

The Orissa Gazette



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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th November 2011

No. 10070—li/1(B)-130/1995-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th October 2011 in I. D. Case No. 120/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Orissa Textile Mills Ltd., Choudwar, Dist. Cuttack and its Workman Shri Dinabandhu Pradhan was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 120 OF 2008

(Previously registered as I. D. Case No. 51 of 1996 in the file of the Presiding Officer, Labour Court, Bhubaneswar)

Dated the 10th October 2011

Present :

Shri Raghubir Dash, o.s.j.s. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Managing Director,
M/s Orissa Textile Mills Ltd.,
Choudwar, Dist. Cuttack. . . First-party—Management

And

Its Workman . . . Second-party—Workman
Shri Dinabandhu Pradhan (dead),
Jobber, T. No. 6094 (OTM),
At/P.O. Agrahat, Choudwar,
Dist. Cuttack.

(After the death of the Workman, the following legal heirs have been substituted in place of the deceased workman)

- (1) Shri Ajit Kumar Pradhan,
 (2) Smt. Tilottama Pradhan and
 (3) Smt. Ahalya Pradhan.

Appearances :

None	. . . For the First-party—Management
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Shri T. Lenka, Authorised Representative.	. . . For the Second-party—Workman

AWARD

This is a reference under Section 10 of the Industrial Disputes Act (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 1720—li-(B)/1-130/1995-LE., dated the 13th February 1996 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Industrial Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-LE., dated the 4th April 2008. The Schedule of reference runs as follows :—

"Whether the action of the management of Orissa Textile Mills Ltd., Choudwar by discharging the services of Shri Dinabandhu Pradhan, Jobber, T. No. 6094 of Processing Department with effect from the 9th November 1992 is legal and/or justified ? If not, what relief Shri Pradhan is entitled to ?"

2. According to the claim statement, the deceased workman was an employee of the first-party. In the year 1968 he joined in the employment and continued in service till 9-11-1992 when he was discharged from service preceded by a Departmental Enquiry. It is claimed that on false allegation of negligence in duty and disobedience of orders of superior officer he was served with a charge-sheet vide Letter No. 6089, dated the 31st July 1991. Subsequently, the charge was modified vide Letter No. 6307, dated the 3rd August 1991. The workman had submitted his reply denying the charges. However, the management appointed Shri A. Chandra Kumar, Standard Officer as the Enquiry Officer (for short, 'E.O.'). The workman on being noticed by the E.O. had attended the enquiry on dates fixed but in spite of his attendance the E.O. used to adjourn the enquiry on all the dates. As the enquiry proceeding lingered in that manner the workman submitted a representation on Dt. 4-10-1991 requesting the management to withdraw the order of suspension and allow him to work during pendency of the enquiry. On his prayer the management allowed him to resume duty pending enquiry and accordingly the workman joined his duties with effect from the 13th October 1991. After resuming his duty he used to appear before the E.O. on each adjourned date but the enquiry was not held. On Dt. 7-2-1992 the workman attended the enquiry but the E.O. was not present. Therefore, the workman informed the matter to the Manager, Personnel. Subsequently, the second-party workman was never intimated anything about fixing of the dates of enquiry up to November 1992. Suddenly he was served with Letter No. 9605, dated the 9th November 1992 wherein it was mentioned that the domestic enquiry was conducted by the E.O. with full participation of the workman and a report was submitted by the E.O. finding the charges well established and that since the charges were grave and serious in nature the workman was discharged from service.

According to the workman, the domestic enquiry was not conducted properly, that the workman was not given full opportunity to defend himself, that the first-party did not examine any witness in presence of the workman and no chance was given to the workman to cross-examine

the witnesses, that no chance was given to the workman to adduce evidence in his defence and that falsely showing the workman to have taken part in the domestic enquiry the E.O. showed his biased attitude. It is further alleged that copy of the enquiry proceeding including the evidence recorded by the E.O. was never supplied to the workman. Even a copy of the enquiry report was not served on him. Thus, it is claimed that the enquiry being not fair and proper, the punishment of discharge inflicted on the workman is illegal and unjustified and the workman is entitled to be reinstated in service with full back wages and other service benefits.

