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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st February 2011

No. 1196—li/1(S)-21/2007-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st July 2010 in Industrial Dispute Case No. 7/2008 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Jharsuguda Regional Improvement Trust and its Workman Kumari Dalia Sarangi, Daily Wage Worker was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 7 OF 2008

Dated the 31st July 2010

Present :

Miss Sarojini Mahapatra, M.A., LL.B.,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The management of
Jharsuguda Regional Improvement Trust
through the Secretary,
Jharsuguda/Assistant Town Planning Officer,
Town Planning Unit (near Munda Church
in front of Women's Police Station),
Sambalpur.

.. First Party—Management

And

Its workman Kumari Dalia Sarangi, .. Second Party—Workman
 Daily Wage Worker,
 C/o Shri Basant Kumar Sarangi,
 At Mohanty Para (Dabar Gali),
 P.O./Dist. Sambalpur.

Appearances :

Shri Niranjan Kar, Advocate	.. For First Party—Management
Shri R. K. Mohanty, Advocate	.. For Second Party—Workman

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department in memo No. 4268 (6), dated the 8th April 2008 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 (14 of 1947) for adjudication of the schedule questions :—

"Whether the termination of services of Kumari Dalia Sarangi, Daily Wages Worker by way of refusal of employment with effect from the 24th February 2006 by the management of Jharsuguda Regional Improvement Trust, Jharsuguda is legal and/or justified ? If not, what relief the workman is entitled to ?"

2. The case of the second party stated as follows :—

The second party was employed by the first party-management since dated the 1st February 2004. She has satisfied the management with her work, conduct and service.

The establishment undertake multiple functions to the public as enshrined in Industrial Disputes Act, 1947 (14 of 1947). Therefore, she is entitled to get the protection under the Industrial Disputes Act, 1947. The second party was paid her wages by the first party-management on monthly basis. The second party worked since the 1st February 2004 and her services was for continuous period as per the Industrial Disputes Act, 1947. The first party on dated the 24th June 2006 refused her employment and asked her not to come for work henceforth. The service of the second party was terminated by the first party-management on dated the 24th June 2006 without observing the procedure for retrenchment as enumerated in the Industrial Disputes Act, 1947. Neither the second party was served with one month notice nor was offered wages for one month in lieu of notice. She was also not paid retrenchment compensation. So, her termination by the first party-management is illegal and void *ab initio*. The first party-management did not adopt the principles of "Last in first out" while refusing her employment.

3. Further it is alleged in the claim statement that the first party did not pay head on her prayer. On dated the 21st January 2007, the Secretary, JRIT, Jharsuguda called the second party to the office and obtained her signature in a voucher slip and handed over her an A/c. Payee Cheque bearing No. 121556, dated the 19th January 2007 amounting to Rs. 30,300 (Rupees thirty thousand and three hundred only) drawn on Punjab National Bank, Sambalpur Branch, Sambalpur in lieu of her unpaid wages.

The second party filed one application before the District Labour Officer, Sambalpur and the first party appeared before him. This dispute could not be conciliated by the District Labour Officer, Sambalpur. The second party claims that she is leading a miserable life without getting any source of income. The establishment of the management is very vast and also profitable one and the management is engaging other workmen till today.

4. So, the second party made a prayer on the following grounds :—

- (a) Refusal of service by the management with effect from dated the 24th June 2006 be declared as illegal and void *ab initio*.
- (b) Kumari Dalia Sarangi the second party-workman may be reinstated in her job
- (c) The back wages from the date of illegal termination of service, i.e. the 24th June 2006 till the date of order of this Court be awarded in favour of the second party-workman.
- (d) In other relief such as cost of the case and soct for mental agony, harassment, anxiety, sufferings, etc.

