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**LABOUR & EMPLOYMENT DEPARTMENT**

**NOTIFICATION**

The 23rd November 2011

No. 10470—li/1(B)-46/2006(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd September 2011 in I. D. Case No. 51/2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Managements of Executive Engineer, Nimapara Irrigation Division, Nimapara, Puri/Subdivisional Officer, Gop Irrigation Subdivision and their Workmen Mohammad Zainul, N.M.R. and Shri Sudarsan Lenka, N.M.R. was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 51 OF 2006

Dated the 3rd September 2011

*Present :*

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

*Between :*

- |   |    |                        |
|---|----|------------------------|
| 1. The Management of<br>Executive Engineer,<br>Nimapara Irrigation Division,<br>Nimapara, Puri. | .. | First-party—Management |
| 2. Subdivisional Officer,<br>Gop Irrigation Subdivision.  |    |                        |

And

Their Workmen Mohammad Zainul, N.M.R. and Shri Sudarsan Lenka, N.M.R.	..	Second-party—Workmen
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*Appearances :*

Shri P. K. Swain	. .	For the First-party—Management
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M. Zainul and Shri S. Lenka	. .	For the Second-party—Workmen themselves.

## AWARD

The Government of Odisha 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. 4772—li/1(B)-46/2006-LE., dated the 17th June 2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

"Whether the action of the management of the Executive Engineer, Nimapara Irrigation Division, Nimapara, Puri and the Subdivisional Officer, Gop Irrigation Subdivision, Gop, Puri in terminating the service of Md. Zainul and Shri Sudarsan Lenka with effect from the 15th November 2002 is legal and/or justified ? If not, to what relief Md. Zainul and Shri Lenka are entitled ?"

3. The case of the workmen in brief, as set out in their statement of claim is that they both were initially engaged as D.L.R. with effect from the 1st April 1995 and subsequently their services were brought to the N.M.R. cadre with effect from the 1st February 1997. Both of them were getting their wages as per the minimum wages fixed by the Government on monthly basis. They were performing their duties sincerely and honestly to the satisfaction of the management. Subsequently they were transferred to different places under the management. While the workmen were working as such, all of a sudden the management terminated their services with effect from the 15th November 2002 by way of refusal of employment. While terminating their services, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act. The principles of natural justice has also not been followed by the management at the time of their termination of services. So in this background, the workmen have prayed for reinstatement in service with full back wages and all consequential service benefits.

4. The management appeared and filed written statement admitting that the workmen were working as N.M.R. and were receiving their wages on monthly basis. But according to the management, the workmen were engaged for a specific work as and when on requirement basis. According to it, the workmen were relinquished their job after their continuity ceases. They were remained absent unauthorisedly frequently which violates the discipline and decorum of their engagement. So the development work hampered due to such negligence in duty. In spite of the above conduct, the management offered them employment but they did not turn up. In view of the above facts and circumstances, the management has prayed for dismissal of the present proceeding.

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

#### ISSUES

- (i) "Whether the action of the management of the Executive Engineer, Nimapara Irrigation Division, Nimapara, Puri and the Subdivisional Officer, Gop Irrigation Subdivision, Gop, Puri in terminating the services of Md. Zainul and Shri Sudarsan Lenka with effect from the 15th November 2002 is legal and/or justified ?
- (ii) If not, to what relief Md. Zainul and Shri Lenka are entitled ?"

6. In order to substantiate their plea, both the workmen have examined themselves as W.W. 1 and W.W. 2 and proved documents such as, xerox copy of office order communicated vide Memo. No. 140, dated the 15th November 1999 and the xerox copy of muster roll for March, 1999 under the cover of Exts. 1 and 2 respectively.

7. It is pertinent to mention here that the management has appeared and filed written statement but subsequently remained absent and did not took part in the hearing though sufficient opportunities were given to them.

#### FINDINGS

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

In their individual affidavit evidence, the workmen have stated that they were working as D.L.R. and N.M.R. under the management with effect from the 1st April 1995 and have corroborated the facts as stated in their statement of claim regarding illegal refusal of their employment without compliance of the provisions of Section 25-F of the Industrial Disputes Act. Since the management has not been cross-examined the workmen and also did not adduce any evidence, the evidence of the workmen both oral and documentary have remained uncontroverted.

9. It is stated by the workmen that no notice has served on them before they were terminated. Also notice pay and any compensation was not paid to them before refusal of employment by the management. Thus the management has contravened the provisions of Section 25-F of the Industrial Disputes Act which is a mandatory and precondition one.

10. So on careful consideration of all the materials available in the case record and in view of unchallenged testimony of W.Ws. 1 and 2, I came to the finding that the action of the management in terminating the services of the workmen with effect from the 15th November 2002 is neither legal nor justified. Hence both the workmen are entitled to be reinstated in service with full back wages. Hence both the issues are answered accordingly.

11. Hence, it is ordered :

That the action of the management of the Executive Engineer, Nimapara Irrigation Division, Nimapara, Puri and the Subdivisional Officer, Gop Irrigation Subdivision, Gop, Puri in terminating

the services of Md. Zainul and Shri Sudarsan Lenka with effect from the 15th November 2002 is neither legal nor justified. Both the workmen, Md. Zainul and Shri Lenka are entitled to be reinstated in service with full back wages. The management is directed to implement the Award within a period of two months 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.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
3-9-2011  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED  
3-9-2011  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor

T. K. PANDA

Under-Secretary to Government