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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 18th January 2011

No. 733—li/1(B)-7/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st August 2010 in I. D. Case No. 32 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s Polychem India, Kharipada, Puri and its workmen Shri Uchhab Pani and 6 others were referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 32 OF 2004

Dated the 31st August 2010

#### *Present :*

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

#### *Between :*

The Management of .. First Party—Management  
M/s Polychem India, Kharipada, Puri.

And

Its Workmen .. Second Party—Workmen  
Shri Uchhab Pani and 6 others.

#### *Appearances :*

Shri M. K. Mohanty .. For the First Party—Management

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Shri R. Pani .. For the Second Party—Workmen

## 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, 1947, have referred the matter in dispute to this Court vide Order No. 3666—li/1(B)-7/2003-LE., dated the 29th April 2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s Polychem India, Karipada, Puri 752 002 by terminating the services of the workmen Shri Uchhab Pani, Ramesh Nayak, Rasana Pani, Bibana Khatei, Nilakantha Bisoi, Bhikari Ch. Baral and Koren Mohanty with effect from the 1st March 2002 is legal and/or justified ? If not, what relief the workmen are entitled to ?”

3. The case of the workmen in brief is that they were employed by the management since more than 10 to 12 years back. All the workmen were working with dedication and for better satisfaction of the management. The management manufactures polythene bags for various uses of the customers. All of a sudden the management published a general notice stating therein that the services of all the workmen will be terminated with effect from the 1st March 2002 without following the mandatory provisions of the Industrial Disputes Act regarding prior notice, notice pay, retrenchment compensation etc. the management illegally as well as arbitrarily terminated the services of all the workmen. The management has also not paid salary for five months prior to the date of termination and has not deposited the L. I. C. premium deducted by the management has not been deposited with L. I. C. Now the management is running the factory with the help of new workers. So the workmen have raised an industrial dispute before the District Labour Officer, Puri and when the conciliation failed, a reference was made by the Government and this I. D. Case has been initiated and the workmen have filed the statement of claim praying for reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to him, the workmen namely Rasana Pani and Bhikari Baral left the service since August 2000 and May 2001 respectively and the workmen Uchhab pani had never employed under the management. Therefore the question of their termination of service with effect from the 1st March 2002 does not arise. The establishment of the management is a rural based Small Scale Industrial Unit financed by Orissa State Financial Corporation engaged in manufacturing of polythene bags, rolls and sheets. Running of the Unit solely depends upon continuous supply of power and purchase orders from the Government or private parties. The unit of the management hardly runs 5 to 6 months in a year depending upon availability of power. For that the workmen were engaged casually for diferent jobs. They were paid wages for the days they actual performed their duties. Due to certain dispute between the Central Electricity Supply Co. and the management regrading energy bill during January 2002 the CESCO intimated the management to disconnect the power supply to the management from the 1st March 2002 which ultimately lead to closure of

the unit of the management. The management accordingly intimidated the workmen. However the unit of the management was saved from closure consequent upon consideration of the representation of the management by the SESCO. So there was no retrenchment of the workmen from the 1st March 2002. The workmen were continued to work beyond the 1st March 2002 without any break in service. The workmen were continued to work for the said period and have received their wages. Again there was sudden disruption in power supply from the 12th April 2002 due to burnt of the transformer. The power supply was restored to unit on the 16th May 2002 by installation of new transformer. Thereafter the workmen namely, Ramesh Nayak, Bibina Khatoi, Nilakantha Bisoi and Kiran Mohanty who were working beyond the 1st March 2002 did not turn up for duty and on personal approach, they refused to work in the factory of the management. So they voluntarily left their job from the 16th May 2002 Ramesh Nayak was in charge of the store. He was asked by the management to settle his account as he was not interested to continue to work. It was found that there was huge shortage of store materials and other properties and when he was asked to give proper account of the store materials he fled away with the key of the Store. The management lodged F. I. R. and a police case was initiated against him. He also instigated other willing co-workers not to come for duty. So the said four workmen voluntarily abandoned their service. In this background the management has prayed to answer the reference in negative.

5. In view of the above pleadings of the parties, the following issues have been settled :—

#### *ISSUES*

(i) “Whether the action of the management of M/s Polychem India, Kadipada, Puri 752 002 by terminating the services of the workmen Shri Uchhab Pani, Ramesh Nayak, Rasana Pani, Bibana Khatei, Nilakantha Bisoi, Bhikari Ch. Baral and Koren Mohanty with effect from the 1st March 2002 is legal and/or justified ?

(ii) If not, what relief the workmen are entitled to ?”

6. In order to substantiate their plea, the workmen have examined Rasana Pani as W. W. 1 and Nilakantha Bisoi as W. W. 2 and provided the documents marked as Exts. 1 on their behalf. The management has not adduced any evidence on their behalf and also has not proved any document in their behalf.

#### FINDINGS

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

According to W. W. 1 they were working under the management for more than 10 years on monthly salary basis. The management had issued notice on the 18th February 2002 regarding termination of their services with effect from the 1st March 2002 and such notice was affixed on the wall of the management. Thereafter seven new persons are engaged by the management. The management has cross examined this witness but nothing has been elicited from his mouth to disbelieve the sworn testimony. The workman Nilakantha Bisoi is examined as W. W. 2. He files his affidavit evidence and the management has not cross examined at all. So the affidavit evidence of W. W. 2 remains unchallenged.

8. The plea of the management has not been substantiated at all by any cogent evidence as the management is silent and has not adduced any evidence in his favour. So on careful consideration of the evidence of W. Ws. 1 and 2 it shows that the workmen were working under the management and their services have been terminated with effect from the 1st March 2002 without following the mandatory provisions of Section 25-F of the Industrial Disputes Act. Regarding voluntary abandonment of their service by the workmen and not working under the management as mentioned in the written statement has not been substantiated at all. So on careful consideration of the entire materials available in the case record I am of the opinion that the termination of services of the workmen with effect from the 1st March 2002 is illegal and unjustified and they are entitled for reinstatement in service.

9. Regarding back wages, according to the settled principle of law reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further in the settled principle of law as reported in 2004 (Supp.) O. L. R. 694 it has been held that when the workmen had not worked for the management during the period in question and they had not proved by cogent evidence that they were not gainfully employed elsewhere payment of back wages is not justified. In the instant case nothing has been proved by cogent evidence that the workmen were not gainfully employed elsewhere. So on consideration of all the materials available, it is not a fit case to grant any back wages or any compensation in lieu of back wages. Both the issues are answered accordingly.

9. Hence ordered :

That the action of the management of M/s Polychem India, Khadipada, Puri - 752 002 by terminating the services of the workmen Shri Uchhab Pani, Ramesh Nayak, Rasana Pani, Bibana Khatei, Nilakantha Bisoi, Bhikari Ch. Baral and Koren Mohanty with effect from the 1st March 2002 is neither legal nor justified. The above named workmen are entitled to be reinstated in service but without any back wages or compensation. The management is directed to implement this Award forthwith after notification of the Award in the official Gazette.

The reference is answered accordingly.

Dictated and Corrected by me.

S. K. DASH  
31-08-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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31-08-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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