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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 30th November 2011

No. 10775—li/1-(B)-51/1994(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th April 2011 in Industrial Disputes Case No. 79 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Rashmi Talkies, Jagatsinghpur and their Workmen represented through Jagatsinghpur Subdivisional Cinema Hall and Commercial Establishment Labour Union, Jagatsinghpur was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 79 OF 2008 (Previously registered as  
I. D. Case No. 263 of 1995 in the file of the Presiding Officer,  
Labour Court, Bhubaneswar)

Dated the 28th April 2011

#### *Present :*

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

#### *Between :*

Shri Rashmikanta Sahoo, .. First Party—Management  
Proprietor/Employer,  
M/s Rashmi Talkies,  
At/Post/Dist. Jagatsinghpur.

And

The Secretary, .. Second Party—Workman  
Jagatsinghpur Subdivisional  
Cinema Hall and Commercial  
Establishment Labour Union,  
At Badabag, P. O. Punanga,  
Jagatsinghpour.

*Appearances :*

Shri Rashmikanta Sahoo, Proprietor .. For the First Party—Management

Shri Baishnab Moharana,  
Authorised Representative .. For the Second Party—Workmen

## AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') made by the Government of Odisha in Labour & Employment Department vide their Order No. 11083-li/1-(B)-51/1994-LE., dated the 23rd August 1995 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication 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 action of the employer, M/s Rashmi Talkies, Jagatsingpur in terminating the services of the workmen, namely : Shri Narayan Singh, Pointer, Manoj Das, Pointer, Laxmidhar Bhol, Pointer, Rabindra Kumar Das, Pointer, Braja Kishore Bishoi, Pointer, Sk. Allimulla, Asst. Operator and Shri Ranjan Mohapatra, Pointer with effect from the 26th November 1992 is legal and/or justified ? If not, what relief they are entitled to ?”

2. In the case the Second Party/Union has raised the dispute on behalf of 7 (Seven) workmen. In the claim statement it is stated that the first party, the Proprietor of Rashmi Talkies, had engaged the workmen represented by the Second Party/Union since 1975. They were continuously in the employment of the first party. The workmen were getting low wages. So, in order to press their legitimate demands the workmen along with others formed a Union and put forth their demand through the Union. So, the first party was not happy with the workmen. On 26-11-1992 the first party told that since he was going to take-up the work of renovation of the Cinema Hall there would be no exhibition of films and therefore, the workmen would be kept out of work till completion of the renovation work which would likely to take half month. After completion of the renovation work the Cinema Hall started functioning with effect from June 1993 but the first party did not give employment to the workmen, even though some outsiders were engaged to run the Hall. With these pleadings the Union claims that the termination of service of the workmen is illegal.

3. According to the first party, the Cinema Hall is a small one located in a semi-urban area. The workmen were not engaged since 1975. The workmen had worked in the Cinema Hall during different periods and they had left their services much prior to 26-11-1992 which is claimed to be the date of illegal termination of their services. Admitting that the Cinema Hall was closed down for sometime due to renovation work, it is contended that when the Hall reopened for exhibition of films there was wide advertisement in the locality about its reopening. But, none of the workmen had over turned up for work. The first party had to run the Cinema Hall with other old staff who were actually on the roll of the first party as on 26-11-1992. It is admitted by the first party that some new workmen were also taken to run the Cinema Hall.

In the written statement the first party has given the following facts and figures showing the period of employment of the seven workmen under it :

Sl. No.	Name of the workmen	Period of engagement	
		From	To
1.	Shri Narayan Singh	1-5-1984	31-9-1985
		1-7-1986	30-4-1990
		1-8-1992	25-11-1992
2.	Shri Ranjan Mohapatra	1-10-1989	31-12-1989
3.	Shri Manoj Das	1-4-1990	31-7-1990
4.	Sk. Alimulla	November, 1991	8-10-1992
5.	Shri Braja Kishore Bisoi	1-2-1987	31-10-1989
6.	Shri Laxmidhar Bhol	1-4-1990	30-9-1990
7.	Shri Rabindra Kumar Das	1-5-1986	30-6-1987

The specific case of the first party is that workmen namely, Ranjan Mohapatra, Manoj Das, Laxmidhar Bhol and Rabindra Kumar Das have resigned from service and others had voluntarily left their jobs.

