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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th November 2011

No. 10786—li-1(B)-135/1996(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th August 2011 in Industrial Dispute Case No. 143 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Odisha Water Supply & Sewerage Board, Bhubaneswar and its workman Shri Manik Ch. Pattnaik was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 143 OF 2008  
(Previously registered as I. D. Case No. 46 of 1997 in the file  
of the Presiding Officer, Labour Court, Bhubaneswar)  
Dated the 12th August 2011

*Present :*

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

*Between :*

The Managing of .. First Party—Management  
Odisha Water Supply and Sewerage Board,  
Bhubaneswar.

*And*

Shri Manik Ch. Pattnaik .. Second Party—Workman  
S/o Bibhuti Bhusan Pattnaik,  
Water Works Road, Near Ram Mandir,  
Dist. Khurda - 752 002.

*Appearances :*

For the First Party—Management	..	Shri P. K. Mohanty, Advocate & his Associates.
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For the Second Party—Workman himself	..	Shri M. C. Pattnaik

## 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 the Labour & Employment Department vide their Order No. 7841—li-1(B)-135/1996-LE., dated the 4th July 1997 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-L.E., dated the 4th April 2008. The Schedule of reference runs as follows :—

“Whether the termination of service of Shri Manik Chandra Pattanaik, DLR Watchman engaged in Waste Water Treatment Plant, Puri of M/s Odisha Water Supply & Sewerage Board by the Project Engineer, Project Management Unit, M/s Odisha Water Supply & Sewerage Board, Budha Nagar, Bhubaneswar with effect from the 9th May 1995 is legal and/or justified ? If not, what relief Shri Pattanaik is entitled to ?”

2. The pleadings of the Second Party Workman taken in his claim statement is that he was working as a D. L. R. Watchman in the Waste Water Treatment Plant, Puri under the Odisha Water Supply and Sewerage Board (for short, 'the Board') with effect from the 12th March 1994. He worked continuously till the 8th May 1995. Thereafter, on the 9th May 1995 he was denied employment without any rhyme and reason. While terminating his services the Management did not comply with the mandatory provisions of the Act such as Section 25-F and Section 25-G of the Act. Therefore, the termination of his service is illegal as well as improper. It is specifically pleaded that his juniors namely, Shri Nakula Chandra Padhy, Shri Sadashiv Ojha, Shri Bhikari Behera and Shri Purna Chandra Dixit have been given employment by the First Party who are still continuing in employment under the First Party. With this plea the workman claims reinstatement with full back wages and other service benefits.

3. The management in its written statement has contended that as per the direction of the Hon'ble Supreme Court for disposal of waste water generated in Puri Town a Project was undertaken and the Project work was executed through the Executive Engineer, Public Health Division, Puri. Out of the Project a portion was allotted to the Board which was inaugurated on the 27th February 1994. In order to execute the work some casual labourers were engaged on daily wage basis as and when necessary arose and they were continued till completion of the Project. The Second Party was one of such casual labourers. The Project got completed in the month of May, 1995. After completion of the portion of the work assigned to the First Party the same was handed over to the Executive Engineer, Public Health Division, Puri as per the direction of the State

Government. After completion of the Project there remained no other work to be performed by the casual labourers including the Second Party. So, their engagement automatically came to an end with the completion of the Project work. Therefore, the Second Party has no right to employment under the First Party after the completion of the Project work. Compliance of the provisions of Section 25-F of the Act is also not required inasmuch as the case is covered under Section 2(o) (bb) of the Act. It is denied by the Management that persons junior to the workman were ever allowed to continue in employment.

4. In the rejoinder the workman has further contended that the Project work is being extended from time to time and the Project Engineers and staff working in the establishment of the Project Engineer have been continuing in their employment.

5. The following issues have been settled :—

#### ISSUES

- (i) “Whether the termination of service of Shri Manik Chandra Pattanaik, DLR Watchman engaged in Waste Water Treatment Plant, Puri of M/s Odisha Water Supply & Sewerage Board by the Project Engineer, Project Management Unit, M/s Odisha Water Supply & Sewerage Board, Budha Nagar, Bhubaneswar with effect from the 9th May 1995 is legal and/or justified ?
- (ii) If not, what relief Shri Pattnaik is entitled to ?”

