

# The Odisha Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

---

No. 2606 CUTTACK, FRIDAY, DECEMBER 2, 2011/MARGASIRA 11, 1933

---

---

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 24th November 2011

No. 10515—1i/1(B)-89/2008(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd August, 2011 in Industrial Disputes Case No. 8 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Rashmi Motors, NH-5, Manguli, Cuttack and its workman Shri Prakash Kumar Patnaik represented through Cuttack Commercial Workers Union was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 8 OF 2009

Dated the 3rd August 2011

#### *Present :*

Shri Raghubir Dash, OSJS (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

#### *Between :*

The Management of .. First Party—Management  
M/s Rashmi Motors, N. H. 5,  
Manguli, Cuttack.

And

Its Workman .. Second Party—Workman  
Shri Prakash Kumar Patnaik,  
S/o Late Bibhusan Patnaik,  
At OTMLabour Colony,  
Qrs. No. L/14, At/P.O./P.S. Choudwar,  
Dist. Cuttack, rerepresented through  
Cuttack Commercial Workers Union.

*Appearances :*

None	.. For the First Party—Management
Shri T. Lenka, Authorised representative	.. For the Second Party—Workman

## AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 3596—li/1 (B)-89/2008-LE., dated 15-04-2009. The Schedule of reference runs as follows :

“Whether the termination of services of Prakash Kumar Patnaik, Security Gunman by the management of M/s Rashmi Motors, N. H. 5, Manguli, P.O. Choudwar, Dist. Cuttack with effect from 20-11-2007 is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. The Second Party Workman in his claim statement has stated that from February, 1999 he had been working under the First Party as a Security Guard. He worked continuously till 6-11-2006. On 7-11-2006 the First Party did not allow him to perform his duty saying that his services were terminated with effect from 7-11-2006. The Second Party approached several times for final settlement of his dues. Ultimately, on 7-12-2006 when the Second Party demanded for settlement of his account he was asked to submit his resignation letter to get all his dues. Accordingly, the Second Party submitted his resignation letter, but the Management did not pay his dues. Therefore, on 20-11-2007 the workman withdrew his resignation. It is contended that his termination is illegal inasmuch as neither any charge was framed against him nor the statutory provisions of Section 25-F of the Act were complied with. He has also taken the plea that ever since the retrenchment he has been going without any gainful employment.

3. In the written statement the First Party has contended that when the demand for a hike in the salary made by the Second Party was not acceded to, the Second Party submitted the resignation on 6-11-2006. The Management accepted the resignation and asked the workman to collect his dues, if any, on 10-12-2006. Accordingly, the workman came on 10-12-2006 and received his salary for the month of November 2006 by putting signature on the acquittance Roll. The First Party denies that the workman was not allowed to perform his duties with effect from 7-11-2006.

4. The following issues have been settled :—

## ISSUES

1. “Whether the termination of services of Prakash Kumar Patnaik, Security Gunman by the Management of Rashmi Motors, N. H. 5, Manguli, P.O. Choudwar, Dist. Cuttack with effect from 7-11-2006 is legal and/or justified ? If not, to what relief the workman is entitled ?
2. Whether the services of the workman have been terminated by way of refusal of employment or it is a case of voluntary abandonment of employment ?”

5. After settlement of the additional issue on 6-12-2010 the Management did not take part in the proceeding. Though a petition was filed to permit the Management to engage an Advocate, no such permission was granted as it was strongly opposed to by the workman. When none appeared on behalf of the Management it was set *ex parte* and evidence of the workman has been recorded in the absence of the First Party.

6. The workman has examined himself as W. W. No. 1. He has exhibited documents marked Exts. 1 to 3.

#### Findings on Issue Nos. 1 and 2

7. It is not disputed by the First Party that the Second Party had worked continuously in the establishment of the First Party from February 1999 to 6-11-2006. But, it has denied the allegation that on 7-11-2006 the workman was refused employment on the ground that his services had already been terminated. The Management has taken the plea that the workman tendered his resignation and it was accepted by the Management. The workman in his sworn testimony has denied to have voluntarily submitted his resignation. Rather, he has stated in his affidavit evidence that when he demanded for payment of his dues the Management asked him to submit his resignation letter so that his dues would be paid to him. In his evidence the workman has stated that with effect from 7-11-2006 he was not allowed to perform his duty and that on 7-12-2006 when he approached the Management to get his dues settled the Management asked him to submit resignation and accordingly, he wrote down resignation letter as per the dictation of the First Party. Thus, the workman seems to have taken the stand that the submission of resignation letter was not a voluntary act and it was done under compulsion. The Second Party is an ex-serviceman and he is also a licenced Gunman. In his claim statement he has stated that the Management used to pay Rs. 1,800.00 per month which was very low. It is also stated in the claim statement that since the salary was very low the workman on several occasions had requested the First Party to increase his wages. It is also there in his pleadings that when he was denied employment with effect from the 7th November 2006 he had asked the First Party to settle his legal dues. From such admissions a presumption may be raised to the effect that the workman being not satisfied with the low salary he used to get from the First Party had no interest to continue under the First Party for which when the latter denied employment he asked for settlement of his legal dues. It is also found from the claim statement that on the 7th December, 2006 when the First Party asked him to tender resignation the Second Party wrote-out the resignation letter as dictated by the First Party. The facts and circumstances do not make-out a case of involuntary act on the part of the workman in submitting his resignation letter.

8. But then the evidence of the Second Party goes unchallenged. In his affidavit evidence he has stated that though he had continuously worked for about seven years, his services were terminated with effect from the 7th November 2006 by way of denial of employment. To prove that the workman has voluntarily abandoned his job, the burden is on the employer. The employer has not come forward to adduce evidence in this regard. Though in the pleadings of the Second Party there are some contentions giving rise to a presumption that the workman had voluntarily submitted his resignation, the unchallenged evidence of the workman establishes that on the 7th November 2006 he was first denied employment and a month thereafter on being asked by the Management he had submitted resignation to get his final dues. Therefore, it is to be held that it is not a case of voluntary abandonment of employment. Consequently, the termination of service of the workman with effect from the 7th November, 2006 is illegal for non-compliance of the provisions of Section 25-F of the Act.

9. It is not pleaded by the First Party that it is no more in need of the services of Security Guards. It is also not the case of the First Party that the Second Party had allegedly committed any misconduct. Rather, it is the case of the First Party that when the workman's demand for a hike in his salary was not acceded to, the workman submitted his resignation. The workman now wants to

remain in employment under the First Party. Therefore, the workman is entitled to be reinstated in service but he is not entitled to the entire back wages inasmuch as there are circumstances giving rise to a presumption that he submitted the resignation letter without there being any coercion, undue influence, mis-representation, etc. So, instead of back wages he be paid compensation in the sum of Rs. 20,000.00 (Rupees twenty thousand) only. The First Party to implement the Award within a period of two months of the date of its publication in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
3-8-2011  
Presiding Officer, Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
3-8-2011  
Presiding Officer, Industrial Tribunal  
Bhubaneswar

---

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