5. The management appeared and filed parawise comments of statement of claim.

Kumari Dalia Sarangi was engaged on daily wage basis on dated the 1st February 2004 under the then Special Planning Authority, Jharsuguda and now Jharsuguda Regional Improvement Trust, Jharsuguda. As per the decision of the Trust Board the engagement of Kumari Dalia Sarangi has been refused with immediate effect after payment of arrear dues. The words like services and employment as used by Kumari Dalia Sarangi is improper and unjustified. It is termination of temporary engagement as per the decision of the Trust Board of Jharsuguda Regional Improvement Trust, Jharsuguda. Such engagement was made by the then officer *suo motu* without approval of the Trust Board while there S.P.A. Committee or Director of Town Planning, Orissa, Bhubaneswar. In the functioning pattern of Jharsuguda Regional Improvement Trust, the Trust Board is in the apex with Chairman as its head. So, how the Secretary becomes employer ? The C.C.R. of the above daily wage workers has not been maintained in the office of Jharsuguda Regional Improvement Trust.

Jharsuguda Regional Improvement Trust, Jharsuguda has been constituted as per the provision of Orissa Town Planning and Improvement Trust Act, 1956 and Rules thereon. It is a statutory body guided by the State Government Rules and Regulations. But it is not a State Government establishment as claimed by the second party-workman Kumari Dalia Sarangi and other interpretation by her are improper. The second party Kumari Dalia Sarangi was working as a daily wages basis. She has been paid her dues of Rs. 30,300 from the 1st March 2004 to the 6th June 2006, i.e. date in which decision was taken by the Trust. The second party was engaged on daily wage basis since the 1st February 2004 to the 6th June 2006. As per Rules only working days are counted for payment to Kumari Sarangi (the second party). There are adequate number of breaks in engagement and the claim of continuous service by Kumari Sarangi is unjustified. As per the decision of the Trust Board meeting her engagement has been refused with effect from the 6th June 2006. The arrear wages has already been paid. As alleged Kumari Dalia Sarangi was

engaged on daily wage basis since the 1st February 2004 by then S.P.A., Jharsuguda. As per Trust Board meeting held on the 6th June 2006, the Trust Board did not appreciate the manner of above engagement and resolved to discontinue the service of Kumari Dalia Sarangi with immediate effect after payment of arrear dues. So there is termination of temporary engagement and hence the claim of the retrenchment, retrenchment compensation or one month notice does not arise. As she was the only daily wages worker attached to the office of Jharsuguda Regional Improvement Trust, the question of "Last in first out" does not arise. So the claims of Kumari Sarangi are vague and illegal. The Secretary has acted as per the decision of the Trust Board of Jharsuguda Regional Improvement Trust, Jharsuguda. The management has not engaged any other worker till date. So such claim is false. As alleged from the case of the management there is no regular employees of the Jharsuguda Regional Improvement Trust, Jharsuguda. The office of the Jharsuguda Regional Improvement Trust has been managed by the Officer and Staff of Town Planning Unit, Jharsuguda in addition of their own duties. The Collector, Jharsuguda was functioning as a Vice-Chairman of Jharsuguda Regional Improvement Trust. It is a statutory body guided by the Government Rules, Regulations and Provisions of O.T.P. and I.T. Act 1956. Hence no further engagement has been given in Jharsuguda Regional Improvement Trust. So the claims of Kumari Dalia Sarangi are completely false. Hence the management made a prayer the claims of Kumari Dalia Sarangi are false and baseless which is liable for rejection.

6. The second party-workman filed rejoinder stating that she was engaged on the basis of daily wages with effect from the 1st February 2004 and on monthly basis under the then Special Planning Authority, Jharsuguda. It is false to say that the engagement of Kumari Dalia Sarangi, the second party-workman refused after payment of arrear dues. She denied that she was a temporary employee in the management. She had been in continuous service till the first party illegally terminated her from service on dated the 24th June 2006. This case is misconceived as per law. She was rendering service in the management establishment for a continuous period. The first party cannot act arbitrarily and illegally without following the procedure. The first party has not observed the principles of "Last in first out" while refusing the service of the second party.

