

The Orissa Gazette



**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 2444 CUTTACK, FRIDAY, NOVEMBER 4, 2011 / KARTIKA 13, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th October 2011

No. 9571—li/1-(B)-6/2005-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd April 2011 in I. D. Case No. 60/2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial Dispute between the Management of Secretary, Regulated Market Committee, Betnoti, Mayurbhanj and its Workman Shri Ganesh Ch. Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 60 of 2005

The 2nd April 2011

Present :

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

Between :

The Management of Secretary, . . . First-Party Management
Regulated Market Committee,
Betnoti, Mayurbhanj.

And

Their Workman . . . Second-Party Workman
Shri Ganesh Ch. Das

Appearances :

NONE	. .	For the First-Party Management
Shri G. C. Das himself	. .	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. 9125—li/1(BH)-6/2005-L.E., dated the 27th October 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the termination of services of Shri Ganesh Chandra Das, with effect from the 29th November 2002 by the Secretary, Regulated Market Committee, At/P. O. Betnoti, Dist. Mayurbhanj is legal and/or justified ? If not, to what relief is Shri Das entitled ?"

3. The case of the workman in brief is that he was appointed as a Wager by the Management on the 4th January 1995. Thereafter he was engaged as a D. L. R. at different Check Gates under the management by issuing time to time orders of transfer posting. He was getting Rs. 40.00 per day. He was performing his duty most honestly and obediently without any break. While continuing as such, unfortunately the workman suffered from Rheumatoid Arthritis for which he had undergone treatment under Dr. Krishna Chandra Parida, Specialist at the District Head Quarters Hospital, Balasore who advised to take rest and remained on leave from the 1st November 2001 to the 26th November 2002. He had applied for leave to the management by making written application. After recovery from illness the workman approached the management with his joining report supported by the medical fitness certificate for resuming his duty. But the management instead of accepting his joining report advised the workman to wait for some time and thereafter on the 29th November 2002 refused his joining report which amounts to termination of service. No prior notice or notice pay and retrenchment compensation etc. as per the Industrial Disputes Act has been paid to the workman at the time of refusal of his employment. So he 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 his reinstatement in service with full back wages.

4. In spite of notice, the management remained absent and was set *ex parte*.

5. In order to establish his claim, the workman has examined himself as W. W. 1 and proved the documents marked as Exts. 1 to 8.

6. According to the workman, he was appointed as a Wager in the Management on the 4th January 1995 on daily wages at the rate of Rs. 40.00 per day. He became sick on the 1st November 2001 and admitted in the Hospital. He sent a leave application for grant of leave initially for 15 days and thereafter he extended his leave. After recovery from illness, he went to join but the Secretary of the Management refused employment on the 29th November 2002. He has worked 240 days of continuous work in twelve calendar months preceding to the date of his refusal of employment. The Management has not followed the mandatory provisions of Section 25-F of the Industrial Disputes

Act, while refusing employment to him. Perused the documents marked as exhibits on behalf of the workman. Ext. 1 is the xerox copy of his appointment order. Exts. 3 and 5 are the xerox copies of his leave applications. Exts. 4 and 6 are the xerox copies of under certificate of posting receipts. Ext 7 is the xerox copy of his joining report and Ext. 8 is the xerox copy of medical certificate.

7. The entire evidence of W. W. 1 remained unchallenged as the Management was set *ex parte*. According to the settled principle of law as reported in 1993 (67) F. L. R. 111 in case of absence from duty, service terminated without any enquiry and opportunity of hearing, the principle of natural justice violated and the order of termination is liable to be set aside. Similarly according to the settled principle of law when the workman was under medical treatment and as soon as he was declared fit and he reported for duty but was not allowed to report, the same amounts to unfair labour practice and order of dismissal is improper. So in this background on careful consideration of all the materials available in the case record it shows that the workman was in continuous service of 240 days preceding twelve calendar months of his termination and the mandatory provisions of Section 25-F of the Industrial Disputes Act has not been followed by the Management while terminating his service. Therefore, I came to the finding that the termination of services of the workman with effect from the 29th November 2002 by the Management is neither legal nor justified and the workman is entitled for reinstatement in service.

8. Regarding back wages, as per settled principle of law reported in 2004 (supp.) O. L. R. 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 40,000 will meet the ends of justice in this case.

9. Hence, ordered :

That the termination of services of Shri Ganesh Chandra Das with effect from the 29th November 2002 by the Secretary, Regulated Market Committee, At/P. O. Betnoti, Dist. Mayurbhanj is illegal and unjustified. The workman Shri Das is entitled to be reinstated in service with a lump sum amount of Rs. 40,000 (Rupees forty 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 *ex parte*.

Dictated and corrected by me.

S. K. DASH
2-4-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
2-4-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government