

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 260 CUTTACK, SATURDAY, JANUARY 29, 2011/MAGHA 9, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th January 2011

No. 727—li/1(B)-68/1997(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th October 2010 in Industrial Dispute Case No. 156 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Orissa Bridge Construction Corporation Ltd., Choudwar, At/P.O. Choudwar, Cuttack and their workman Shri Srinivas Nayak was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 156 OF 2008 (PREVIOUSLY REGISTERED
AS I. D. CASE No. 28 OF 1998 IN THE FILE OF THE P.O., LABOUR COURT, BHUBANESWAR)

Dated the 27th October 2010

Present :

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

Between :

The Management of Orissa Bridge Construction Corporation Ltd.,
Choudwar, At/P.O. Choudwar, Cuttack. First Party—Management

And

Their Workman Second Party—Workman
Shri Srinivas Nayak,
At Pithakhia, P.O. Gurudijhatia,
Dist. Cuttack.

Appearances :

For the First Party—Management	..	Shri S. K. Ratha, Advocate
For the Second Party—Workman	..	Shri T. Lenka, Advocate

AWARD

This is a reference of an industrial dispute under Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 5649—li/1(B)-68/1997-LE., dated the 2nd June 1998 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar but subsequently transferred to this 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 termination of services of Shri Srinivas Nayak by the management of Orissa Bridge Construction Corporation with effect from the 31st December 1995 is legal and/or justified ? If not, what relief Shri Nayak is entitled to ?”

2. The stand taken by the second party-workman is that he was initially engaged in the first party's establishment through one Agency called “M/s Oriental Security Services” with effect from the 8th September 1987 he was so engaged through the Agency and was continued as such till the 1st May 1990 when he was directly engaged by the first party. During the entire period of his engagement he was transferred to different sites of the first party to work as a Watchman. He continued to work as such and received wages directly from the first party till the 31st December 1995. All on a sudden on the 6th June 1996 he was told that his services had been terminated with effect from the 31st December 1995. Though he had worked till the 5th June 1996 he was not paid wages from the 1st January 1996 to the 5th June 1996. Neither he was served with the notice of retrenchment nor was he offered to receive notice pay and retrenchment compensation. So, he raised a dispute before the local labour machinery. During conciliation the management took a false plea that notice, dated the 30th December 1995 was served on the workman but he refused to accept it. Also, during conciliation the management in order to take an attempt to rectify the legal defects sent Letter No. 271, dated the 5th March 1997 to the second party stating that the later would be paid Rs. 1,900 towards notice pay and retrenchment compensation and the management also sent a sum of Rs. 1,900 by money order, separately.

3. It is not disputed by the first party Corporation that the workman was initially engaged by M/s Oriental Security Services, Bhubaneswar as a Watchman to work in the office of its Senior Project Manager, Choudwar. He worked through the Agency sometime till the last part of 1992. Thereafter, he was engaged by the Corporation on D.L.R. basis and continued till December, 1995 when like other D.L.Rs. the services of the workman were terminated due to reduction of workload. On the 30th December 1995 the management issued a letter of disengagement to the workman but the workman did not receive it. He also refused to accept the notice pay and retrenchment compensation amounting to Rs. 1,900 which was offered to him. Thereafter, the workman did not make any contact with the authority and in June, 1996 he raised a dispute before the local labour machinery. It is also pleaded by the first party that after the disputed disengagement, the management has not taken any other person to its employment as Watchman.

4. The following issues have been settled :—

ISSUES

- (i) “Whether the termination of services of Shri Srinivas Nayak by the management of Orissa Bridge and Construction Corporation with effect from the 31st December 1995 is legal and/or justified ?
- (ii) If not, to what relief Shri Nayak is entitled ?”

5. The workman has examined himself as W.W. No. 1. He has exhibited some documents in support of his case. Likewise the management has examined its Senior Project Manager as M.W. No. 1 and it has also exhibited several documents.

FINDINGS

6. *Issue No. (i)*— In view of facts admitted by the first party, this Tribunal is required to find out whether the disengagement of the workman with effect from the 31st December 1995 is in accordance with the provisions laid down under the Act.

