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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 2nd November 2011

No. 9855—IR (ID)-19/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th September 2011 in Industrial Dispute Case No.11 /2010 of the Presiding Officer, Labour Court, Sambalpur, to whom the industrial dispute between the Management of M/s ERBHS Netra Niketan and Supreme Task General Hospital, Balangir and its workmen Shri Gyan Ranjan Suna and 13 others was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 11 OF 2010

Dated the 29th September 2011

Present :

Shri Pradipa Kumar Samal,  
Presiding Officer,  
Labour Court,  
Sambalpur.

Between :

The Management of  
the Director, M/s ERBHS  
Netra Niketan and Supreme  
Task General Hospital,  
Jyotinagar, Patnagarh Road,  
Balangir,  
Dist. Balangir.

. . First Party—Management

And

Its Workmen,  
Shri Gyan Ranjan Suna & 13 others  
Kandapali,  
Rajendra College Chowk,  
Balangir.

.. Second Party—Workmen

Appearances :

Shri B. K. Nag .. For the First Party—Management

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Shri G. R. Suna .. For the Second Party—Workmen

#### AWARD

The present dispute arose out of the reference made by the Government of Odisha, Labour & Employment Department, made in their Order, Dt. 2-6-2010 under Letter No. 4565-I.D.-19/2010- LE. giving rise to the registration of the present case under Sections 10 and 12 of the Industrial Dispute Act, 1947 (for short, 'Act'). The dispute involved is scheduled as follow :

“Whether the termination of services of Shri Gyan Ranjan Suna, Asst. Ophthalmologist, Shri Sankarlal Tandi, Pharmacy-cum-Health Workers, Shri Eliya Kumar, Pharmacy-cum-Health Worker Shri Surendra Barik, Cook, Shri Satrughna Sahu, Ward Attendant, Shri Bijay Kumar Tandi, Pharmacy-cum-Health Worker, Shri Sunil Nag, Electrician, Shri Kulamani Nag, Community Health Worker, Shri Biraj Tamil Suna, Lab. Technician, Smt. Bandana Sabnam Nanda, GNM, Shri Sahadev Herna, Security Guard, Shri Bidyut Ranjan Kumar, Field Worker, Shri Bharat Chhatria, Gardener and Shri Prasant Bag, Asst. Ophthalmologist, with effect from 29-8-2009 by the management of M/s ERBHS Netra Niketan and Supreme Task General Hospital, Balangir is legal and/or justified ? If not, what relief they are entitled to ?”

2. As required under the above communication of the Government, the second party workmen in the statement of claim submitted by them narrated their case as follows :

The second party workmen said to have been employed by the first party management as against the date mentioned against each of them for performing different duties as per their designation. According to them, their conduct work and behaviour all along the service period were to the satisfaction of the superior higher personnels of the management as there was no complaint against them. They stated that they were being paid with their wages by the first party management on monthly basis by assigning duties in the establishment as and when required by the management. As such, they claimed to have been continued service under the first party management. But they alleged that all of a sudden, with ulterior motives, the first party management refused their employment and illegally terminated their service without any rhyme and reason with effect from 29-8-2009 even without following the procedure as laid down under the law. Consequently, the second party workmen for the alleged inaction of the first party management claimed that they are deemed to be still in employment of the first party management and are entitled for reinstatement with full back wages and other benefits incidental thereto inasmuch as their termination is nonest and void *ab initio*.

The further case of the second party workmen is that after their illegal and forced termination from the service they lodged complaint before the local Labour Machinery who, after proper investigation to the matters admitted in dispute into conciliation, but the management become adamant and did not accept the advise of the Labour Machinery to reinstate them in employment, as a result of which, the conciliation ended in failure. Saying so, the second party workmen alleged further that the first party management has retained the services of the workmen who are junior to them and also recruited fresh new hands against the law for which they remained unemployed in spite of their best efforts for alternative jobs and consequently leading a miserable life with their family members without any other sources of income. According to them, the establishment of the management of the first party is very vast and also profitable one which is engaging other workmen and denied their rights and as such, they are to be reinstated in their respective job with retrospective effect and full back wages from the date of illegal termination of service on 29-8-2009 inasmuch as the first party is an industry, the same is neither a charitable nor philanthropic organisation, that they are the workmen as defined under the Act and have been in continuous service whereas the dispute referred is an industrial dispute as defined under the Act.