6. The workman has examined himself as W. W. No. 1. Exts. 1 and 2 are marked on behalf of the workman. The Management has examined the Project Engineer, In-charge of Project Management, Unit-I, Puri as M. W. No. 1. Exts. A to F have been marked at the instance of the Management.

#### FINDINGS

7. Before going to deal with the issues settled in this case, the points raised by the learned Advocate for the First Party on maintainability of the reference may be thrashed out.

First, it is submitted that the Board is not an ‘industry’ within the meaning of Section 2(j) of the Act. Such a plea is not there in the Written Statement of the First Party. Therefore, no issue has been framed. In view of the landmark Judgment in Bangalore Water Supply & Sewerage Board *Vrs. A. Rajappa and Others*, 1978 Lab. I. C. 467, this contention has no leg to stand. The second contention is that the Executive Engineer, Public Health Division, Puri being a necessary party the proceeding in the absence of the said Executive Engineer is not maintainable. The case of the workman is that he joined in the service of the First Party and it was the First Party who disengaged him. According to the First Party, a portion of the Project in which the Second Party was engaged to work was executed by the Board under the supervision of the Public Health Division, Puri. It is not denied by the First Party that the Second Party was engaged by it. Its further stand is that with the completion of the so called Project work the employment of the Second Party automatically came to an end. Under such circumstances, the Executive Engineer, Public Health Division, Puri, so far

the employment of the workman is concerned, does not come to picture. No doubt, the workman has taken the stand that some workman who were junior to him are still continuing under the Public Health Subdivision, Puri but there is no evidence that after the alleged completion of the portion of the Project work executed by the First Party the services of all the workmen who were junior to the Second Party standing in the same footing as the Second Party, got transferred to the Public Health Division, Puri and on that basis they are still continuing. There is no evidence as to under what circumstances persons junior to the Second Party are still continuing in the Public Health Division. Therefore, the reference proceeding does not suffer from non-joinder of necessary party.

8. *Issue Nos. (i)*—Admittedly, the Provisions of Section 25-F of the Act have not been complied with. Therefore, the workman contends that his retrenchment is illegal. The Management's contention is that it being a case on non-renewal of contract of employment which automatically terminated with the completion of the Project in which the workman was engaged on daily wage basis, the termination is covered under Section 2(oo) (bb) of the Act. The workman does not admit that his engagement was for execution of any Project/Scheme. But, the First Party's case is that the Project work started in 1994 and got completed in 1995 and thereafter the work executed by the First Party was handed over to the Public Health Division, Puri and the Office of the First Party at Puri was closed down. Therefore it is pertinent to find out whether it is a case of execution of a Project undertaken by the First Party. Ext. B is a letter from the Housing & Urban Development Department, Government of Odisha dated the 25th March 1994 addressed to the Chief Engineer, Public Health (Urban), Odisha communicating his administrative approval for Puri Waste Water Treatment Demonstration Project. It reflects that the work was to be executed through the Odisha Water Supply and Sewerage Board on behalf of the Public Health Engineering Organisation. Ext. C is a letter dated the 8th May 1995 of the Board addressed to the Assistant Project Engineer, Puri Waste Water Treatment Plant who has been instructed to handover full charge of the works with men and machinery to one of the Officers to be nominated by the Executive Engineer, P. H. D., Puri. This letter reflects that the works of Puri Waste Water Treatment Plant got completed by the Board by the date the 8th May 1995. Ext. D is another letter from the Board addressed to the Executive Engineer, P. H. D., Puri with a request to instruct any of his Officers to take over the charges of the portion of Puri Waste Water Treatment Plant completed by the Board from the Assistant Project Engineer of the Board at Puri. Ext. E is a letter dated the 11th March 1996 issued by the Engineer-in-Chief, Public Health, Odisha to the Housing & Urban Development Department acknowledging that the Board had handed over the Plantations and other works to Puri P. H. Division on the 27th January 1996.

