On 22-11-2001 the workman fainted near the machine in the shop floor and after medical attention, she was advised complete rest when it was found out that she had recently undergone a caesarean surgery on her. The workman was asked to resume duty on 20-9-2003 which was refused by her and again on 20-12-2003 the workman was requested to resume her duty and accordingly the workman joined on 5-1-2004 in the establishment of the management without any objection or protest. The workman has filed a petition on 22-8-2005 praying for passing a No Dispute Award. On 27-3-2009 she has been charge sheeted for her misconduct and an enquiry has been initiated against the workman. So in this back ground the management has argued that the management has never terminated her service by way of refusal of employment and this I.D. Case is not maintainable. Further it has been argued that from Exts.A and A/1 it shows that the workman has received full and final settlement and thereafter she was re-employed on 19-11-2001. But on 22-11-2001 after falling down near the machine she was advised to resume duty after getting the fitness certificate. Thereafter the workman remained absent for which after the re-employment for second time she has only worked for 4 days for which she has not completed 240 days of service in a year to attract the provisions of the Industrial Disputes Act. It was verified from Exts.A and A/1 regarding full and final settlement after termination of her service. The management has stated that the service of the workman was terminated and she was given full and final settlement on 12-6-1999. Ext. A is the xerox copy of the cash voucher regarding payment of wages for the month of May 1999 amounting to Rs. 184 and Ext.A/1 is the xerox copy of the cash voucher of Rs. 1749 which includes leave encashment of Rs.99 and notice pay and compensation of Rs. 1650. It discloses that the payment was for full and final settlement against notice pay, compensation and leave encashment. On the other hand, it has been argued by the management that due notice was given to the workman and thereafter on 12-6-1999 full and final payment was made at the time of termination of her service. But according to the workman while continuing in service on 15-5-1999 the management was asked her to go on leave on the plea that the management has no sufficient work to utilise her. But nowhere in the pleading or in the evidence the management has taken the plea that any notice has been issued to the workman regarding termination of her service. If the management had issued any notice to the workman how Ext.A/1 discloses about payment of notice pay. Ext.A/1 is also not clear as the detail amount towards notice pay and compensation has been mentioned. The tenure of service

rendered by the workman has also not been mentioned in Ext.A/1. Even if the workman had received the same without any protest, it cannot be said that it is towards the retrenchment compensation for want of detail particulars as mentioned above. In relying upon the authority reported in 2003 AIR SCW 1340 the management has argued that payment would be made simultaneously at the time of retrenchment. But in that case the management had given one month notice in writing which was wanting for the case at hand. So the fact of this case and the case in hand are different. The workman has deposed that her last salary was Rs. 1800 per month at the time of termination of her service. The management has not filed any wage register or wage slip to show the exact amount what the workman was getting. Ext.A does not clearly show that how the salary of the workman for the month of May 1999 was amounting to Rs. 184. Perused the documents marked as exhibits on behalf of the management.

8. The workman has pleaded that she has completed 240 days of service in preceding twelve calendar months from the date of her termination of service by way of refusal of employment. But the management has not produced any document to show exactly how many days the workman had worked in its establishment. So the termination of service of the workman on 12-6-1999 cannot be accepted basing on the materials available in the case record as discussed above. Accordingly to the settled principle of law as reported in AIR 2010 SUPREME COURT 1236 that the workman would have difficulty in having access to all official documents, muster rolls, etc., in connection with her service. When the workman claimed and deposed that she worked for 240 days, burden of proof shifts to employer to prove that she did not complete 240 days of service in requisite period to constitute continuous service. But in the instant case, the management has not produced any document as per her plea taken earlier. The workman in her cross-examination has admitted that she fell down near the machine on 21-11-2001 as she was of ill-health. But thereafter the management is silent if the workman has not attended to her duty. On the other hand, it is the plea of the workman that the management had terminated her service orally with effect from 22-11-2001. The provisions of Section 25-F of the Industrial Disputes Act has not been followed at all by the management on the date of termination on 22-11-2001 of service of the workman which is a precondition and mandatory one. So on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the action of the management in terminating the services of the workman by way of refusal of employment with effect from 22-11-2001 is neither legal nor justified.

9. According to 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. In the instant case, the workman has admitted that from 5-1-2004 to March 2009 she was continuing in service and according to the management a chargesheet was framed against the workman on 27-3-2009 and an enquiry was initiated against her. When the workman has subsequently engaged under the management, in my opinion, she is not entitled for order of reinstatement in this case. Regarding back wages, admittedly the workman had not worked for the management after 22-11-2001 till her next appointment. In view of the authority 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 aginfully employed elsewhere, payment of back wages is not justified. But on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of giving her full back wages, a lump sum amount of Rs. 20,000 will meet the ends of justice in this case. Hence both the issues are answered accordingly.

10. Hence Ordered :

That the action of the management of M/s Galaxy Medicine Ltd., Mancheswar Industrial Estate, Bhubaneswar in terminating the services of Smt. Suprava Dash by way of refusal of employment with effect from 22-11-2001 is illegal and unjustified. The workman Smt. Dash is entitled to get a lump sum amount of Rs. 20,000 (Rupees twenty thousand) only 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.

Dictated and corrected by me.

S. K. DASH  
29-3-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

S. K. DASH  
29-3-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

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