3. The first party management in their written statements, which are found to be akin to each other, among other things submitted that the management society are exempted to be an industry as per provision of the Act whereas the second party members are also not workmen within the meaning of the Act. Their case is that Eastern Regional Board of Health Services (hereinafter referred to as 'ERBHS') is a unit of synodical Board of Health Services, Church of North India, which owns the Netra Niketan eye and Supreme Task General Hospital, Balangir and the Supreme Task being society registered under the Society Registration Act, entered into agreement with ERBHS on 11-2-2007 and thereafter the Supreme Task undertook to perform eye care and general medical treatment along with community health for health improvement of the people of the Balangir and surrounding areas besides managing the hospital situated at Patnagarh Road, Balangir. They therefore asserted that the Supreme Task is an organisations, substantially engaged in charitable social and philanthropic services.

The first party management, however, admitted about the works done by the second party members under them for different capacities but not in the designation as mentioned by them in their statement of claims. They asserted that after taking over the management by the Supreme Task abruptly from 12-8-2009 all the second party members stopped work without assigning any reason and prior notice. For such development the first party management vide their letter, Dt. 14-8-2009 issued notices to all the members of the second party workmen requiring them to show cause as to why disciplinary action shall not be taken for their wilful absence from the work causing hindrance in providing medical services to the patients. But, the second party workmen did not file any reply to the show cause notice issued to them and thereafter the management presuming that the second party workmen had no intention to work with the management dispensed with their services accordingly. Thereafter, the management submitted further, that the second party workmen approached the District Labour Officer, Balangir, who initiated a conciliation proceeding during which three numbers of second party workmen namely Bijay Kumar Tandi, Sunil Nag and Prasanta Bag admitted the mistakes done by them, begged apology to the management and the management after considering their request called them to join duty vide their letter, Dt. 4-12-2009. But those three workmen did not join their duty on the pressure of some of the workmen for which the

management finally reminded them to resume their duties under another letter, Dt. 9-1-2010. But, those workmen thereafter even did not resume their duties. The first party management averred further that though the nature of services of the second party workmen is emergency in nature, none of them resumed duty in spite of several request made by them. Consequently, the management asserted that the conduct of the second party workmen during the continuation of their service was neither satisfactory nor their absence from duty was with any valid reason. Instead it was alleged by the management that some of them namely Bijay Kumar had initiated labour case against the management earlier questioning the appointment of the other workmen Gyana Ranjan Suna whereas the other workman Bidyut Ranjan Kumar had served several notices to the management and the lady worker namely Bandana Sabnam Nanda had lodged a case against the Administrative Officer which was, of course, ended in compromise, The management also alleged that during continuation of the members of the second party workmen with the management, there were some reported cases of theft of household articles and medical equipments for which police cases were registered against the workmen and at present one of them namely Surendra Barik is facing trial in the Judicial Court at Balangir. Alleging so against the workmen, the management submitted further that the present case has been initiated by Gyana Ranjan Suna for an illegal bargaining with the management which was infant of only 18 months by them.

With such assertion the management submitted that since the second party workmen, notwithstanding the nature of services to be rendered by them, violated the provision of Section 22 of the Act and resorted to strike amounting their action to illegal and, as such, they are not entitled for any benefit under the provisions of the Industrial Dispute Act.

Answering the stand taken by the second party workmen in their claim statement, the first party management once again disputed the designated work done by the workmen and their date of joining in service as shown against their names and narrating the specific work made by them asserted that they had worked under it from 1-3-2008. It however, denied the continuous service of the workmen under the management. On the other hand, it was asserted that the second party workmen abandoned their services by resorting to illegal strike for no reason or fault of the management even though they were called on to join the service during the conciliation proceeding but the management not being any industry they were never been terminated by it. Consequently it was submitted that the workmen cannot claim any employment from the management and would not also be entitled for reinstatement with back wages and/or incidental benefits thereto particularly when they abandoned their services even though the management agreed to the suggestion of the Conciliation Officer to take back them.

With a view to exempt it from the liability, the first party management submitted further that it being a public utility service establishment has taken temporary workers to carry out the day-to-day work and had never engaged any permanent workmen much less any junior persons by way of recruitment. On the other hand naming seven out of the 14 workmen (second party) it submitted further that when some of them are working gainfully, some others are working in the Government Organisation whereas some other of them joined their services subsequent to the conciliation made in the matter saying so, it was submitted further that the management has lost faith and confidence completely on the erring members of the second party for their bad records,

lack of integrity and trustworthiness and, as such, their continuance in services would be detrimental to the peace, tranquility and working atmosphere of the Society. It, therefore, prayed to answer the reference in its favour.