M. W. No. 1 in his evidence has stated that the Government of Odisha had prepared a Scheme and conceived a Project for disposal of Waste Water in Puri Town, that the Housing & Urban Development Department of the State Government had approved a total estimated amount of Rs. 6.20 crores for execution of the entire Project, that a small portion of the said Project with estimated cost of Rs. 37.9 lakh was to be executed by the Board under the supervision of the Public Health Division, Puri, that at the relevant time the Board had no Project Management Office at Puri that it was not executing any other Project at Purri, that a temporary Office of the Board was

opened at Puri to execute the portion of the Project work allotted to it and the office functioned from 1994 to 1995 and that the office was closed after completion of the small portion of the Project work. The witness has further stated that for the aforesaid Project work the first party had engaged some casual labourers on daily wage basis as and when necessity arose and they were engaged till completion of the portion of the Project work. No advertisement for engagement of any employee was there and there was no recruitment process. The second party was one of such casual labourers who had worked in between the 4th March 1994 and the 30th April 1995 with intermittent breaks.

The oral evidence of M. W. No. 1 supported by the documentary evidence amply proves that for the execution of a portion of the project the Board had opened a temporary office at Puri and to get the work executed some casual workers including the second party were engaged. Thus the first party has successfully proved that the second party was employed as a casual worker to work for the execution of the Project.

9. It is submitted that since the workman was engaged in a Project, his disengagement falls within Section 2(oo) (bb) of the Act. To support this contention reliance is placed on the decision in Karnataka Handloom Development Corporation Ltd. *Vrs.* Shri Mahadeva Laxman Raval, 2006 13 Supreme Court Cases 15. In this reported case the workman was appointed specifically under a Scheme initially for a period of three months but subsequently he was again appointed on contract basis for a period of nine months and after expiry of the term of the contract of appointment he was not appointed again. In the facts and circumstances of that case the Hon'ble Supreme Court have observed that the workman was aware that his appointment was purely contractual and for a specified period and that his appointment stood automatically terminated on the completion of the stipulated period. Therefore, the Hon'ble Supreme Court held that the case would fall under Section 2(oo)(bb) of the Act. Also reliance is placed on *State of Rajasthan Vrs. Sarjeet Singh and Another*, (2006) 8 Supreme Court Cases 508. The fact situation of this case is somewhat similar to that of the reference in hand. In the reported case there was a Scheme for supplying water in the villages and it was a joint Scheme of the State of Rajasthan through Public Health & Engineering Department of the Gram Panchayat. The Respondent workman was appointed by the Sarpanch of the Gram Panchayat. On completion of the Scheme his service was terminated. The workman however, was initially appointed for a period of six months but he was allowed to continue beyond that period. In that case it also appeared that the engagement of the workman was to remain in force till the Scheme was completed. Therefore, the Hon'ble Supreme Court have held that the termination of the workman is covered under Section 2(oo) (bb) of the Act.

10. The second party of this case was not appointed for a specific period. Therefore, the observation of the Hon'ble Supreme Court in *S. M. Nilajkar and Others Vrs. Telecom, District Manager, Karnataka*, reported in 2003 (97) FLR 608(S. C.) appears to be applicable. In Para. 13 and 14 of the reported Judgement their Lordships have observed as follows :—

“The termination of service of a workman engaged in a Scheme or Project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied :—

- (i) that the workman was employed in a Project or Scheme of temporary duration;

- (ii) the employment was on a contract and not as a daily wager simpliciter which provided *inter alia* that the employment shall come to an end on the expiry of the Scheme or Project; and
- (iii) the employment came to an end simultaneously with the termination of the Scheme or Project and consistently with the terms of the contract.
- (iv) the workman ought to have been appraised or made aware of the abovesaid terms by the employer at the commencement of employment.

The engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a Scheme or Project which was to last only for a particular length of time or up to the occurrence of some event and therefore, the workman ought to know that his employment was shortlived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was shortlived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the Scheme or Project coming to an end. The workman may not therefore, complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a Scheme or Project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub-clause (bb) abovesaid. In the case at hand, the respondent employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily-wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment.”

In the case at hand the employment of the workman was not on a contract but on daily wage basis. The workman was not made aware at the commencement of his employment that the employment was to expire on the expiry of the Scheme/Project. All that the Management has proved is that the workman was engaged as a casual worker in a Project. Therefore, the termination under challenge is not covered by Section 2(oo) (bb) of the Act.