Admittedly, the workman was engaged by the first party from 1992 to 1995. According to the workman, he was under the direct employment of the first party with effect from the 1st May 1990 till the 31st December 1995 but according to the management, he had worked under the direct employment of the Corporation from the later part of 1992 till the 31st December 1995. The workman has not produced any document to show that on the 1st May 1990 he joined in the Corporation to work under its direct control. The management has also not proved the appointment order of the workman. It has also not specified the date on which the workman came under the direct employment of the Corporation. But, Ext. B is a list of D.L.R. employees who had not completed five years of service with the Corporation as on the 25th November 1995, wherein the name of the workman appears at Sl. No. 7 and his date of joining in the Corporation is stated to be the 1st October 1992. Therefore, relying on Ext. B it can be held that the workman had worked with the first party from the 1st October 1992 to the 31st December 1995.

It is mentioned in the written statement so also in the memo of argument that the workman has to prove that he had completed 240 days of work in the preceding twelve months of the alleged termination. It is also argued that the workman failed to discharge the onus by not adducing evidence on this point. But, in the facts and circumstances of the case when the management has admitted that the workman was employed between the 1st October 1992 and the 31st December 1995 and at the time of retrenchment the management had offered notice pay and retrenchment compensation, this Tribunal is of the considered view that the workman was not required to adduce evidence that he had completed 240 days of work. So, in the facts and circumstances it is to be presumed that the workman was in continuous employment of the first party from the 1st October 1992 to the 31st December 1995.

7. The workman has exhibited some documents to prove that he had been working with the first party since the 8th September 1987. Ext. 1 is an experience certificate purportedly issued by one Assistant Project Manager of the first party wherein it is mentioned that the workman had been working in the Corporation as a Security Guard from the 8th September 1987. Ext. 3 is an abstract

containing service particulars of temporary staff engaged at Mundali and Kadalisal sites of the first party. There it is mentioned that the second party had joined in Mundali Division on the 8th September 1987. In the remarks column of Ext. 3 it is mentioned that the workman used to be paid through O. S. S. Agency. There is no dispute that the workman had been working with the first party from 1987. At the same time there is also no dispute that till the later part of 1992 the workman had been working through an Agency and thereafter he was engaged directly by the first party. The workman has pleaded that even though he was shown to be working through an Agency from 1987 to 1992 he was actually working under the absolute control and supervision of the first party. But, this plea is not relevant for the purpose of adjudication of the present reference. The workman has not taken the stand that if he was deemed to have been directly working under the first party with effect from 1987 he could not have been terminated with effect from the 31st December 1995. It is also beyond the scope of the reference to determine as to whether the workman though initially worked with the first party through an Agency, he was actually an employee in the establishment of the first party during the employment through the Agency. Therefore, documents such as Exts. 1, 2 and 3 are not relevant for the purpose of the actual dispute before this Tribunal.

The workman has further tried to prove that though he had performed duties from the 1st January 1996 to the 5th June 1996, the management did not pay him wages for that period. That is also beyond the scope of the present reference. The workman has proved Ext. 6 said to be xerox copy of the attendance register which the workman used to sign. Ext. 6 reflects that the workman and another, named Birabar Das, used to put signatures in the register during the period from the 1st January 1996 to the 5th June 1996. The genuineness of this documents has been challenged by the first party. There is nothing on Ext. 6 wherefrom it can be said that it was the Attendance Register maintained in the office of the first party wherein the workman was required to mark his attendance. The heading of the register reflects that the printed form is intended for "Teacher's Attendance". Having examined the document it can be said that a document of this nature can be created by someone. So, no reliance can be placed on it. That apart, this Tribunal is not required to decide as to whether the workman had performed duties from the 1st January 1996 to the 5th June 1996 and he was entitled to get wages for that period.