4. In their rejoinder to the written statement submitted by the first party management, the workmen avorred that the management was never a charitable institution, rather a most profitable establishment and they are covered under the Industrial Dispute Act. According to them, they have never-stopped their work but the first party management threatened and denied their continuity to work and finding no other way they were compelled to complaint before the Conciliation Officer, Balangir , for redressal of their dispute. They alleged that the first party management played a role of divide and rule and under undue inflence could able to take a few workmen to join in service with alluring facilities and giving handsome money when they were under duress and could not get an alternative job after their illegal termination. As regards other workmen, they denying the allegations made by the first party management about their conduct, submitted further that they were discharging their work in the establishment of the first party management with utmost devotion and hence they are eagerly waiting the direction of the Court for their reinstatement as they have failed to get an alternative employment. They, therefore, prayed for their reinstatement in service with full back wages and cost.

5. In view of the above pleadings of the parties, the following issues have been framed in this case for adjudication.

#### ISSUES

- (i) “Whether the termination of services of Shri Gyana Ranjan Suna, Asst. Ophthalmologist, Shri Sankarlal Tandi, Pharmacy-*cum*-Health Worker, Shri Eliya Kumar, Pharmacy-*cum*-Health Worker, Shri Surendra Barik, Cook, Shri Satrughan Sahu, Ward Attendant, Shri Bijay Kumar Tandi, Pharmacy-*cum*-Health Worker, Shri Sunil Nag, Electrician, Shri Kulamani Nag, Community Health Worker, Shri Biraj Tamil Suna, Lab. Technician, Smt. Bandana Sabnam Nanda, GNM, Shri Sahadev Herna, Security Guard, Shri Bidyut Ranjan Kumar, Field Worker, Shri Bharat Chhatria, Gardner and Shri Prasant Bag, Asst. Ophthalmologist, with effect from 29th August 2009 by the management of M/s ERBHS Netra Niketan and Supreme Task General Hospital, Balangir is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?”

6. The record disclosed that the workmen namely Gyana Ranjan Suna and Eliya Kumar have been authorised by the second party workmen to look after the case on their behalf and both the said workmen were accordingly examined as the two witnesses on behalf of the second party workmen. On other hand, the authorised representative of the management namely Bhanja Kishore Nag and two other workmen namely Kulamani Nag and Sahadev Herna, who joined the service again, were examined as the three witnesses on behalf of the first party management. Numbers of documents were relied upon by the parties.

## FINDINGS

7. *Issue No.—(i)* The second party workmen in their statement of claim among other things asserted that though some of them were appointed way back in the year 1990 and since they continued their service all along to the satisfaction of the superior higher personnels of the management and there were no complaint against them, the first party all on a sudden with an ulterior motive refused their employment and illegally terminated their service on fabricated charge with effect from 29-8-1998. According to them, before the termination as the first party management did not follow the procedure as laid down under the law, the termination made is nonest and void *ab initio*. As such, they claimed to be still in employment and are consequently entitled for reinstatement with full back wages and other benefits incidental thereto. On the other hand, the first party management in their written statement submitted that the second party workmen stopped working from 12-8-2009 without assigning any reason and without any prior notice for which they were issued with notice on 14-8-2009 to show cause but they did not file any reply and wilfully remained absent from duty besides neglecting the work wilfully causing hindrance to the medical service of the patients for which presuming that they have no intention to work with the management their services were dispensed with as during conciliation of the matter when some of the workmen realised their misdeed and requested the management to allow them to resume duty but did not on the pressure of some of other workmen. Finding no other go, the first party management being not satisfied with their conduct and taking into account the nature of service rendered in the organisation took temporary workers to carryout the day to day work without engaging any permanent workmen or juniors to the workmen. Consequently, the management submitted that the workmen are not entitled to any benefit inasmuch as the management establishment being not an "industry," the question of termination had never taken place.