11. Since the Management does not admit the workman to have completed 240 days of work during the twelve calendar months preceding the date of his termination, a finding has to be arrived at on this point.

The Management has cited several decisions of the Hon'ble Supreme Court to support its contention that the burden of establishing the factum of continuous service for one year or 240 days of work in preceding twelve months is on the workman. The workman claims to have worked under the first party continuously from the 12th March 1994 to the 8th May 1995. The Management does not specifically deny that the employment of the workman under the first party was continued

in between the 12th March 1994 and the 8th May 1995 but it is denied that he has completed 240 days of work in preceding twelve calendar months. The workman has exhibited a copy of purported duty statement showing the number of days he had worked under the first party in between the 4th March 1994 and the 30th April 1995. It is marked Ext. 2 with objection. But, no question was put to the workman touching on Ext. 2. It is not disclosed as to on what ground the management raised objection at the time it was exhibited by the workman. Ext. 2 reflects that the workman has completed more than 240 days of work during the twelve calendar months preceding the date of his termination. The Management has not produced any document in its custody such as Attendance Register/Muster Roll and/or Payment Register to show the number of days actually worked by the Workman during the entire span of his engagement. In this case the workman has discharged the initial burden. Therefore the Management ought to have adduced sufficient evidence to prove that the workman had not completed one year of continuous service. In this regard the management has cited Judgments of the Hon'ble Supreme Court reported in (2004) 8 Supreme Court Cases 246 and (2005) 8 Supreme Court Cases 450. In both the cases the Management had produced Muster Roll/Attendance Register and placed materials showing the number of days the concerned workmen had actually worked in different years. Admittedly, the workman was not issued with any appointment letter. It is not shown by the Management that any document was in the custody of the workman which could show the actual period of engagement. On the other hand, documents like Muster Roll, Attendance Register, Payment Vouchers, etc. are supposed to be in the custody of the first party. When the First Party has not denied it in specific terms that the period of employment extended from the 12th March 1994 to the 8th May 1995 and it is stated by M. W. No. 1 in Para. 12 of his affidavit evidence that the workman was not in continuous employment from the 4th March 1994 to the 30th April 1995 the Management ought to have placed materials before the Tribunal to disprove the workman's claim that he had completed 240 days of work. In the facts and circumstances the Tribunal holds that the workman had completed one year of continuous service as on the date of his termination.

12. The workman challenges his retrenchment on further ground that his retrenchment is in contravention of Section 25-G of the Act. He has named four persons to be his juniors who were allegedly continued by the Management at the time his own service was terminated. But this plea is not established by the workman. Rather, it is found to be incorrect. In his cross-examination the workman has stated that the four named persons are now working under the P. H. Division, Puri. There are no material to ascertain as to under what circumstances the named persons have been working in the P. H. Division, Puri. In my considered view the provisions in Section 25-G of the Act are not proved to have been contravened.

13. In view of the observations in S. M. Nilajkar's case (*Supra*), the termination of the workman's service amounts to retrenchment. However it is sufficiently shown by the first party that on completion of the Project the workman's service was terminated. According to the observation in Para. 15 of the Judgment in S. M. Nilajkar's case (*Supra*), Section 25-FFF which deals with compensation to workmen in case of closing down of undertakings is the appropriate provision to be complied with. Therefore the workman was entitled to notice and compensation in accordance

with the provisions of Section 25-F of the Act. Thus, the retrenchment of the workman is found to be in contravention of Section 25-FFF of the Act. But, termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited. Such notice and/or payment are not made conditions precedent to such closure. Therefore, the termination is neither illegal nor unjust.

14. *Issue Nos. (ii)*—Since Section 25-FFF of the Act has not been complied with, the workman is entitled to one month's notice pay and retrenchment compensation for one year of continuous service. Since the Management did not comply with Section 25-FFF of the Act the workman had to raise an industrial dispute way back in 1996 and since then he has been fighting the litigation against the Management. For that he must be compensated by the Management. In the facts and circumstances, the Tribunal awards a lump sum amount of Rs. 25,000 (Rupees twenty-five thousand) only in favour of the second party which is inclusive of notice pay, retrenchment compensation and compensation awarded against the first party.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
12-08-2011  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH  
12-08-2011  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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