

The Orissa



Gazette

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 2445 CUTTACK, FRIDAY, NOVEMBER 4, 2011 / KARTIKA 13, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th October 2011

No. 9576—li/1-(B)-23/2004-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th April 2011 in I. D. Case No. 47/2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Officer, Cuttack Municipal Corporation and its Workman Shri Prasant Mukhi, ex-D. L. R. Sweeper was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

**IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 47 of 2004**

The 29th April 2011

Present :

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

Between :

The Management of the Executive . . . First-party Management
Officer, Cuttack Municipal
Corporation.

And

His Workman Shri Prasant Mukhi, . . . Second-party Workman
Ex-D. L. R. Sweeper.

Appearances :

Shri S. K. Das, Jr. Assistant . . . For First-party Management
Shri P. Mukhi . . . 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. 5522—li/1(B)-23/2004-L.E., 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 Prasant Mukhi, ex-D. L. R. Sweeper with effect from the 1st June 2002 by the Executive Officer, Cuttack Municipal Corporation, Cuttack is legal and/or justified ? If not, what relief Shri Mukhi is entitled to ?"

3. The case of the workman in brief is that he was initially appointed as D. L. R. Sweeper by the management with effect from the 1st August 1995 for 89 days vide office Order No. 75, dated the 31st July 1995 and accordingly he joined in his duty. Thereafter, after lapse of two and half years, the workman was re-engaged on daily wage basis by the management vide office Order No. 2456, dated the 27th May 1998 for a period of 44 days and continued as such till the 31st May 2002 and on the 1st June 2002, he was terminated from service by way of refusal of employment. His last salary was Rs. 1,500 per month. The workman had worked continuously for more than 240 days in a year but while terminating his service, the management has not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act. Some outsiders were also appointed after termination of his service. So in this background, 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. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to him, initially the workman was appointed for 89 days with effect from the 1st August 1995 vide office Order No. 75, dated the 31st July 1995. After expiry of such order, no extension of his service was made. Thereafter, after lapse of three years, further engagement was given to the workman vide office Order No. 3456, dated the 27th May 1998. When there was restriction for any engagement without prior approval of the Government. The Government in H. & U. D. Department vide their Letter No. 36051, dated the 15th December 2000 clearly mentioned that the D. L. R./N. M. Rs. who have been engaged after the 19th May 1997 should be disengaged. So in this circumstances, there is no scope to the management further to engage the workman. Therefore, the management has prayed for answering the reference accordingly.

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

ISSUES

- (i) "Whether the termination of services of Shri Prasant Mukhi, ex-D. L. R. Sweeper with effect from the 1st June 2002 by the Executive Engineer, Cuttack Municipal Corporation, Cuttack is legal and/or justified ?
- (ii) If not, what relief Mukhi 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 10. The management has neither examined any witness nor proved any document on his behalf.

FINDINGS

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

The workman has filed his affidavit evidence in support of his statement of claim. He has deposed that initially he joined on the 1st August 1995 vide Ext. 1 for 89 days as D. L. R. Sweeper and thereafter a gap of about two and half years, he was again reappointed on the 27th May 1998 vide Ext. 2. This appointment was for 44 days. Further, he deposes that he was discharging his duty continuously up to the 31st May 2002 and his last salary was Rs. 1,500 per month. On the 1st June 2002, the management terminated his service by way of refusal of employment as on that date when he went to resume his duty, he was informed that his service was no more required. Perused the documents marked as exhibits on behalf of the workman.

8. The termination of the workman from service was with effect from the 1st June 2002. Exts. 3 and 4 are the xerox copy of subsequent engagements of the workman along with others. Ext. 6 is the xerox copy of Nominal Muster Roll for the months of January, 2002 to May, 2002 which disclose that the workman was working under the management for the period as mentioned therein with a certificate of the concerned authority, i. e. Medical Officer, Thoria Sahi Dispensary of the management. Ext. 9 is the xerox copy of the certificate issued by the Medical Officer, Thoria Sahi Dispensary of the management wherein it has been mentioned that the workman was working under the management from the 28th May 1998 till the 31st May 2002. All the documents are marked as exhibits on behalf of the workman without any objection. In the cross-examination, nothing has been elicited from the mouth of the workman to disbelieve his sworn testimony.

9. According to the pleading of the management, the workman was disengaged along with others who were engaged illegally after the 19th May 1997 in pursuance to the direction of the Government, dated the 15th December 2000. After amendment of Orissa Municipal Act in view of the proviso in Section 73(B) of Orissa Municipal Act, Section 25-F of the Industrial Disputes Act is applicable to a workman in case of termination of service. So in view of the provisions of said statute, Section 25-F of the Industrial Disputes Act is applicable to such temporary service holders.

10. The workman vide his petition, dated the 17th January 2011 prayed to direct the management to produce certain relevant documents in support of his case which was allowed vide order, dated the 25th January 2011 and the management was directed to produce such documents, but the management failed to produce the same without any sufficient reasons. So in this background, the workman has argued that due to non-production of such documents, he has prejudiced and an adverse inference should be drawn against the management. The workman has filed certain xerox copies of the documents in support of his case and failed to produce other documents. So he has filed a petition praying to direct the management to produce the documents but the management failed to produce the same. According to the settled principle of law as reported in AIR 2010 S. C. 1236, the workman would have difficulty in having access to all official documents, muster rolls, etc. in connection with his service which the workman claimed and deposed that he had worked for 260 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. Ext. 9 is the xerox copy of the certificate issued by the Medical Officer, Thoria Sahi Dispensary of the management remained unchallenged which discloses that he was working under the management from the 28th May 1998 to 31st May 2002. The workman has taken the plea and deposed that he was working under the management continuously for 240 days in twelve calendar months preceding to the date

of termination. The management has not adduced any evidence in support of his plea. So from the materials available in the case record, it can safely be concluded that the workman was working continuously under the management preceding twelve calendar months from the date of termination of his service but the provisions of Section 25-F of the Industrial Disputes Act has not been followed while terminating his service by way of refusal of employment though it is a mandatory and pre-condition one. So on careful consideration of all the materials available in the case record as discussed above, I am inclined to hold that the termination of service of the workman with effect from the 1st June 2002 by the management is neither legal nor justified and he is entitled to be reinstated in service.

11. Regarding back wages, admittedly the workman had not worked for the management during the relevant period. It is now well settled by reason of catena of decisions of the Hon'ble Supreme Court that 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.) 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, I am of the opinion that instead of granting full back wages, a lump sum amount of Rs. 25,000 as compensation will meet the ends of justice in this case. Hence, both the issues are answered accordingly.

12. Hence, ordered :

That the termination of service of Shri Prasant Mukhi, ex-D. L. R. Sweeper with effect from the 1st June 2002 by the Executive Officer, Cuttack Municipal Corporation, Cuttack is illegal and unjustified. The workman Shri Mukhi is entitled to be reinstated in service with a lump sum amount of Rs. 25,000 (Rupees twenty five 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
29-4-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
29-4-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government