8. One of the representative of the second party workmen namely Gyana Ranjan Suna when examined as W.W.1 submitted an Affidavit for the purpose of examination-in-chief reproduced almost all the assertions such made by them in the statement of claim and while in the box proved number of documents which were found to be the communications between the management and the workmen. But when cross-examined he admitted that the nature of job made by some of the workmen namely Shankarlal Tandi, Eliya Kumar and Bijaya Kumar only to be the Health Workers and not Pharmacists though, in the next breath, he stated that sometimes those Health Workers were discharging their duty of Pharmacist being engaged by the management. He stated further that all the above workmen were in continuous service in the management since the date of joining till 12-8-2009 by denying the suggestion that on that date they *suo motu* left their job. He, however, stated on the other hand that on 19-8-2009 all the workmen proceeded to the management for their work but the management did not allow them to enter inside and locked the gate. He then deposed that the second party workmen requested in wrting to the management on 17-8-2009 to re-engage all of them in their establishment and on 22-8-2009 all the workmen again filed a joint petition requesting the Head of the Management to reengage them in their establishment. During the further cross-examination W.W.1 at Para. 5 admitted that they are not possessing their appointment letter regarding their joining in Netra Niketan. On the other hand, he admitted that on 11-12-2009 the management proposed to reinstate 10 workmen out of 13 in their respective post but the above 10 workmen did not join in the management since the management excluded the other workmen and

thereafter remained silent without any reply to reinstate the rest workmen. Perhaps, with a view to ascertain the nature of the establishment of the first party management not to be an "industry", when questioned, W.W.1 in the last Para. of his evidence admitted that the management is not taking money of Rs. 2,000 to Rs. 2,500 from the persons at the time of operation and also not taking money from others at the time of treatment. He admitted further that Government also provided no money in case of free operation. He, however denied the suggestion that the management requested the workmen on several time to join in their respective posts but they did not join and disobey, the management's order.

Perhaps, after the admission of W.W.1 that the first party management is not collecting any money from the patients, the other representatives of the second party workmen namely Eliya Kumar got himself examined as W.W.2 and proved a money receipt Dt. 25-3-2009 issued on behalf of the first party management receiving Rs. 60 towards Laboratory Test charge and the resolution of the public meeting submitted by them to Bishop R.T. Rev. P. Dip. It is found that the first party management admitted about grant of money receipt and submitted that they take nominal price. However, W.W.2 admitted that the second party workmen convened the public meeting to discuss the matter when the second party workmen were driven out from their service. He then deposed with vehemence that they have never separated them from the Hospital duty though he admitted to have filed application on 12-8-2009 before the management and also admitted the contents thereof to be true. He then admitted further that in that letter the workmen have mentioned to have *suo motu* stopped their work. From the further admission of the W.W.2 it appeared that the workmen have received their salary till 11-8-2009.

9. The Administrative Officer of the first party management while examining himself as M.W.1 in his Affidavit for the examination-in-chief, like the workmen, reproduced the assertion made in the written statement, while in the box, he proved the certificate of registration of the Supreme Task under the Society Registration Act, 1960, as Ext.M.1 the order of the Registration of the Management Society under Section 12-A read with Section 12-AA(1) (b) of the Income Tax Act, 1961 issued by the Director of Income Tax, New Delhi and the Order of Registration Management Society under Section 80-G (5), (vi) of the Income Tax, 1961 issued by the said Director of Income Tax. Among other documents he proved the copy of the Registered Memorandum of undertaking entered between ERBHS and Supreme Task on 29-6-2008 and the copy of the certificate issued by the Commissioner and Secretary, Women & Child Development, Government of Orissa as required under the customs Act, 1962. The other documents proved by this witness primarily related to the communications made between the first party management and the workmen subsequent to 12-8-2009 and the conciliation proceeding made by the District Labour Authority on the complaint made by the workmen. When cross-examined this witness at Para. 3 admitted that the Hospital accepted fees towards treatment of general public but it rendered free service in case of eye treatment for the poor people and in case of operation they received money from the Government. From the further cross-examination of this witness it appeared that on 12-8-2009 F.I.R. was lodged against the Administrative Officer, Biswajit Pal, and on that date the informant and the other staff Member of the establishment ceased their work. It appeared that the said dispute was subsequently resolved on compromise. It is also seen from his statement during cross-examination that certain development had taken place in the conciliation meeting but he admitted fairly that there is no document available

with the management regarding the date of joining of the staff and for that he expressed his inability to say specifically the date of joining of each staff. He was also not able to say whether the staff were continuously working in the management till the date of their cease work as, according to him, there is no record in the establishment. He, however admitted about taking of fees from the patients towards the services by the management and the doctors as well, deduction of provident fund money from each of the staff members was admitted by this witness but with the explanation that the some has now been stopped. According to him, the workmen by ignoring the management put their grievance before the District Labour Officer, Balangir, whereas the management has not reported in writing to any legal authority alleging misconduct by the workmen. In the later part of his cross-examination M.W.1 stated that they never advanced any proposal to take 9 workmen in their service denying 5 other workmen out of the 14 on 11-12-2009 but, at the same time, he admitted that the management is ready to reinstate the workmen in their service.

