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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 18th January 2011

No. 722—li/1(B)-64/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th September, 2010 in Industrial Dispute Case No. 45 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Shree Mahavir Corporation, Cuttack and its workman Shri Kishan Tiwari was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 45 OF 2003

dated the 18th September 2010

#### *Present :*

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

#### *Between :*

The Management of M/s. Shree Mahavir Corporation, Cuttack . . . First Party—Management

And

Their workman Shri Kishan Tiwari . . . Second Party—Workman

#### *Appearances :*

For the First Party—Management . . . Shri P. K. Nayak

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For the Second Party—Workman . . . Shri K. Tiwari

## 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.8934—li/1 (B)-64/2003-LE., dated the 9th September 2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Kishan Tiwari, ex Office Assistant with effect from 5-10-2001 by the management of M/s. Shree Mahavir Corporation, Malgodown, Cuttack is legal and/or justified ? If not, to what relief is Shri Tiwari entitled ?”

3. The case of the workman in brief is that Shri Kamal Kumar Agarwal is the main partner of M/s. Sampat Rai Subash Kumar, Malgodown, Cuttack. Dhanawat Clearing & Carriers (P) Ltd., Pilgrim Road, Cuttack and Shree Mahavir Corporation, Malgodown, Cuttack. The workman was appointed as a Godown in-charge in M/s. Sampat Rai Subash Kumar from September, 1991 to September, 1998. In Dhanawat clearing & Carriers (P) Ltd. from September, 1998 to January, 2001 and in the present management from February, 2001. He was paid the salary of Rs.2,500 per month, but his salary was not paid in full. There was no arrangement for deduction of P. F. and E. S. I. from the employees. In September, 2001 the workman was compelled to remind the management regarding payment of his dues in shape of written application as his daughter's marriage was being arranged in the month of December, 2001 and he was in need of money. On receipt of the written application of the workman, the management bore grudge against him on 5-10-2001 and gave two slaps by using filthy language in front of his co-workers and outsiders at their Telengapenth godown premises and asked him to make case against the management and no money will be given to him. He was not allowed to sign in the attendance register from 5-10-2001 and he was not allowed regularly to perform his duty. In spite of regular approach to the management when he failed, he raised an industrial dispute before the labour authority but the management did not attend the conciliation proceeding and when the conciliation failed this reference has been received from the Government and this I. D. Case has been initiated wherein the workman has prayed for arrangement of every possible relief and benefits in his favour.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the establishment of the management is not an industry and the workman is not a workman within the meaning of Industrial Disputes Act. The workman was appointed under the management on a consolidated salary of Rs.1,750 per month with effect from 1-2-2001 with certain conditions. The workman has accepted the terms and conditions of his appointment. During the period of probation as the work of the workman was not satisfactory and there was shortage of stocks from his custody, his probation period was extended from time to time and he left the service on 1-10-2001. The workman has not completed 240 days of work under the management. Because of these unsatisfactory work, the workman was never confirmed in service. Even if it is accepted for the sake of argument, but not conceded that his service has been terminated then the termination is as per the terms of the contract of employment. So in this background the management has prayed to reject the reference.

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

## ISSUES

- (i) “Whether the termination of services of Shri Kishan Tiwari, ex Office Assistant with effect from 5-10-2001 by the management of M/s. Shree Mahavir Corporation, Malgodown, Cuttack is legal and/or justified ?
- (ii) If not, what relief is Shri Tiwari entitled to ?”

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 to 4. Similarly the management has examined his Accountant as M.W. 1 and proved documents marked as M. W. 1 and proved documents marked as Exts. A to D.

