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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 27th January 2011

No. 1025-li/1-(B)-43/2007-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd September 2010 in I. D. Case No. 51 of 2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Lingaraj Biscuits (P) Ltd., Chandaka Industrial Estate, Bhubaneswar and its Workman Shri Mrutunjay Sabat, Electrical Supervisor was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 51 OF 2007  
Dated the 23rd September 2010

#### *Present :*

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

#### *Between :*

The Management of M/s Lingaraj Biscuits (Pvt.) Ltd., Chandaka Industrial Estate, Bhubaneswar. .. First-party—Management

And

Its workman .. Second-party—Workman  
Shri Mrutunjay Sabat,  
Electrical Supervisor.

#### *Appearances :*

Shri R. N. Pattnayak, Dy. Manager, HRD .. For the First-party—Management

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Shri M. Sabat. .. 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 have referred the matter in dispute to this Court vide Order No. 11706—li/1-(B)-43/2007-L.E., dated the 22nd October 2007 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 Lingaraj Biscuits (Pvt.) Ltd., Bhubaneswar in terminating the services of Shri Mrutunjay Sabat, workman with effect from 11th June 2006 is legal and/or justified ? If not, to what relief the workman Shri Sabat is entitled ?”

3. The case of the workman in brief is that he joined in the management on 1-6-2005 as Assistant Electrical Incharge-*cum*-Supervisor. He was performing his duty by signing in the daily log book. Though the management was deducting the amount from his salary for E.S.I. and E.P.F. but no such document has been given to him. While working in the factory of the management on 1-5-2006, met with an accident and sustained burn injury and when the management did not heard in this regard, he spent money from his own pocket. But all of a sudden without hearing the grievances of the workman, the management terminated his service with effect from 1st June 2006 without paying him anything and without complying the mandatory provisions of the Industrial Disputes Act. So he raised an industrial dispute before the labour authority and when the conciliation failed a reference has been received from the Government and this I.D. Case has been initiated wherein 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 management had never refused employment to the workman rather he voluntarily abandoned his job. The allegation of verbal refusal of employment is concocted, false and fabricated. The workman has not completed 240 days of continuous and uninterrupted service under the management and as such, he is not entitled to get protection as provided in Section 25-F of the Industrial Disputes Act. In this back ground, the management has prayed for answering 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 Lingaraj Biscuits (Pvt.) Ltd., Bhubaneswar in terminating the services of Shri Mrutunjay Sabat, workman with effect from 11-6-2006 is legal and/or justified ?”
- (ii) If not, what relief the workman Shri Sabat is entitled to ?”

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 and 2. Similarly the management has examined his Deputy Manager, HRD as M.W. 1 and proved documents marked as Exts. A and B.

## FINDINGS

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

According to W.W. 1 he joined in the management on 1-6-2005 as Electrical Incharge-*cum*-Supervisor vide the appointment letter, the xerox copy of which has been marked as Ext. 1. But his