M.W.2 and M.W.3 are found to be the 2 out of 14 workmen of the second party members and in their affidavits they among other things submitted that they were at fault and unnecessarily put finger against the management's affair and they could realise the fault at the intervention of the common -well wishers. Both them were found to have been taken to the services of the management without any benefit for their absence from the work when begged unconditional apology before the management and sworn in an affidavit before them, when cross-examined, both of them stated that at present they are not one among the workmen party of this proceeding. Though, they were not able to name the common well wishers but admitted about filing of a complaint jointly with the other employees of the management before the Assistant labour officer, Balangir. They however, denied the suggestion that later on at the instance of the management, they betrayed the other colleagues and being paid by the management deposed falsehood.

10. Coming to the documentary evidence adduced by the parties, it is found, both from Ext.W. 2 and Ext. W. 6 that all on a sudden on 12-8-2009 on a Wednesday the second party workmen exhibiting their grievance against the Administrative Officer, Mr. Biswajit Pal, on the allegations of extension of threat to the staff members ceased work till redressal of their grievance. It is also seen that for such development almost all the workmen members were issued notice to show cause by the management on 14-8-2009, when the matter stood thus, on 18-8-2009, F.I.R was lodged against Mr. Biswajit Pal before the I.I.C. Town P.S., Balangir, for the incident that alleged to have taken place on 12-8-2009. Such a fact writ large from the entries made in the Ext. W.13 proved by the workmen. Thus it is found that six days after the alleged occurrence the matter was reported to the police. Interestingly on the morrow i.e. 19-8-2009 the so called informant namely Bandana Sabnam Nanda submitted an affidavit in the Court of the S.D.J.M., Balangir, in connection with the connected G.R. case No.539 of 2009 stating therein that due to some misunderstanding she had filed the case but at the intervention of the gentleman and well-wisher she has compromised the matter. In the meantime, when the complaint was lodged before the District labour Authority some of the workmen requested the District labour Officer, Balangir, to withdraw the name of the Supreme Task, of the general hospital, from the dispute as per their application proved as Ext. M.8. As stated earlier, when the workmen resorted to cease work on 12-8-2009, the management issued notice to show cause on 14-8-2009 requiring them to submit the written explanation by 17-8-2009 but the workmen did not submit any show cause and instead some of them namely Bijaya Kumar Tandi, Sunil Nag, Prasanta Bag, Kulamani Nag, Sahadev Herna, Premamali Swain in their application



Dt. 1-10-2009, 20-8-2010, 15-9-2010 and 3-11-2009 as shown in Ext. M.9, Ext. M.11, Ext.M.12, Ext.M.13 and Ext. M.14 submitted in writing to the management about their repentance for the misdeed committed and prayed to allow them to join in their service. The communications made by the first party management disclosed that some of them were ultimately advised to join their duty on 7-12-2009, yet they did not. On the other hand, as stated earlier M.W.2 and M.W.3 by filing separate affidavits before the management prayed them to join their service and in their evidence they deposed on oath that they had unnecessarily put their finger against the affairs of the management and could realise their fault at the intervention of the well-wishers. Of late, it is found that when on 29-8-2009 through Ext.W.6 letter intimating that the services of the workmen are no more required due to the wilful, deliberate and intentional absent from duty since 12-8-2009 and for the failure of the workmen for submitting appropriate explanation and resumption of duty an appeal was issued by the first party management, the workmen in their turn found to have issued letter to the management which was Dt. 12-8-2009, received by the first party management through the Good Luck Courier at 5.15 P.M. on 29-8-2009 in which they had sought to resume duty. However, reminding the workmen about the service rule of the organisation regarding unauthorised absence of the employee the management ultimately intimated the workmen that in consultation with the National Director they had taken action and informed about the decision that their service is no more required in the organisation and consequently requested them to come and settled their dues and to be relieved. A careful reading of the above communication disclosed that the management has narrated in detail the development that took place in the organisation for the sudden cease work by the workmen on 12-8-2009 and the ultimate failure in resolving the problem despite due diligence by the management.

