

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

---

No. 284 CUTTACK, TUESDAY, FEBRUARY 1, 2011/MAGHA 12, 1932

---

---

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 20th January 2011

No. 793—li/1(B)-5/1997-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th October 2010 in I. D. Case No. 136 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Jagatpur Oil Refinery, Jagatpur and its Workman Shri Bipin Behera was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

#### IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 136 OF 2008 (PREVIOUSLY REGISTERED AS  
I. D. CASE NO. 11 OF 1997 IN THE FILE OF THE P. O. LABOUR COURT, BHUBANESWAR)

Dated the 6th October 2010

#### *Present :*

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

#### *Between :*

The Management of .. First Party—Management  
Jagatpur Oil Refinery, Jagatpur.

And

Its Workman .. Second Party—Workman  
Shri Bipin Behera,  
At Daradapari, P. O. Sidheswarpur,  
Via Kandarpur, Dist. Jagatsinghpur.

#### *Appearances :*

None .. For the First Party—Management

---

Shri Bipin Behera .. For the Second Party—Workman  
himself.

## AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short the Act) made by the Government of Orissa in the Labour & Employment Department vide their Order No. 5904—li-1(B)-5/1997-L.E., dated the 21st May 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 services of Shri Bipin Behera, Electrician with effect from the 17th November 1995 by the employer of M/s Jagatpur Oil Refinery, Jagatpur, Cuttack is legal and/or justified ? If not, to what relief he is entitled ?”

2. In the claim statement the workman has stated that he had been working as an Electrician with the first party since March, 1992. When he took leading roll in the matter of trade union activities the management out of grudge terminated his services with effect from the 17th November 1995 by way of refusal of employment. He made repeated request to give him employment and thereafter raised an industrial dispute before the local Labour authority. While the dispute was pending for conciliation the management with an ulterior motive framed charge sheet against him vide its letter dated the 24th January 1996. On being served with the charge sheet he submitted his reply. After appointment of an Enquiry Officer a notice was served on him by the Enquiry Officer to attend the enquiry on the 9th July 1996, but the workman wrote to the Enquiry Officer that he was not in a position to attend the enquiry in as much as the management's action in terminating his services with effect from the 17th November 1995 was under challenged before the Labour authority. The enquiry was held *ex parte* and second showcause notice was also served on him. It is further pleaded by the second party that the management did not give any answer to several letters of the labour machinery to take part in the conciliation proceeding. Therefore, ultimately the labour machinery submitted a failure report to the Government.

The first party has not filed written statement despite of service of notice. So, it has been set *ex parte* and *ex parte* hearing has been taken-up. The workman has examined himself as W. W. No. 1. He has exhibited several documents in support of his claim.

3. It is to be decided as to whether the termination of service of the second party with effect from the 17th November 1995 by the first party is legal and/or justified and whether the second party is entitled to any relief.

4. As already stated the management has not filed any counter controverting the averments made by the workman in his claim statement. The workman has adduced his affidavit evidence which contains all the averments made in the claim statement. In the absence of any denial from the side of the first party the workman's affidavit evidence is to be be relied on. On the basis of the uncontroverted pleading and testimony this Tribunal comes to a conclusion that the services of the workman were terminated with effect from the 17th November 1995 by way of refusal of employment. Since the impugned retrenchment is not in accordance with the provisions contained in the Act, the same is held to be illegal.

5. The second party has prayed for his reinstatement with back wages. He has taken the plea that all along he has remained unemployed. In 2009 he was aged about 47. So, at the time of his retrenchment he was aged about 3. Admittedly, the second party is an Electrician. He is a resident of the district Jaagatsinghpur. Since he is a skilled workman it can not be believed that after his retrenchment he sat idle and did not take up the avocation of an Electrician which has been in demand all the time. On the other hand he has not rendered any service to the management for the last fifteen years. According to the workman, he was under the employment of the first party from March, 1992 to November, 1995 and he used to get Rs. 43 as daily wage. It appears he was a daily wage worker. From his own pleadings it transpires that the management had initiated a domestic enquiry against him. Ext. 14 reflects that on the basis of the report of the Enquiry Officer the workman's services were terminated by the management with effect from the 11th August 1996. There is apparently a dispute over the date of termination of service of the workman but the present reference is with regard to the termination allegedly effected from the 17th November 1995. According to the management the workman was removed from service with effect from 11th August 1996. That removal order is not the subject matter of the present reference. It also appears that the order of removal with effect from the 11th August 1996 has not yet been challenged by the workman. Therefore even if the termination of service of the workman with effect from the 17th November 1995 is found to be illegal, the workman can not avoid the effect of the management's order of termination which is marked Ext. 14. Under such circumstances, this Tribunal considers it just and appropriate to award compensation to the workman in lieu of reinstatement and back wages. Considering the facts and circumstances, this Tribunal awards compensation of Rs. 25,000 (Rupees twenty five thousand) only to be paid to the workman by the management for the illegal retrenchment impugned in this reference.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH

5-10-2010

Presiding Officer

Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH

5-10-2010

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government