During pendency of this I. D. Case the workman died. Therefore, his legal heirs have been substituted.

3. The management on being duly served with notice had appeared before this Tribunal but did not file any written statement. Several adjournments have been granted to give opportunity to the management to file written statement, even though no one used to appear on behalf of the management. Order was passed on Dt. 30-11-2000 setting the management *ex parte*. Thereafter, another notice was sent to the management by registered post in compliance of the order passed by this Tribunal on Dt. 15-1-2011 but the management did not appear. Thus, the management seems to have preferred not to contest the case.

4. On behalf of the second-party, Shri Ajit Kumar Pradhan, a son of the deceased workman is examined as W.W. No. 1.

5. W.W. No. 1 has sworn an affidavit containing his evidence in chief. Since the management has not contested the case the evidence of W.W. No. 1 goes unchallenged. However, W.W. No. 1 does not appear to have got direct knowledge as to what happened during the enquiry proceeding. Therefore, virtually there is no legal evidence on the allegation that even though the workman used to appear on each date of the enquiry proceeding, the E.O. did not conduct any enquiry and subsequently, he falsely stated in his report that the workman had fully participated in the enquiry proceeding.

6. It is true that the second-party has not adduced direct evidence on the manner in which the enquiry proceeding was conducted by the E.O. but this being a dispute with regard to the legality of the order of discharge it stands in a different footing. The deceased workman alleged that the enquiry was not conducted fairly. Yet, the management did not come forward to defend its action and preferred to abstain from the proceeding before this Tribunal. Had the management produced the relevant papers pertaining to the proceedings of the domestic enquiry including the enquiry report this Tribunal could have examined them in order to find out whether the enquiry conducted was fair and proper. Even if, it is presumed that the workman had fully participated in the disciplinary proceeding and full opportunity was given to him to defend himself it cannot be presumed that the management has adduced sufficient evidence before the E.O. and the E.O. on his part dealt with the evidence in proper perspective to arrive at a conclusion that the charges were duly established. If the enquiry report were made available for scrutiny of the Tribunal it could have been ascertained whether the report suffered from perversity. The workman has alleged in his claim statement that a copy of the enquiry report was not served on him. It is also alleged that copy of the enquiry proceeding including the statements of the witnesses were not supplied to him. Therefore, it is not expected that the second-party should have produced the enquiry report along with copy of statements of the witnesses for perusal of this Tribunal. In the absence of the enquiry report which needs to be closely examined by the Tribunal to find out whether it is a cryptic order or whether it suffers from perversity it is not possible on the part of the Tribunal to presume that the enquiry was

held fairly and properly. Adverse inference has to be drawn against the management for its non-participation in the proceeding before this Tribunal. Since relevant documents are in the custody of the management who preferred not to take part in this proceeding it is to be presumed that had the management participated in this proceeding it would have failed to establish that the domestic enquiry was conducted fairly and properly. Therefore, it is held that the enquiry was not held fairly and properly.

7. Since the management has not appeared and has not made any prayer to give it a scope to prove the charges by adducing evidence before this Tribunal in the event the enquiry is found to be not fair and proper and whereas it is already held that the enquiry is not found to be fair and proper, it is to be held that the order of discharge which is challenged by the second-party is neither legal nor justified.

8. If the workman were alive and he had not reached the age of superannuation Award would have been passed in his favour for his reinstatement with full back wages and other service benefits. But, the workman has died in the meanwhile. There is no evidence as to what is the age of superannuation of a workman in the establishment of the first-party. Under such circumstances, Award is passed against the management to pay to the legal heirs of the deceased workman the amount equivalent to the workman's full back wages and other monetary benefits which he would have been entitled to get if he were in service from Dt. 9-11-1992 till the date of his superannuation or the date of his death whichever is earlier.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
10-10-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
10-10-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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