4. The following issues have been framed :—

#### ISSUES

- (i) Whether the action of the employer, M/s Rashmi Talkies, Jagatsinghpur in terminating the services of the workmen, namely : Shri Narayan Singh, Pointer, Manoj Das, Pointer, Laxmidhar Bhol, Pointer, Rabindra Kumar Das, Pointer, Braja Kishore Bisoi, Pointer, Sk. Alimulla, Asst. Operator and Shri Ranjan Mohapatra, Pointer with effect from the 26th November 1992 is legal and/or justified ?
- (ii) If not, to what relief they are entitled ?

5. On behalf of the second party, workman Sk. Alimulla has adduced evidence as W. W. No. 1. On behalf of the first party, the Proprietor of the Cinema Hall himself had adduced the evidence.

#### FINDINGS

6. *Issue No. (i)*—Since it is admitted by the management that the workmen were employees of the first party but has taken the plea that some of them resigned and others left the job voluntarily, it is to be examined as to how far the management has been able to establish its plea on the alleged resignation as well as voluntary abandonment of job.

According to M. W. No. 1, Ext. F series are the resignation letters submitted by the afore-named four workmen. During cross-examination it is simply suggested to M. W. No. 1 that none of the workmen had ever resigned and that M. W. No. 1 having obtained signatures of the aforesaid workmen on plain papers has later converted those papers into resignation letters. Mere suggestion is not enough. The four workmen who have allegedly submitted their resignation have not come-forward to dispute their resignation letters. The second party has not filed any rejoinder denying the specific assertion of the first party about the resignation. The first party has exhibited the Register of Wages for the period from 1-4-1981 to 31-7-1992 and Muster Roll for the period from 1-7-1990 to 31-12-1995 marked Exts. B, C and D. The second party has failed to challenge the correctness of the entries made in the Registers. It is also not pointed out from the

entries in the Registers that the workmen were under the continuous employment of the first party atleast from 1981 till the date of the alleged retrenchment. It is also not pointed out that the facts stated in the above chart given by the first party in its written statement compared with the entries made in the exhibited registers are incorrect. So, their plea that all the workmen except Manoj Das had been working in the Cinema Hall since 1975 is not correct. The documentary evidence adduced by the management are found to be reliable. When the first party has proved the resignation letters of four of the workmen, the plea taken by the second party that all the workmen were refused employment with effect from 26-11-1992 is also found to be incorrect. No discrepancy between the entries is found in the Register of Wages and Muster Roll and the facts and figures furnished in the aforesaid chart which has been prepared on the basis of pleadings made in the written statement. Therefore, it is to be held that the workmen namely, Ranjan Mohapatra, Manoj Das, Laxmidhar Bhol and Rabindra Kumar Das had resigned from service and their services were never terminated by the first party by way of refusal of employment with effect from 26-11-1992.

Since the facts and figures given in the aforementioned chart are found to be correct and consistent with the documents exhibited by the management, it is to be held that workmen namely, Braja Kishore Bisoi was engaged from 1-2-1987 to 31-10-1989. He did not raise any dispute alleging illegal retrenchment with effect from 31-10-1989. The second party has failed to show that his services were terminated with effect from 26-11-1992. Therefore, it is to be presumed that he had voluntarily abandoned the job after 31-10-1989.