### FINDINGS

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

W.W. 1, deposes that he was continuing under the management as per direction of Shri Kamal Kumar Agarwalla. He was getting salary at the rate of Rs. 2,500 per month. From February, 2001 his salary was increased to Rs. 3,000 out of which he used to get Rs. 2,500 as his salary and rest of Rs.500 were kept for P. F. and E. S. I. deposit. In the month of September, 2001 he approached his employer Shri Kamal Kumar Agarwalla in writing for an advance against his dues for his daughter's marriage. But instead of helping him, the management threatened him to terminate from service. From 5-10-2001 to November, 2001 he was not allowed to perform his duty regularly. No notice was served on him, and no termination letter was issued to him by the management. Ext.1 are the xerox copies of salary slips for the period from February 2001 to September, 2001. The salary slip Dt. 30-3-2001 discloses that the workman has received advance from the management towards his salary for the month of February and March, 2001 amounting to Rs. 5,000 M. W. 1 deposes that on 1-2-2001 the workman submitted his bio-data seeking employment and he was appointed with a consolidated pay of Rs. 1,750 per month with certain terms and conditions. However the probation period of the workman was extended from time to time as his work was not satisfactory and there was shortage of stock from his custody. Further more, the workman has not completed for complete twelve calendar months nor even in total 240 days under the management. Because of his unsatisfactory work, he was not confirmed in the employment.

8. It has been argued on behalf of the management that the establishment of the management is not an industry and the workman is not a workman under the management as per the provisions of the Industrial Disputes Act. But no sufficient material has been proved in this regard. On the other hand, industry has been defined in Section 2(j) of the Industrial Disputes Act and the definition of workman has been defined in Section 2(s) of the Industrial Disputes Act. However on careful consideration of all the materials available in the case record and in view of such definition of the Industrial Disputes Act, I am of the opinion that the establishment of the management is an industry and the workman is a workman as per the Industrial Disputes Act.

9. One of the plea of the management is that due to unsatisfactory work and shortage of stock etc. from the custody of the workman, he was not confirmed in the service. According to the settled principle of law as reported in 1969 (90) CLT 357 compliance of Section is required even if the employment is contractual with specific term. Further in view of the authority reported in AIR 2000 Supreme Court 1080 in case of probationer order of terminating his service on the ground of unsatisfactory work is stigmatic and regular enquiry and opportunity of hearing is a must. But in the instant case such are lacking. Further the probation period as stated by the management has been extended and during such period he was removed from service by way of termination of his service. It has been argued by the management in relying upon the 91(2001) CLT 301 that as the work of the workman not covered under one calendar year the workman is not entitled to get benefit of Section 25-F of the Industrial Disputes Act. But according to the settled principle of law as reported in 2005 Supreme Court Cases (L & S) 716, 240 days of work in a period of 12 months is

enough to satisfy the requirement of Section 25-F of the Industrial Disputes Act though a workman had not been served under the employer for complete one year. In the instant case the workman has not completed one year of service under the management but he has completed more than 240 days for such period. According to the settled principle of law as reported in AIR 2010 Supreme Court 1236 when the workman claimed and deposed that he had worked for 240 days which the statutory requirement, burden of proof shifts to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. But the management has miserably failed in this regard. Section 25-F of the Industrial Disputes Act has not at all been followed by the management while terminating the services of the workman. So now on careful consideration of entire evidence available in the case record, I am of the opinion that the termination of service of the workman with effect from 5-10-2001 by the management is neither legal nor justified for which he is entitled to be reinstated in service.

10. As regards back wages, according to the settled principle of law 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. Admittedly the workman has not worked for the management during the peiroad in question and he did not prove by cogent evidence that he has not been gainfully employed elsewhere. However on careful consideration of all materials available in the case record, I am of the opinion that instead of giving full back wages to the workman a lump sum amount of Rs. 10,000 as compensation in lieu of back wages will meet the ends of justice in this case. Hence both the issues are answered accordingly.

11. Hence Ordered :

That the termination of services of Shri Kishan Tiwari, ex office Assistant with effect from 5-10-2001 by the management of M/s. Shree Mahavir Corporation, Malgodown, Cuttack is illegal and unjustified. The workman Tiwari is entitled to be reinstated in service with a lump sum amount of Rs. 10,000 (Ten 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 in the Official Gazette 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  
18-9-2010  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. DASH  
18-9-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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