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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th November 2011

No. 10031—li/1(B)-42/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th October 2011 in Industrial Dispute Case No. 39 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Ambika Plastic, Plot No. 68, New Industrial Estate, Jagatpur, Cuttack and their Workman Kumari Chandrakanti Nath represented by the General Secretary, J.I.W. Union, Gosala Road, Nayabazar, Cuttack was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 39 OF 2003

Dated the 17th October 2011

*Present :*

S.A.K.Z. Ahamed,  
Presiding Officer,  
Labour Court, Bhubaneswar.

*Between :*

The management of M/s Ambika Plastic, .. First party—Management  
Plot No. 68, New Industrial Estate,  
Jagatpur, Cuttack.

And

Their workman .. Second party—Workman  
Kumari Chandrakanti Nath  
represented by the General  
Secretary, J.I.W. Union, Gosala Road,  
Nayabazar, Cuttack.

*Appearances :*

For the First party—Management	..	None
For the Second party—Workman	..	Shri S.N. Biswal, General Secretary

## 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. 8262—li/1(B)-42/2003-LE., dated the 23rd August 2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s Ambika Plastic, Plot No. 68, New Industrial Estate, Jagatpur, Cuttack in terminating the services of Kumari Chandrakanti Nath, Helper with effect from the 8th August 2002 by way of refusal of employment is legal and/or justified ? If not, what benefit Kumari Nath is entitled to ?”

3. The case of the workman in brief, as set out in her statement of claim is that she initially joined as Helper under Ambika Fadder for six months. Thereafter, the establishment of the management was opened and the workman was directed to work there. While she was working under the management on the 26th June 2002, she sustained injury (grievous) on her right hand index fingure and was shifted to hospital by the management for treatment. When the workman became fit, she went to the management to resume her duty, but the management on the 8th August 2002 refused employment to the workman. According to the workman, even though she was in continuous service under the management for a period of more than two years, but at the time of termination of her service, the management has not followed the provisions of Section 25-F of the Industrical Disputes Act, 1947. The management has also not paid the medical expenses to the workman as she was not covered under the E.S.I. Scheme. In this manner, according to the workman, the termination of her service is illegal, unjustified and motivated and has prayed for reinstatement in service with full back wages and other service benefits.

4. The management was set *ex parte*.

5. In order to substantiate her plea, the workman has examined herself as W. W. 1 and proved documents such as xerox copy of representation dated the 12th August 2002, xerox copy of prescription, dated the 7th June 2002 and the xerox copy of conciliation notice, dated the 21st September 2002 under the cover of Exts. 1 to 3 respectively.

6. The workman in her affidavit evidence has corroborated the facts as stated in her statement of claim. Since the management has been set *ex parte* and the evidence both oral and documentary of the workman have remained unchallenged, I have no option but to answer in affirmative in favour

of the workman.

7. It is stated by the workman that no one month prior notice was given to him before she was terminated and also no notice pay and retrenchment compensation was paid to her before refusal of employment by the management. So the management has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and pre-condition one.

8. So on careful consideration of all the materials available in the case record and in view of the unchallenged testimony of the workman, I am of the view that the action of the management in terminating the services of the workman with effect from the 8th August 2002 by way of refusal of employment is neither legal nor justified. So the workman is entitled for reinstatement in service.

9. Regarding back wages, admittedly the workman has not worked for the management during the period in question and she had not proved by cogent evidence that she was not gainfully employed elsewhere, payment of full back wages is not justified. However, on the facts and circumstances of the present case as discussed above, I am of the opinion that instead of granting full back wages, 50 % back wages will meet the ends of justice.

10. Hence, ordered :

That the action of the management of M/s Ambika Plastic, Plot No. 68, New Industrial Estate, Jagatpur, Cuttack in terminating the services of Kumari Chandrakanti Nath, Helper, with effect from the 8th August 2002 by way of refusal of employment is illegal and unjustified. The workman Kumari Nath is entitled for reinstatement in service with 50% 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 10% per annum till its realisation.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. A. K.Z. AHAMED  
17-10-2011  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED  
17-10-2011  
Presiding Officer  
Labour Court, Bhubaneswar

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