As alleged the second party-workman is still remaining unemployed under vicious circle of poverty without any source of income. Therefore she prayed for her reinstatement in service with back wages.

7. Out of the aforesaid pleadings of the parties, the following issues have been framed for adjudication of this case :

ISSUES

- (i) "Whether the termination of services of Kumari Dalia Sarangi, Daily Wages Worker by way of refusal of employment with effect from the 24th February 2006 by the management of Jharsuguda Regional Improvement Trust, Jharsuguda is legal and /or justified ?
- (ii) If not, what relief the workman entitled to ?"

8. Both the parties have filed their documents in support of their own case.

9. On behalf of the first party-management, the management has examined only one witness, M.W. 1 Raj Kishore Sahu, working as Planning Member of Rourkela Development Authority as well as taken over additional charge of the post of Secretary, Jharsuguda Regional Improvement Trust on the 26th June 2010.

On behalf of the second party-management, two witnesses have been examined. W.W. 1 Kumari Dalia Sarangi, & the second party-workman. W.W. 2 Sushil Gardia, retired employee of Town Planning, Sambalpur.

FINDINGS

10. *Issue No. 1* :—The second party-workman Kumari Dalia Sarangi was working in the first party-management. Admittedly the first party-management is a State Government Establishment, an Industry as on shined in the Industrial Disputes Act, 1947 (The I. D. Act, 1947). The second party-workman started her work since the 1st February 2004. She claims that her services were of continuous service as per industrial Dispute Act, 1947. Admittedly she was terminated from her job on the 24th June 2004. The second party-workman further claims that she was terminated by the first party-management on the aforesaid date, i.e. dated the 24th June 2006 without observing the procedure for retrenchment as enumerated in the I.D. Act, 1947. Neither she was served with one month notice nor was offered wages for one month in lieu of notice. She was not paid retrenchment compensation. So, her termination from service by the first party-management amounts to illegal retrenchment as the workman claims. It is an admitted fact that on the 21st January 2007, the Secretary, Jharsuguda Regional Improvement Trust, Jharsuguda handed over one A/c. Payee Cheque bearing No. 121556, dated the 19th January 2007 amounting to Rs. 30,300 only drawn on Punjab National Bank, Sambalpur Branch, Sambalpur in lieu of her unpaid wages.

11. As per the case of the first party-management, the second party-workman was engaged on daily wages basis under the then Special Planning Authority, Jharsuguda now it is Jharsuguda Regional Improvement Trust, Jharsuguda. As per the decision of the Trust Board, the engagement of the second party has been refused with immediate effect after payment of arrear dues. So the second party was terminated by the decision of the Trust Board. The engagement of the second party was made by the then officer *suo motu* without approval of the Trust Board of Jharsuguda Regional Improvement Trust, Jharsuguda while S.P.A. Committee or Director of Town Planning, Orissa, Bhubaneswar. The functioning pattern of Jharsuguda Regional Improvement Trust, the Trust Board is in the apex with Chairman as its Head. So the management claims that the Secretary is not the proper authority to engage the second party-workman Kumari Dalia Sarangi. So her engagement is improper and illegal.

12. At the stage the evidence led by both the parties along with their documents should be scrutinised in a careful manner. The second party-workman has filed documents and relied on those documents. Ext. W. 1 is the xerox copy Agenda notice, dated the 6th June 2006. It appears from this Agenda note item No. 6 (Ext. W. 1) regarding sanction of minimum post for Jharsuguda Regional Improvement Trust, Jharsuguda. As alleged there is no regular staff under this office nor any posts have been sanctioned by the Government. Day-to-day activities of this office have been

