

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2383 CUTTACK, SATURDAY, OCTOBER 22, 2011/ASWINA 30, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th October 2011

No. 9106—li/1(B)-21/2004-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th June 2011 in Industrial Dispute Case No. 51 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Drainage Division, Gandarpur, Cuttack and its workman Shri Golak Chandra Moharana, Ex-Typist was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 51 OF 2004

Dated the 7th June 2011

Present :

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

Between :

The Management of
Executive Engineer,
Drainage Division,
Gandarpur,
Cuttack.

. . First Party—Management

And

Its Workman
Shri Golak Chandra Moharana,
Ex-Typist.

. . Second Party—Workman

Appearances :

Shri K. C. Das	. . For First Party—Management
<hr/>	
Shri G. C. Moharana	. . Second Party—Workman himself

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. 5547—li/1(B)-31/2004-LE., dated the 30th June 2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Golak Chandra Moharana, Ex-Typist, with effect from the 27th September 1993 by the Executive Engineer, Birupa-Ganguti Island Irrigation Division, Nrutang redeployed as Drainage Division, Govindpur, Cuttack is legal and/or justified ? If not, what relief Shri Moharana is entitled to ?”

3. The case of the workman in brief is that initially he was appointed as Typist on N.M.R. basis by the Executive Engineer, Kuanria Irrigation Division on 1-6-1978 and was continued till 31-10-1988. Such Kuanria Irrigation Division was abolished and merged with Khurda Irrigation Division and his service was terminated. Thereafter, he was again appointed by the Executive Engineer, Upper Brahmini Irrigation Division, Rourkela as Typist on 1-12-1988 and continued till 18-5-1989. Thereafter his service was terminated. He was again appointed as Typist by the Executive Engineer, Birupa -Ganguti Island irrigation Division, Nrutang on 1-1-1990 with a salary of Rs. 35 per day as N.M.R. basis. He was retrenched from service on 1-8-1990. Thereafter he was again appointed in the same post on 1-10-1990 in the said management and continued till 27-9-1993. Thereafter his service was terminated with effect from the 27-9-1993 without complying the mandatory provisions of the Industrial Disputes Act. The workman takes shelter before the Orissa State Administrative Tribunal, and order was passed directing the management to consider the case of the workman keeping in view of the notification of 15-5-1997 issued by the Finance Department of Government of Orissa. The termination of service of the workman was deliberate and wilful with *mala fide* intention to victimise him for his trade union activities. Juniors to the workman were retained in service and also no workers were engaged after his termination. So in this background, the workman raised an industrial disputes 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 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. The workman was never in service from the 11th January 1992 to 27-9-1993. The notification issued by the Finance Department Dt. 15-5-1997 is not applicable to the workman since he was not in service during that period. he was removed from the muster roll

much before the notification. He was not in service after 31-7-1990. As per the policy decision, number of N.M.R. persons have been retrenched from the service. No recruitment was made after disengagement of the workman. The workman was disengaged in the service with effect from the 31-7-1990 and not 27-9-1993. He was not employed beyond 31-7-1990. So in this background the workman is not entitled to get any relief as prayed for in this case. The management though filed written statement did not participate in the hearing.

5. In view of the above pleadings of the parties, the following issues are framed :

ISSUES

- (i) "Whether the termination of services of Shri Golak Chandra Moharana, Ex-Typist, with effect from the 27-9-1993 by the Executive Engineer, Birupa-Ganguti Island Irrigation Division, Nrutang redeployed as Drainage Division, Govindpur, Cutack is legal and/or justified ?
- (ii) If not, what relief Shri Moharana 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 12. The management has not proved any document on his behalf.

FINDINGS

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

According to the workman, he was working as N.M.R. Typist in Kuanria Irrigation Division from 1-6-1978 to 31-10-1988. After abolition and merger of such establishment with Khurda Irrigation Division, he was retrenched from service after payment of due retrenchment compensation. Thereafter he joined in Kansbahal Irrigation Division on 3-12-1988 and was also retrenched on 20-5-1989. On 1-1-1990 he joined as N.M.R. Typist in Birupa -Ganguti Island Irrigation Division, Nrutang and worked there till 27-9-1993. He was illegally terminated from service with effect from the 27-9-1993. At the time of termination, the management has not complied with the mandatory provisions of Section 25 -F of the Industrial Disputes Act. He had worked for more than 240 days during the preceding twelve calendar months from the date of his termination. So he was prayed for his reinstatement in service with full back wages. Perused the documents marked as exhibits on behalf of the workman.

8. The entire evidence of the workman remained unchallenged. According to the settled principle of law as reported in AIR 2010 SC., 1236, the workman would have difficulty in having access to all official documents, muster rolls etc. in connection with his services which the workman claimed and deposed that he had worked for 240 days which the statutory requirement, burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. But in the instant case, the management did not take any pain dis-prove the plea of the workman though he has filed the written statement challenging the plea of the workman. So on careful consideration of all the materials available in the case record, I came to the finding that the workman has completed 240 days of service in twelve calendar months preceding

to the date of his termination under the management and while terminating the service of the workman, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act which is a mandatory and precondition one. So on careful consideration of all the materials available in the case record as discussed above, the termination of services of the workman with effect from the 27-9-1993 by the Executive Engineer, Birupa -Ganguti Island Irrigation Division, Nrutang redeployed as Drainage Division, Gandarpur but not Govindpur, Cuttack is neither legal nor justified, and the workman is entitled for reinstatement in service.

9. Regarding back wages, as per settled principle of law the relief of reinstatement with full backwages 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 according to the authority reported in 2004 (Supp.) OLR 694 that 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. However, on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of granting full back wages, a lump sum amount of Rs. 30,000 will meet the ends of justice in this case. Both the issues are answered accordingly.

10. Hence Ordered :

That the termination of services of Shri Golak Chandra Moharana, Ex-Typist, with effect from the 27-9-1993 by the Executive Engineer, Birupa -Ganguti Island Irrigation Division, Nrutang redeployed as Drainage Division, Gandarpur but not Govindpur, Cuttack is illegal and unjustified. The workman Shri Moharana is entitled to be reinstated in service with a lump sum amount of Rs. 30,000 (Rupees thirty 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
7-6-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
7-6-2011
Presiding Officer
Labour Court
Bhubaneswar

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

