

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 282 CUTTACK, TUESDAY, FEBRUARY 1, 2011/ MAGHA 12, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd January 2011

No. 867—li/1(B)-25/2004-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th November 2010 in Industrial Dispute Case No. 56 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Konark Television, Bhubaneswar and their workman Smt. Premalata Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 56 OF 2005

Dated the 9th November 2010

Present :

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

Between :

The Management of M/s Konark
Television, Bhubaneswar. First Party—Management

And

Their Workman Second Party—Workman
Smt. Premalata Das.

Appearances :

Nilima Mohanty, Special
Officer. For the First Party—Management

Smt. Premalata Das Second Party—Workman herself

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.9060—li/1 (B)-25/2004-LE., dated the 27th October 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shrimati Premalata Das, Technical Helper with effect from the 11th April 1999 by the management of M/s Konark Television Ltd., Rasulgarh, Bhubaneswar is legal and/or justified ? If not, to what relief Smt. Das is entitled ?”

3. The case of the workman in brief is that after successful training under the management she joined as a Mazdoor under the management on 2-5-1995 for a period of 45 days temporarily on daily wage basis at the rate of Rs. 25 per day with certain terms and conditions and such appointment was extended from time to time for 45 days at a stretch till she was terminated from her service with effect from the 11th April 1999. She was working continuously under the management till then. The workman was covered under E. P. F. and E. S. I. Scheme and enjoying the benefit of these schemes. She was also working as a Casual Helper. The work of the workman was permanent in nature but she was engaged temporarily as Mazdoor on daily wage basis. The workman requested many a times to the management for regularisation of her service but the management did not pay any heed to it. Her last wage was Rs. 1,200 per month. While termination the service of the workman, the management has not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act regarding notice, notice pay, retrenchment compensation, etc. which clearly violates the principle of natural justice. So in this circumstances, the workman raised an industrial dispute before the labour authority and when the conciliation failed, the matter was informed to the Government and this reference was received from the Government and I. D. case has been initiated wherein the workman has prayed for her reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. It is admitted that the workman was working under the management but the service of the workman was extended from time to time and her appointment was purely temporary in nature and without continuation and it was a purely contractual of service. Therefore her termination of service after completion of term of 45 days as per last Office Order, Dt. 4-3-1999 is within the rights of the management. There was no relationship between the employer and employee for which her case does not come under the Industrial Disputes Act. So there was no need of giving one month's notice or notice pay or of taking any disciplinary action against the workman. The management of the Company has already filed liquidation in the Company Court after facing heavy loss since 1989-1990 and the Company is now defunct and it is not possible to regularise the services of the workman.

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

ISSUES

- (i) “Whether the termination of services of Smt. Premalata Das, Technical Helper with effect from the 11th April 1999 by the management of M/s Konark Television Ltd., Rasulgarh, Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief Shrimati Das is entitled to ?”

6. In order to substantiate her plea, the workman has examined herself as W.W. 1 and proved documents marked as Exts. 1 to 5. The management though contested the case and took part in the hearing, does not choose to give any evidence in support of its pleading.

FINDINGS

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

It has been argued by the workman that after successful training by the management she joined in the management as Mazdoor on 2-5-1995 and her initial appointment was for 45 days vide Ext. 3. Thereafter her service was extended from time to time for a span of 45 days at a stretch vide Office Orders Ext. 4 which contain 30 orders. All the orders clearly show that the workman was appointed for 45 days. It has been argued by the workman that she was continuously working without any break till the date of termination of her service, i. e. on 11-4-1999. In view of the evidence available in the case record the plea of the management that there was no relationship of employer and employee has no force at all. Furthermore the management has not adduced any evidence on its behalf as mentioned earlier. According to the settled principle of law that when the workman claimed and deposed that she had worked for 240 days which is the statutory requirement, burden of proof shifts to employer to prove that she did not complete 240 days of service in requisite period to constitute continuous service. The workman would have difficulty in having access to all official documents, muster rolls, etc. from the evidence of W. W. 1 and documents proved by her, it clearly shows that the workman had completed 240 days of service in preceding 12 calendar months from the date of her termination of service and it is an admitted fact that the management has not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act, while terminating her service by way of refusal of employment. So on careful consideration all the materials as discussed above, I am inclined to hold that the termination of service of the workman with effect from the 11th April 1999 by the management is neither legal nor justified.

8. Regarding reinstatement in services of the workman and back wages, 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 the management in the written statement has taken the plea that the company has already filed liquidation in the Company Court. It is also admitted by W. W. 1 that officially liquidation has been taken possession of the management. So

basing on the materials available, on careful consideration of the same, I am of the opinion that instead of reinstatement and back wages a lump sum amount as compensation will meet the ends of justice in the instant case. Further basing on the materials available, I am of the opinion that a sum of Rs. 50,000 as compensation will meet the ends of justice in lieu of reinstatement and back wages.

9. Hence Ordered :

That the termination of services of Smt. Premalata Das, Technical Helper with effect from the 11th April 1999 by the management of M/s Konark Television Ltd., Rasulgarh, Bhubaneswar is illegal and unjustified. The workman Smt. Das is entitled to get a lump sum amount of Rs. 50,000 (Rupees fifty thousand) only as compensation in lieu of reinstatement and back wages. The management is directed to pay the above amount within a period of one month from the date of its publication in the official Gazette, failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
9-11-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
9-11-2010
Presiding Officer
Labour Court, Bhubaneswar

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