managed by the officer in-charge and the staff of Town Planning Office. It is also apparent from Item No. 7 (Ext. W. 1) that engagement of person on D.L.P. contractual basis—"one lady has been engaged on Daily Wage Basis on labour contract. She has been paid wages from the 1st February 2004 to the 28th February 2004 considering the necessity of manpower. The Secretary may be allowed for continuation of such engagement either with break of 45 days engagement on *post facto* basis and or on contractual basis with a fixed remuneration in order to engage day-to-day official activities as there was no other staff at present." Ext. W.2 is the copy of Voucher, dated the 28th February 2004 disclosed that she was paid for the period from the 3rd February 2004 to the 28th February 2004 total 23/29 days at Rs. 50.00 per day. The second party-workman also put his signature on the 28th February 2004 on Ext. W. 2. Ext. W. 3 is the copy of Cash Book dated the 28th February 2004. Ext. W. 4 is the copy of proceeding, dated the 6th June 2006 which disclosed regarding the proceeding of the First Trust Board Meeting of Jharsuguda Regional Improvement Trust held on the 6th June 2006 at 10-00 A.M. in the D.R.D.A. Hall, Jharsuguda presided over by the Hon'ble Minister, Urban Development, Orissa, Bhubaneswar-*cum*-Chairman, Jharsuguda Regional Improvement Trust Board. In the said Trust Board meeting the Chairman, Hon'ble Minister of the Urban Development, Orissa, Bhubaneswar, Vice-Chairman, Collector and District Magistrate, Jharsuguda and Vice-Chairman, Jharsuguda Regional Improvement Trust, M.L.A., Jharsuguda, *ex officio* Members and Specially Invitee were present. As per the Item No. 7 of the Trust Board Meeting in Ext. W. 4 the engagement of person of D.L.R./Contractual basis was one of the item for discussion. As per the Item No. 7 the Trust Board did not appreciate the manner in which one lady was engaged on daily wage basis on labour contract. However, the Secretary, Jharsuguda Regional Improvement Trust was asked to discontinue her service with immediate effect after payment of arrear dues. Ext. W. 5 is the copy of application, dated the 5th September 2006. Ext W. 5 discloses that the second party-workman Kumari Dalia Sarangi submitted her application addressing to the Hon'ble Minister, Urban Development, Public Enterprises, Orissa, Bhubaneswar and requested him to engage her in the said office. Ext. W. 6 is the xerox copy of A/c. Payee Cheque which discloses that the alleged Cheque of Rs. 30,300 issued in favour of the workman towards her wages. Ext. W. 7 is the copy of Cash Book for the year 1996-1997 to the 10th May 2006. Ext. W. 8 is the copy of application, dated the 24th December 2003. It appears from Ext. W. 8 that "the second party-workman Kumari Dalia Sarangi has filed an application requesting the S.P.A., Jharsuguda, Town Planning Unit, Sambalpur to engage her on same jobs in his office on daily wages basis showing her financial crisis. Due to her financial crisis the Secretary engaged her on the basis of daily wages and gave his endorsement in Ext. W.8. She was engaged as D.L.R. basis of Rs. 50 per day. The Secretary of S.P.A., Jharsuguda has also mentioned in Ext. W. 8 that there was no availability of Class IV post in the said Department. Ext. W. 9 is the copy of deed of agreement in between the Chairman, Jharsuguda Regional Improvement Trust, Jharsuguda and M/s Spatial Planning and Analysis Research Centre (SPARC) Pvt. Ltd., a registered firm under Companies Act, 1956. Ext. W. 10 is the copy of hand receipt. Ext. W. 11 is the copy of Cash Book foil. Ext. W. 12 is the copy of Minimum Wages Notification, dated the 29th December 2002. Ext. W. 13 is the copy of Notification, dated the 27th November 2003 of Labour Commissioner, Orissa. Ext. W. 14 is the copy of Notification, dated the 14th February 2006 of Labour Commissioner, Orissa. These three documents, i.e. Ext. W. 12 to Ext. W. 14 are marked with objection by the first party-management.

