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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 19th January 2011

No. 764—li/1(B)-116/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th June 2010 in I. D. Case No. 9 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of D. T. M., O.S.R.T.C., Cuttack and its workman Shri Banamali Nandi was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 9 OF 2004

Dated the 17th June 2010

#### *Present :*

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

#### *Between :*

The Management of .. First Party—Management  
D. T. M., O. S. R. T. C., Cuttack.

And

His Workman .. Second Party—Workman  
Shri Banamali Nandi, Balasore.

#### *Appearances :*

Shri G. Tudu, L. W. O. .. For the First Party—Management

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Shri B. Nandi .. For the Second Party—Workman  
himself.

## 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. 411—II/1(B)-116/2003-LE., dated the 9th January 2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Banamali Nandi, Ex-Driver with effect from the 27th August 2001 by way of dismissal by the District Transport Manager, O. S. R. T. C., Cuttack vide order No. 736(c), dated the 27th August 2001 is legal and/or justified ? If not, what relief Shri Nandi is entitled to ?”

3. The case of the workman in brief is that he was working as a Driver under the management. He was posted under the District Transport Manager (in short D. T. M.), Bhubaneswar and subsequently he was transferred to different places like Baripada, Puri, Bhadrak and Cuttack. From there he was posted under the A. T. M., Kendrapara on deputation vide order dated the 27th February 2001 of the T. D. M., Cuttack. While working at Kendrapara he got telephonic message about seriousness of his ailing father, he suddenly proceeded to his native place at Balasore without taking any headquarter leaving permission or prior sanction of leave and he sent his leave application by registered post with A. D. seeking leave from the 3rd March 2001 which was returned back with postal remark “addressee refused to receive”. Due to serious illness of his father who was suffering from acute paralysis, he continued on leave. Suddenly the D. T. M. (A), Cuttack, vide his order No. 737(c), dated the 7th August 2001 dismissed the workman from service on the ground of misconduct for remaining unauthorised absence from duty from the 3rd March 2001 to the 17th July 2001. Such dismissal of service of the workman from service is against the principle of natural justice and mandatory provisions of law. The A. T. M. (A), Angul was appointed as Enquiry Officer and the date of enquiry was fixed to the 7th August 2001 at 11-30 a.m. in the office of the D. T. M. (A), Cuttack. The workman was present in the enquiry but the Inquiry Officer was absent for which the enquiry could not be held. Thereafter no further communication has been received regarding the date of enquiry by the workman till the date of dismissal. No opportunity was also given to putforth the cause of his unauthorised absence. So on this background the workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement denying the plea of the workman. According to him, the workman after being transferred from Bhadrak jointed at Cuttack but remained unauthorised absence from the place of duty and thereafter he was again transferred to Kendrapara to work at Kendrapara but the workman left the place of duty without intimating the authorities and without giving details of his whereabouts. Since he remained unauthorised absence from duty a proceeding was initiated and in view of O.S.R.T.C. (C.R. & C.S.) Regulation, 1978 it was a grave misconduct. Though the workman

received the proceeding he did not submit any show-cause. Even if sufficient opportunities were given, the workman did not attend the enquiry. Hence his service was terminated by way of dismissal by the disciplinary authority. Admittance of remaining unauthorised absence has been proved on record. Hence, no enquiry is necessary. So on this background the management has prayed for answering the reference in his favour.

5. In view of the above pleadings of the parties, the following issues are framed :—

#### ISSUES

- (i) “Whether the termination of services of Shri Banamali Nandi, Ex-Driver with effect from the 27th August 2001 by way of dismissal by the District Transport Manager, O. S. R. T. C., Cuttack vide order No. 736(c), dated the 27th August 2001 is legal and/or justified ?
- (ii) If not, what relief Shri Nandi is entitled to ?”

7. In order to substantiate his plea, the workman has examined himself as W. W. 1 and proved the documents marked as Exts. 1 to 15. Similarly the management has examined as M. W. 1 but no document has been proved on behalf of the management.

#### FINDINGS

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

It has been argued by the workman that his absence in duty as alleged was beyond his control and due to illness of his father but the management without giving proper opportunity to him to defend his case and without holding any proper enquiry dismissed him from the service which is totally illegal and against the principle of natural justice. On the other hand, it has been argued by the management that when the fact of unauthorised absence from duty by the workman is evident from the record no specific enquiry is required and it has been rightly dismissed the workman from service by the disciplinary authority. Perused the documents proved and marked exhibits on behalf of the workman. As per Ext. 14 the workman was dismissed from service. But the evidence of W. W. 1 discloses that the A. T. M. (A), Angul was appointed as Inquiry Officer and the date of enquiry was fixed to the 7th August 2001 at 11-30 a. m. in the office of the D. T. M. (A), O. S. R. T. C., Cuttack. On the date of enquiry though the workman was present the Inquiry Officer was absent and the enquiry could not be held. Thereafter no further communication has been received by the workman till the date of dismissal. On the other hand, according to the M. W. 1 a show-cause notice for unauthorised absence from the 3rd March 2001 to the 17th July 2001 was disposed of on the 27th August 2001 terminating the service of the workman. No inquiry report was supplied to the workman so also the second show-cause notice. But strangely enough the management has not produced any document to show that any enquiry has been held against the workman before imposing punishment of dismissal from service which is a major punishment one. On the other hand it has been also been admitted that no enquiry was held as not required in

view of O. S. R. T. C. (C.R. & C.S.) Regulation, 1978. So the management is taking contrary pleas. At one time he took the plea about the enquiry and immediately took the plea that no enquiry was held. According to the settled principle of law as reported in SCLJ - 1988-90 S. C. 783 in the case of Kulwant Singh Gill Vrs. State of Punjab that merely issuing a show-cause notice and consideration of explanation is not an enquiry. A regular enquiry has got to be conducted. In the instant case no regular enquiry has been conducted as evident from the materials available from the case record. So on careful consideration of all the materials available I came to the finding that the termination of services of the workman with effect from the 27th August 2001 by way of dismissal is neither legal nor justified and he is entitled to be reinstated in service.

8. As regards back wages, according to the settled principle of law when he had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. Similarly according to the settled principle of law that the relief of 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. In the instant case on careful consideration of all the materials available I am of the opinion that the workman is not entitled to get any back wages he is only entitled for reinstatement in service. Both the issues are answered accordingly.

9. Hence ordered :

That the termination of service of Shri Banamali Nandi, Ex-Driver with effect from the 27th August 2001 by way of dismissal by the District Transport Manager, O.S.R.T.C., Cuttack vide Order No. 736 (c), dated the 27th August 2001 is neither legal nor justified. The workman Shri Nandi is only entitled to be reinstated in service but without any back wages. The management is directed to implement this Award forthwith.

The reference is thus answered accordingly.

Dictated and corrected by me.

S. K. DASH  
17-6-2010  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. DASH  
17-6-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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