service was terminated with effect from 11th June 2006 by the management without assigning any reason. Orally he was not allowed to enter inside the factory premises of the management on 11-6-2006. He has not received any amount from the management towards retrenchment benefit. In the cross-examination the management put question to him regarding voluntary abandonment of service by him with effect from 10th June 2006 to which the W.W. 1 answered in negative. Ext. 1 was issued by Pritesh Bhattacharjee, Electrical In-charge of the establishment of the management wherein it has been mentioned that the workman was advised to join positively on or before 1-6-2005. Ext. 2 is the xerox copy of 106 numbers of gate pass starting from 1-10-2005 to 14-1-2006. M. W. 1 deposes that the workman joined in the establishment of the management on 1-2-2006 as Electrician and worked till 10-6-2006. Thereafter on his own accord the workman left the job and remained absent. The workman had never worked for more than 240 days of continuous and uninterrupted service at any time during his employment under the management. The management has produced the xerox copy of muster roll and salary sheet from January 2006 to July 2006 which are marked as Exts. A and B respectively. On such muster roll and salary sheet the name of the workman does not found place. For the month of January 2006 and February onwards the name of the workman found place on both the documents along with other employees of the establishment of the management. So from the above evidence when the workman is claiming that he joined in the management on 1-6-2005 and continued till 10-6-2006 the management took the plea that he joined in the establishment of the management on 1-2-2006 and worked till 10-6-2006. According to the workman, his service was terminated by the management by way of refusal of employment. But according to the management, it is a voluntary abandonment of service. Now, I have to see whether the workman has completed 240 days of service in 12 calendar month preceding to the date of termination to get the benefit under Section 25-F of the Industrial Dispute Act regarding termination of his service. The appointment order vide Ext. 1 discloses that he was directed to join on or before 1-5-2005 and according to W.W. 1 he joined in service on 1-6-2005. Though the management took the plea that the workman has joined on 1-2-2006, no such appointment order has been filed in this regard. Only Exts. A and B disclose that he joined in the month of February 2006 under the management. During hearing of the case, the workman has filed a petition praying to direct the management to produce the attendance register, log book, gate pass register, payment register, cash book and shift duty register from 1-6-2005 to 11-6-2006 for better appreciation of the case. But the management reply to it has filed objection mentioning that the log books, gate pass register, shift duty register except of the current years, the management does not preserve the same for years together and destroyed these old and unimportant documents and the management has only preserved some old documents such as the attendance registers and payment registers etc. for reference including of the year 2006 and the management has only produced the attendance register and payment register such as Exts. A and B, but has not produced the attendance register and payment register prior to January 2006. So from it, it clear that the management has suppressed such documents and if such documents has filed the real truth may come out which may go against the management. Regarding the xerox copies of gate pass marked as Ext. 2 series, the mangement has objected to it. On persual of Ext. 2 it shows that it was issued in favour of the workman having his signature therein and it was issued by the same person namely Pritesh Bhattacharjee who has issued Ext. 1 to the workman. There is no evidence from the side of the management why the documents should be disbelieved and under what circumstances the huge numbers of gate pass starting from 1-10-2005 to 14-1-2006 were issued to the workman. Further, it has been argued by the management in repaying the authority reported in AIR 2003 SUPREME COURT 38 that proof of fact of 240 days working is on the workman in case of denial of such fact by the management. But in view of the authority reported in AIR 2010 SUPREME COURT

1236, it has been held that the burden of proof of continuous service of 240 days in initially on the workman. But when the workman claimed and deposed that he had worked for 240 days which the statutory requirement, burden of proof shifts to employer to prove that he 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. In the instant case as discussed above, it shows that the management has not produced all relevant documents and suppressed the documents in order to compute how many days the the workman had actually worked. From the materials, I came to the conclusion that the workman joined in the establishment of the management on 1-6-2005 and continued till 10-6-2006. So on careful consideration of all the materials available in the case record it can safely be concluded that the workman had completed more than 240 days in 12 calendar months preceding to the date of his termination. But the management has terminated his service without following the mandatory provisions of Section 25-F of the Industrial Disputes Act. Therefore, I came to the finding that the action of the management in terminating the services of the workman with effect from 11th June 2006 is neither legal nor justified and he is entitled to be reinstated in service.

8. Regarding back wages, it is 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. When the workman 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 full back wages is not justified. However, having regard to the facts and circumstances of this case, in my opinion instead of giving full back wages a lump sum amount of Rs. 20,000 as compensation will meet the ends of justice in this case. Both the issues are answered accordingly.

9. Hence Ordered :

That the action of the management of M/s Lingaraj Biscuits (Pvt.) Ltd., Bhubaneswar in terminating the services of Shri Mrutunjay Sabat, workman with effect from 11th June 2006 is illegal and unjustified. The workman Shri Sabat is entitled to be reinstated in service with a lump sum amount of Rs. 20,000 (Rupees twenty thousand) only as compensation in lieu of back wages. The management is directed to implement this Award 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 referance is answered accordingly.

Dictated and corrected by me.

S. K. DASH  
23-9-2010  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. DASH  
23-9-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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