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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd November 2011

No. 10487—li/1(B)-23/2007-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 1st December 2010 in Industrial Dispute Case No. 28 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, E. H. T. (C) Division, Bhubaneswar and their Workman Shri Nabakishore Swain, S/o Debaraj Swain, At Bhaliabadi, Post Palahat, Dist. Khurda was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 28 OF 2008

Dated the 1st December 2010

*Present :*

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

*Between :*

The Management of the Executive Engineer, E.H.T.(C) Division, Bhubaneswar. . . First Party—Management

And

Their Workman . . . Second Party—Workman  
Shri Nabakishore Swain,  
S/o Debaraj Swain, At Bhaliabadi,  
P. O. Palahat, Dist. Khurda.

*Appearances :*

For the First Party—Management . . . Shri B. Behera, S. D. O.

For the Second Party—Workman himself . . . Shri N. K. Swain

## 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 have referred the matter in dispute to this Court vide Order No. 11528—li/1(B)-23/2007-LE., dated the 6th November 2008 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the Executive Engineer, E.H.T.(C) Division, Bhubaneswar in striking off the name of Shri Nabakishore Swain, N. M. R. workman from the nominal Muster Roll with effect from the 1st July 1987 is legal ? If not, to what benefit/relief the workman is entitled ?”

3. The case of the workman in brief is that he joined as a N. M. R. under the management on the 1st February 1986 and performed his duty accordingly for the stipulated period as per law continuously till refusal of employment by the management without following the mandatory provisions of Section 25-F of the Industrial Disputes Act. Shri Surendra Dash and Shri Sarbeswar Parida are working under the management in his place violating the mandatory provisions of the Industrial Disputes Act. So the workman raised an industrial dispute before the labour authority and when the conciliation failed the matter was referred to the Government and a reference is received and this I. D. Case has been initiated wherein the workman has prayed for his reinstatement in service with other monetary service benefits.

4. The management appeared and filed written statement partly admitting partly denying the plea of the workman. According to the management the workman joined as N. M. R. in the Construction work on the 1st February 1986 on daily wage basis and no work no pay basis on the basis of need of work and continued as such till the 30th June 1987. The workman remained absent in his duty on his own accord without any intimation to the site Engineer of the management. He again came and engaged on the 1st February 1987 as such on similar work and continued till the 30th June 1987. He again remained absent in duty from the 1st July 1987 of his own accord without intimation to the site Engineer of the management. He has only worked for 181 days in the first spell and 150 days in the second spell. So he has not completed 240 days in preceding 12 calendar months for which the provisions of Section 25-F and 25-H of the Industrial Disputes Act are not applicable. Shri Sarbeswar Parida has completed 3,024 days and Shri Surendra Das has completed 3,072 days for which they were regularised in service as per rule. Moreover the workman raised the dispute after long period of 18 years without assigning any reason. So in this background the management has prayed for answering the reference in negative.

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

## ISSUES

- (i) “Whether the action of the Executive Engineer, E.H.T.(C) Division, Bhubaneswar by striking off the name of Shri Nabakishore Swain, N. M. R. workman from the nominal Muster Roll with effect from the 1st July 1987 is legal ?
- (ii) If not, to what benefit/relief the workman is entitled ?”

6. In order to substantiate his plea the workman has examined himself as W. W. 1 and proved documents marked as Exts. 1 to 9. Similarly the management has examined two witnesses altogether on his behalf out of whom, M. W. 1 is the Head Clerk of the management and M. W. 2 is the Subdivisional Officer of the management. The management has not proved any document on his behalf.

### FINDINGS

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

It has been deposed by W. W. 1 that he got appointment on the 1st February 1986 and allowed to perform his duty till the 31st July 1986. Thereafter the management intentionally did not allow him to work from the 1st August 1986 regularly. He reported the matter to the authority. Thereafter he was allowed to work from the 1st February 1987 to the 30th June 1987 and from the 1st July 1987 without any reason the management did not allow him to work. On the other hand M. W. 2 also deposes in admitting that the workman has worked from the 1st February 1986 to the 31st July 1986 for a period of 181 days and thereafter, after the 1st February 1987 to the 30th June 1987 for a period of 150 days but he left the job voluntarily from the 1st July 1987. From the 1st August 1986 to the 31st January 1987 the workman did not work under the management. So this fact is admitted by both the parties regarding number of days worked by the workman under the management. Further M. W. 2 deposes that Shri Sarbeswar Parida had worked for 3,024 days and Shri Surendra Das had worked for 3,072 days for which they were regularised in the post of Helper. So the case of the workman is different to that of two persons. According to Section 25-F of the Industrial Disputes Act relates to condition precedent to retrenchment of a workman wherein it has been mentioned that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until fulfilling certain conditions mentioned therein. The continuous service has been defined in Section 25-B of the Industrial Disputes Act. But in the instant case it is admitted that the workman has worked for less than 240 days preceding to the date of retrenchment. Therefore the provisions of Section 25-F of the Industrial Disputes Act is not applicable to the workman. As mentioned earlier, regularisation of service of two other employees is different from the present workman for which the workman cannot claim the provisions of Section 25-H of the Industrial Disputes Act. According to the settled principle of law as reported in (2004) III LLJ 760 S.C. that the provisions of the Indian Evidence Act per se are not applicable in an Industrial adjudication. The general principles of it are however applicable. The workman is also silent about delay in raising the present dispute after lapse of 18 years. So on careful consideration of all the materials available in the case record as discussed above I am of the opinion that the action of the management by striking of the name of the workman from the nominal Muster Roll with effect from the 1st July 1987 is legal and justified and the workman is not entitled to get any relief in this case. Both the issues are answered accordingly.

8. Hence ordered :

That the action of the Executive Engineer, E.H.T. (C) Division, Bhubaneswar by striking off the name of Shri Nabakishore Swain, N. M. R. Workman from the Nominal Muster Roll with effect from the 1st July 1987 is legal and justified. The workman Shri Swain is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH  
1-12-2010  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. DASH  
1-12-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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