

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2467 CUTTACK, WEDNESDAY, NOVEMBER 9, 2011/KARTIKA 18, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th October 2011

No. 9635—li/1(B)-22/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th May 2011 in Industrial Dispute Case No. 43 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Assistant Executive Engineer, R. W. Division, Nayagarh and their workman Shri Kelu Rout, Ex-D.L.R., R. W. Division, Nayagarh was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 43 OF 2006

Dated the 17th May 2011

Present :

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

Between :

The Management of the Asst. Executive Engineer, R. W. Division, Nayagarh. First Party—Management

And

Their workman Shri Kelu Rout, Ex-D. L. R, R. W. Division, Nayagarh. Second Party—Workman

Appearances :

For the First Party—Management Shri S. N. Sahoo

For the Second Party—Workman himself Shri K. Rout

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, 1947 have referred the matter in dispute to this Court vide Order No.4468—li/1 (B)-22/2006-LE., dated the 6th June 2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the refusal of employment of Shri Kelu Rout, D. L. R. by the Assistant Executive Engineer, Puri Works Subdivision, Nayagarh with effect from the 1st February 2003 is legal and/or justified ? If not, to what relief Shri Rout is entitled ?”

3. The case of the workman in brief is that he was working as Road Gang Cooli, D. L. R. under the management with effect from the 1st January 1996 to 31st January 2003 at the rate of Rs. 1,296 per month. He was performing his duty sincerely. Due to demand of the arrear wages for the period from the 1st October 2001 to 31st January 2003 amounting to Rs. 17,615, the management suddenly refused employment of the workman on the 1st February 2003. He has completed more than 240 days of continuous employment in twelve calendar months. The provisions of Section 25-F of the Industrial Disputes Act has not been followed by the management at the time of refusal of employment to the workman. The policy of last come first go has also not been properly followed by the management. So in this background he has 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 denying the plea of the workman but did not took part in the hearing. According to the management, the workman has raised this dispute at a belated stage without approaching the authority and without reporting to the authority/ higher authority. So the case of the workman is an imaginary one and should be rejected.

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

ISSUES

- (i) “Whether the refusal of employment of Shri Kelu Rout, D. L. R. by the Asst.Executive Engineer, Puri Works Subdivision, Nayagarh with effect from the 1st February 2003 is legal and/or justified ?
- (ii) If not, to what relief Shri Rout is entitled ?”

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 to 6. The management has neither adduced any evidence 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.

According to W.W. 1, he was working as D. L. R. under the management for the period from the 1st January 1996 to 31st January 2003 at the rate of Rs. 1,296 per month and he had completed

240 days continuous employment in twelve calendar months. He was terminated from service with effect from the 1st February 2003 without compliance of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act. One Jogi Pradhan an outsider was appointed in his place at the time of termination of his employment. Perused the documents filed by the workman marked as exhibits.

8. The evidence of W. W. 1 remained unchallenged. Further the management has not adduced any evidence on his behalf. 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 service 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. So in the instant case on consideration of entire evidence on record, I am of the opinion that the management had not complied with the provisions of Section 25-F of the Industrial Disputes Act which is a mandatory and precondition one. Therefore on careful consideration of all the materials available in the case record as discussed above, now I came to the finding that the refusal of employment of the workman by the management with effect from the 1st February 2003 is neither legal nor justified. The workman is entitled to be reinstated in service.

9. Regarding back wages, 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 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.

10. Hence ordered :

That the refusal of employment of Shri Kelu Rout, D. L. R. by the Asst. Executive Engineer, Puri Works Subdivision, Nayagarh with effect from 1st February 2003 is illegal and unjustified. The workman Shri Rout 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
17-5-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
17-5-2011
Presiding Officer
Labour Court, Bhubaneswar

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