8. As pleaded by the first party, a notice was served on the second party on the 30th December 1995 and the proposed termination was given effect to from the 31st December 1995. Therefore, the management was required under the law to pay at the time of retrenchment one month's wages in lieu of one month's notice and retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. Ext. C is Letter No. 1545, dated the 30th December 1995 addressed to the second party stating therein that his services were disengaged with effect from the 31st December 1995 and he would be allowed usual compensation and disengagement benefit. There is no proof as to in what way Ext. C was attempted to be served on the workman. In the written statement it is stated that though the workman was issued with the letter of disengagement, he did not accept the same and though notice pay and retrenchment compensation amounting to Rs. 1,900 was offered to him, he refused to accept the same. But, M.W. No. 1 has not stated anything as to whether and how the notice and

the money were offered to the workman. He has simply stated that the compensation amount and the notice were issued but due to incorrect address as supplied by the workman the same were refused by the workman. On the body of Ext. C someone has mentioned that the notice was sent by registered post with A.D. but M.W. No. 1 in his cross-examination has stated that the registered envelope containing the notice sent to the workman, which was received back unserved on refusal, is not exhibited by the management. No witness is examined to say that the notice and the money towards notice pay and retrenchment benefit were offered to the workman on the 30th December 1995 or even on the 31st December 1995 but the workman refused to receive the same. Ext. C, the order of disengagement does not disclose that the workman was called upon to receive the notice pay and compensation. Payment of notice pay and compensation is a condition precedent and if that condition is not fulfilled, then the order of retrenchment becomes invalid. Such an invalid order will not get validated consequent upon subsequent payment of the notice pay and compensation. Therefore, the evidence adduced by the management to establish that in the first part of 1997 the workman received the amount of Rs. 1,900 towards notice pay and retrenchment compensation is of no avail.

It is the case of the management that on account of reduction of work the management disengaged several of its employees including the second party and that after the disengagement of the second party the management has neither engaged any new workman as Watchman nor has retained any workman who is junior to the second party. In this regard, reliance has been placed on Exts. A and B. Ext. A is a letter from the Chairman-*cum*-Managing Director of the first party Corporation communicating the approval for disengagement of services of the employees working in the Corporation on D.L.R. basis who had not completed five years of service as on the 25th November 1995 due to drastic reduction of workload and deteriorating financial condition of the Corporation. A list of such employees who had not completed five years of service has been annexed to the letter which is marked as Ext. B. The list contains names of as many as 53 employees. There is no denial from the side of the workman that as per the approval vide Ext. A all the employees whose names find place in Ext. B were terminated by the management. It is also not shown by the workman that after his disengagement the management has employed any outsider to work as Watchman or any of his juniors were retained by the time his services were terminated.

Taking all these facts and circumstances into consideration, this Tribunal arrives at a conclusion that though there was justification for termination of the workman's services, the same was illegal for non-compliance of the mandatory provisions of Section 25-F of the Act.

9. *Issue No. (ii)*—The workman had been working on D.L.R. basis. As a D.L.R. employee of the first party he had worked for about three years. On account of reduction of work the management retrenched a number of D.L.R. workers who had not completed five years of service under the first party. It is not shown that after the disputed retrenchment the management had engaged any other person to perform watch-and-ward duty. It is also not shown that after the mass retrenchment on the 31st December 1995 vide Exts. A & B the management has given employment to outsiders or persons junior to the workman. Under such circumstances, it would be improper to ask the employer

to reinstate the second party. In the recent past the Hon'ble Supreme Court have consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure [AIR-2010 (S.C.) 502, Ashok Kumar Sharma *Vrs.* Oberoi Flight Services]. In Jagbir Singh *Vrs.* Haryana State Agriculture Marketing Board, AIR-2009 (S.C.) 3004, it is observed that the award of reinstatement with full back wages, particularly in the case of daily wagers is not proper and instead compensation is to be awarded. Taking the facts and circumstances of this case into consideration, this Tribunal is of the considered view that the workman should be compensated for the illegal retrenchment. Taking into consideration the period of engagement, the age of the workman at the time of retrenchment (in his affidavit, dated the 25th November 2008 he has stated that he is aged about 22), the amount of notice pay and retrenchment compensation received by the workman, the fact that the workman could not have avoided the termination of his service with effect from the 31st December 1995 and the time consumed for adjudication of the reference, this Tribunal awards compensation of Rs. 30,000 (Rupees thirty thousand) only to be paid by the management to the second party.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
27-10-2010
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
27-10-2010
Presiding Officer
Industrial Tribunal, Bhubaneswar

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