13. As alleged from the evidence on record and documents the second party-workman Kumari Dalia Sarangi has filed an application, before the S.P.A., Jharsuguda, Town Planning Unit, Sambalpur for her engagement on daily wage basis. Accordingly as there was no post for Class IV employee, on her application dated the 24th December 2003 (Ext. W. 8) the Secretary of the S.P.A., Jharsuguda has engaged her on daily wage basis. The evidence led by the second party-workman Kumari Dalia Sarangi leads to the fact that she started her work since the 1st February 2004 for a continuous period till the date of her retrenchment, i.e. the 24th June 2006. So she claims that she was terminated by the first party-management on 24th June 2006 without observing the procedures for retrenchment as enumerated in the Industrial Disputes Act, 1947. So as per her evidence the management terminated her without following the procedure of Section 25-F of the I. D. Act. However Kumari Dalia Sarangi the second party-workman has filed some documents Ext. W. 1 to Ext. W. 11 are admitted by the first party-management. Here the question arises whether the termination of the second party-workman by the first party-management is improper and illegal. Admittedly as per Ext. W. 4 the proceeding, dated the 6th June 2006 the engagement of the second party-workman on daily wage basis on labour contract is improper and illegal which was decided by the first party Trust Board Meeting of Jharsuguda Regional Improvement Trust held on the 6th June 2006 in the D.R.D.A. Hall presided over by the Hon'ble Minister, Urban Development, Orissa, Bhubaneswar-cum-Chairman, Jharsuguda Regional Improvement Trust Board.

14. The learned advocate on behalf of the second party-workman submitted that as the second party-workman was a good and sincere worker and discharged her duties for more than 240 days for the management, the retrenchment is illegal and void *ab initio*. The management terminated her from the job without complying the procedure under the I. D. Act and without any compensation. Admittedly, the Trust Board Meeting of Jharsuguda Regional Improvement Trust held on the 6th June 2006 heading by Hon'ble Minister, Urban Development, Orissa, Bhubaneswar-cum-Chairman, Jharsuguda Regional Improvement Trust Board along with the other dignitaries have decided that the engagement of second party-workman Kumari Dalia Sarangi is illegal and not proper. So they decided and directed the management to retrench her from the job with immediate effect after payment of arrear wages/dues. The evidence led by W.W. 2 who was the retired employees of Town Planning, Sambalpur discloses that the second party-workman was working as a Peon in the office of the Special Planning Authority, Jharsuguda but she was posted at Sambalpur office where the work of S.P.A. was functioning in the Town Planning Office, Sambalpur. W.W. 2 complained regarding the work of the second party-workman Kumari Dalia Sarangi. However, his evidence only based on his knowledge. In order to establish the case of the workman as well as the management, the workman herself has filed some documents. So the workman cannot deny regarding the decision of the management which was taken up by the Trust Board, Jharsuguda Regional Improvement Trust as per the Ext. W. 4. The contents of Ext. W. 8 is also corporated to the decision taken by the Trust Board of the management which is categorically and clearly explained in Ext. W. 4, i.e. copy of proceeding, dated the 6th June 2006. The learned advocate on behalf of the management simply submitted that there are some procedures for appointment in the Government job which is supported by some decision taken by the Hon'ble Court.