7. So far workmen Narayan Singh and Sk. Allimulla are concerned, it is found that they were under the employment of the first party till the Cinema Hall was temporarily closed for renovation work. It is alleged that after reopening of the Cinema Hall the first party did not give employment to the workmen. This may be believed so far these two employees are concerned. But, Narayan Singh had not completed one year of continuous service by the time his services were terminated on 6-11-1992. Admittedly, he had worked under the first party in three spells. According to the first party, he was employed under it from 1-5-1984 to 31-9-1985, 1-7-1986 to 30-4-1990 and 1-8-1992 to 25-11-1992. W. W. No. 1 has exhibited E.P.F. slips issued in the name of this workman which has been marked Ext. 2. The periods covered by the E.P.F. slips are also covered by different spells as mentioned above. So, Ext. 2 is of no help to prove that the three spells given by the first party in respect of this workman are incorrect. Since he had not raised any dispute prior to the present dispute, it is to be presumed that he had voluntarily left his job on earlier two occasions and therefore, it cannot be said that he was in continuous employment under the first party from 1-5-1984 till 25-11-1992. Since he has not completed one year of continuous service he is not entitled to either notice or notice pay and retrenchment compensation as contemplated under Section 25-F of the Act.

8. So far workman Sk. Allimulla is concerned, it is stated by M. W. No. 1 that he had worked as an Assistant Operator from 1-11-1991 to 7-10-1992 which is little more than one year of continuous service. This workman has adduced evidence as W. W. No. 1 and has claimed that he had worked till temporary closure of the Cinema Hall. But, during cross-examination nothing was suggested to this workman denying this assertion. This workman along with others raised the dispute by making a representation to the Asst. Labour Officer on 19-8-1993. Had he voluntarily left the job on 9-10-1992, he would not have raised the dispute soon thereafter. The first party has stated it in its written statement that notice was served on Sk. Allimulla but he did not resume duties. But service of notice is not proved by him. According to the first party, Sk. Allimulla left the job on 9-10-1992 and it is admitted by the parties that the Cinema Hall was temporarily closed with effect from 26-11-1992. The plea of voluntarily leaving the job is not to be readily accepted, more so when the workman has raised the dispute without much delay and the Proprietor of the Cinema Hall has taken the stand that despite of notice the workman did not resume duties. Therefore, so far

workman Sk. Allimulla is concerned, his case stands in a different footing. In the facts and circumstances, it is to be held that after the reopening of the Cinema Hall notice ought to have been issued to this workman inviting him to resume duties. Apart from that, it is admitted by M. W. No. 1 that some new workmen were taken to run the Cinema Hall. As regards other workmen it is to be held that their services were not terminated with effect from 26-11-1992 and that they had voluntarily left the job much prior to that date.

The services of an Assistant Operator in a Cinema Hall is very much essential and it is to be presumed that in place of Sk. Allimulla someone else was appointed as an Assistant Operator. In the absence of claim that Section 25-F of the Act was complied with, it is to be held that the termination of service of Sk. Allimulla is illegal and unjustified.

9. *Issue No. (ii)*—All the workmen except Sk. Allimulla are not entitled to any relief. Now, it is to be considered as to what relief Sk. Allimulla is entitled to get. Sk. Allimulla was in the employment of the first party for about one year. He has remained out of employment for about 19 years. The workmen have not come forward with a clean story about their period of employment and the manner of termination of their services. Though they claim that they had been working in the Cinema Hall since 1975 but they have not substantiated the same. On the other hand, the Proprietor of the Cinema Hall with the help of documentary evidence has proved its case showing that four of the workmen had submitted resignation and employment of other three had come to an end not on 26-11-1992 but on some other dates. For the incorrect assertions of the Union the first party had to fight this battle for a long period. The workmen have not pleaded in the claim statement that they were not in gainful employment ever since their termination of service. But, while adducing evidence W. W. No. 1 says that all the workmen were not gainfully employed. In *U. P. State Brassware Corporation Ltd. & Another Vrs. Udai Narayan Pandey*, AIR 2006 (S.C.) 586, the Hon'ble Apex Court have observed that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it. workman Sk. Allimulla is now aged about 51. Taking all these facts and circumstances into consideration, it is held that Sk. Allimulla shall be entitled to get compensation of Rs. 30,000.00. Accordingly the first party is directed to pay a compensation of Rs. 30,000.00 (Rupees thirty thousand) only to Sk. Allimulla within two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
28-4-2011  
Presiding Officer, Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
28-4-2011  
Presiding Officer, Industrial Tribunal  
Bhubaneswar

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