11. Yet, however, with a view to claim reinstatement in the service *vis-a-vis* to disclose that the first party management is an industry, the workmen pressed into service the case las reported in A.I.R. 1978 Supreme Court 548 Bangalore Water Supply *vrs.* A. Rajappa A.I.R. 1979 Supreme Court 75 (*M/s Hindustan Tin works vrs. Its employees*) A.I.R.1984 Supreme Court 500 (*Gammon India Limited vrs. Niranjan Dash*) A.I.R. 1976 Supreme Court 1111 (*State Bank vrs. N.S. Many*) and 2010 (125) E.L.R. 187 (Supreme Court ) (*Krishna Singh vrs. Executive Engineer*). Per contra, the first party management placed reliance in the case law reported in 2004 Supreme Court cases (L&S) 1078 (*Regional Manager Rajasthan State Road Transport Corporation vrs. Shoan Lal*). Written Arguments were also placed by the parties in support of their respective cases.

12. On a careful reading of the written argument submitted by the parties and the case laws relied by them, it is found that their Lordships in A.I.R. 1978 Supreme Court 548 (*Supra.*) have ultimately laid down the character of the unit which cannot be an "Industry", whereas in the other case laws relied on by the workmen the normal rule regarding the entitlements to the workmen whose service has been terminated was enunciated. In the case at hand, since the first party management have taken plea that their organisation was not an "Industry", the onus was on them to establish the same. However, it is found that the decision rendered by their Lordships in A.I.R. 1978 Supreme Court 548 (*Supra.*) was taken note of by their Lordships in the subsequent cases between Union of India *vrs.* Sri Ganajan Maharaj Sansthan (2002 (11) LLJ-554 SC) and Coir Board, Ernakulam *vrs.* P.S. Indira Devi (2002 (2) LLN-392 (SC)). But their Lordships in the case of State of U.P. *vrs.* Jal Bir Sing (2005 (11) CLR-534 (SC)) have passed order for constitution of Larger Bench

for reconsidering decision in Bangalore Water Supply case reported in A.I.R. 1978 SC-548 (*Supra.*). The management, however, could not place the decision, if any, rendered subsequently in that behalf by the Hon'ble Supreme Court. Perhaps, for that reason, the management in its written note of argument have among other things submitted that in case the reference is not answered as not maintainable, as the management is not an industry and the second party members are not the workmen, it prayed the Court to consider the other submissions among other things to the effect that the workmen violated the provisions of Section 22 of the I.D Act by resorting themselves to illegal strike, and their services was not satisfactory and that they have not approached the Court with clean hand.

13. Thus, from the submission advanced by the parties, it appeared to my considered view, that the second party workmen all on a sudden resorted to cease work and though some of them repented themselves for the wrong done and resumed duties, some other were gainfully employed elsewhere, whereas the authorised representatives and some others despite the time to time discussion made in between the parties did not resume duty and ultimately tabled the affairs of the management in a public meeting on 7-9-2009. Thus, the conduct of some of the second party workmen, in the facts and circumstances of the case, speak against them.

14. Their Lordships in A.I.R. 1979 Supreme Court 75 (*Supra.*) have observed that :

“Ordinarily a workmen whose services has been illegally terminated either by dismissal, discharge or retrenchment will be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule when the termination of services was found to be neither proper nor justified, it would not only show that the workmen were always willing to serve but if they rendered services they would legitimately be entitled to the wage for the same. If the workmen were always ready to work but they were kept away there from on account of invalid act of the employer, there is no justification for not awarding them full back wages which were very legitimately due to them.”

When the backdrop of the proceeding is taken note of it is found, that some of the second party workmen were always found not ready and willing to work by taking the affairs ultimately to the general public for which they were kept away from their service on account of their invalid action. Their Lordships in 2004 Supreme Court cases (L&S) 1078 (*Supra.*) have observed that when the workmen had indulged in misconduct it not only led to monetary loss to the management but the management has also lost confidence in the said workmen continuation of such employee in the employment of the management by virtue of judicial order would be an act of misplaced sympathy which can find no foundation in law or in equity.

15. Thus, to conclude the discussion on the issue, it appeared to my considered view, that the termination of the services of the second party workmen by the first party management is not found illegal and /or unjustified. Consequently, the issue No. 1 is an answered against the second party workmen.

16. *Issue No (ii)*—In view of the discussions made above, the second party workmen, except those who have already been taken in service by the first party management, are not entitled to get any other relief in this case. Hence the award.

#### AWARD

That the reference is answered on contest against the second party workmen, other than those who have already been taken back into service by the first party management, but without any cost.

Dictated and corrected by me.

P. K. SAMAL  
29-9-2011  
Presiding Officer  
Labour Court  
Sambalpur

P. K. SAMAL  
29-9-2011  
Presiding Officer  
Labour Court  
Sambalpur

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