15. On behalf of the management Raj Kishore Sahu M.W. 1 is examined. He has taken over additional charge of the post of Secretary, Jharsuguda Regional Improvement Trust on the 26th June 2010 as per Government Notification over and above his original posting as Planning Member of Rourkela Development Authority. He is also working an additional charge of this office of Town Planning Unit, Sundargarh, Sambalpur, Jharsuguda and Planning Member of Sambalpur Development Authority. He has stated in his evidence basing on the documents of the management office. He relied on the documents. Ext. M. 1 is the attested copy of Orissa Town Planning Act, 1956 from Section 1 to 33. Ext. M. 2 is the attested copy of Orissa Town Planning Rules, 1975 from Rule 1 to 30. Ext. W. 3 is the attested copy of D.O. letter No. 85 (110), dated the 10th May 1988 of Chief Secretary, Orissa regarding recruitment through the Employment Exchange. Ext. M. 3 further disclosed "It is, in any case, imperative that all appointing authorities under government as well as the Quasi-Government bodies, local and statutory bodies scrupulously follow the Government directive to make recruitment only through the Employment Exchanges to fill up the vacancies, whether it is temporary or leave vacancy or a vacancy in posts of seasonal nature. The practice of *ad hoc* appointment must totally be stopped hence forward. Ext. M. 4 is the attested copy of Government of Orissa, Finance Department letter No. L./815/F, dated the 12th April 1993. Ext. M. 5 is the attested copy of Government of Orissa, Finance Department O.M. No. 31954/F, dated the 14th March 2001.

16. The learned Advocate on behalf of the second party-workman submitted that the second party-workman was in continuous service and there is no allegation against the workman. She has sincerely performed her work. The learned Advocate further submitted that the second party-workman never availed leave during her service period. He has further submitted that as the management has not paid minimum wages to the workman as per Revised Scale under Minimum Wages, she is entitled to get Rs. 52.50 paise and Rs. 55 per day which has not been paid to the workman. The learned advocate on behalf of the second party-workman further admitted that basing on the application of the second party-workman, the Secretary of the management engaged her after verifying the qualification certificate, employment card. There is no employment card filed by the second party-workman. No where it is in the record that basing on the Employment Exchange clearance the Secretary engaged the second party-workman in the job. The learned Advocate on behalf of the workman also submitted that the management is utilising the private unit by engaging the private persons in the said unit. The second party-workman relied on the reported decision—AIR 1979 SUPREME COURT 75—Constitution of India, Art. 136—Jurisdiction Award of Labour Court—When open to interference—Termination of services of workmen illegal—Workmen, if entitled to full back wages. AIR—1984 SUPREME COURT 500—Industrial Disputes Act, (14 of 1947), Sections 25-F, 2 (00)—Retrenchment—Notice—Termination of service on account of recession and reduction in Volume of work of Company—It amounts to retrenchment—Pre-requisites for valid retrenchment not complied with—Retrenchment bringing about termination of service would be *ab initio* void. AIR—1976 SUPREME COURT 1111—The State Bank of India *vrs.* Shri N. Sundara Money—"Termination for any reason whatsoever in Section 2(00) are the key words. Whatever the reason, every termination spells retrenchment."

17. The management relied on the reported decision—2009 (Suppl-I) CLR. Page 561—Constitution of India 1950 Articles 14 and 16—Appointment to any public post is to be made by advertising the vacancy and any appointment made without doing so violates the mandates of the Articles as it deprives the candidates who are eligible for the post, from being considered—No person can be appointed even on temporary or *ad hoc* post without inviting applications from all eligible candidates and if any such appointment has been made or appointment has been offered, merely inviting names from the Employment Exchange that will not meet the requirements of the Articles.

Services of the petitioner as a Class IV employee brought to an end on the ground of that he was illegally appointed. Any appointment made without advertising the vacancy cannot be held to be in conformity with the mandate of Articles 14 and 16 of the Constitution of India and is a nullity.

The management relied on the reported decision (2010) 1 Supreme Court cases (L & S) 545—(2009) 1 Supreme Court Cases 327—"It is true that the earlier view of the Hon'ble Supreme Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages will ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, the Hon'ble Supreme Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. An order of retrenchment passed in violation of Section 25-F although may be set-aside but an award of reinstatement should not be automatically passed. The award of reinstatement with full back wages in a case where the workman particularly a daily wager, who has completed 240 days of work in a year preceding the date of termination has not been found to be proper. Compensation instead of reinstatement has been held to meet the ends of justice.

18. While awarding compensation, a host of factors, *inter alia*, manner and method of appointment, nature of employment and length of service are relevant. Each case will depend upon its own facts and circumstances. In the case in hand the second party-workman was appointed by the Secretary on daily wage basis without any recruitment. The second party-workman raised the dispute regarding illegal termination of her service in violation of Section 25-F of the Industrial Disputes Act, 1947. She claims reinstatement with continuity of service and full back wages. She further claims that she was terminated by the management violating the Provisions of Section 25-F of the I.D. Act, 1947 without giving her notice. Admittedly the second party-workman received the A/c. payee Cheque of Rs. 30,300 on dated the 19th January 2007 bearing No. 121556 from the management. In view of the aforesaid decision taken by the Trust Board of Jharsuguda Regional Improvement Trust, the appointment of the second party-workman is illegal and improper. Accordingly she was retrenched from her job with effect from the 24th June 2006 by the management. The workman admitted that it is a Government wings. It is apparent from the record on evidence that the appointment of the second party-workman has not been made in terms of prescribed statement, rules and procedures. Simply basing on the application Ext. W. 8, dated the 24th December 2003 the Secretary of the management engaged her on daily wages on temporary basis. As per the settled law "It is now well settled by reason of a catena of decisions of the Hon'ble Supreme Court

that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. Nor the said purpose, several factors are required to be taken into consideration, one of them being as to whether such an appointment had been made in terms of statutory rules.

19. It is the settled principles of law that indisputably the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor were required to be taken into consideration, such as the nature of appointment, the period of appointment, the availability of the job, etc., should weigh with the Court for determination of such an issue.

In the instant case the documents filed by the second party-workman disclose that the appointment of the second party Kumari Dalia Sarangi is illegal and improper. By the time of appointment there was no sanction post for the Class IV employees. So, she was engaged by the Secretary as daily wage worker. As alleged from the evidence on record there was no existed post for Class IV employee. Moreover as per the above decision by the Hon'ble Supreme Court". A statutory authority is obligated to make recruitments only upon compliance with the equality clause contained in the Articles 14 and 16 of the Constitution of India. Any appointment in violation of the said Constitutional Scheme as also the statutory recruitment rules, if any, would be void.

In the present case, the appointment/engagement of Kumari Dalia Sarangi, the second party-workman was not based upon any Constitutional Scheme or also not any statutory recruitment rules.

20. It is the settled principle of law that the terms and conditions of employment of the employees are governed by a statutory rules. No appointment can be made by a local authority without following the provisions of the recruitment rules. Any appointment made in violation of the said rules as also the constitutional scheme of equality as contained in articles 14 and 16 of the Constitution of India would be nullity. Due to some exigency of work, although recruitment on daily wages or an *ad hoc* basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any constituting and statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his / her services were liable to be regularised. So in view of such facts and circumstances it can be held that the engagement of Kumari Dalia Sarangi the second party-workman is illegal and improper and she is not entitled to get any relief as per her claim. Hence the termination of services of Kumari Dalia Sarangi, daily wages worker by way of refusal of employment with effect from 24th February 2006 by the management of Jharsuguda Regional Improvement Trust, Jharsuguda is legal and justified. Accordingly, the issue No. (i) is answered.

21. *Issue No. (ii)*—In view of the above facts and circumstances, the second party-workman is not entitled to get any relief in this case. Accordingly, issue No. (ii) is answered. Hence the following award :

A W A R D

The reference is answered on contest but in the circumstances without any cost. The termination of services of Kumari Dalia Sarangi daily wages worker by way of refusal of employment with effect from the 24th February 2006 by the management of Jharsuguda Regional Improvement Trust, Jharsuguda is legal and justified and the workman is not entitled to get any relief in this case.

Dictated and corrected by me.

SAROJINI MAHAPATRA
31-07-2010
Presiding Officer
Labour Court
Sambalpur

SAROJINI MAHAPATRA
31-07-2010
Presiding Officer
Labour Court
Sambalpur

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