

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

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No. 413 CUTTACK, WEDNESDAY, FEBRUARY 23, 2011 / FALGUNA 4, 1932

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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 15th February 2011

No. 1646—li/1(BH)-129/1993-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd September 2010 in I. D. Case No. 399 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of O.F.D.C. Ltd., Dukura and its Workman Shri Harish Chandra Behera was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 399 OF 1995

The 3rd September 2010

#### *Present :*

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

#### *Between :*

The Management of O.F.D.C. Ltd., .. First -party—Management  
Dukura.

And

Its workman .. Second-party—Workman  
Shri Harish Chandra Behera

#### *Appearances :*

Shri R. K. Ghosh, S.D.M. .. For the First-party—Management

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Shri H. C. Behera .. 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. 15720–li/1-(BH)-129/1993-L.E., Dt. 4-11-1995 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Harish Chandra Behera, Watcher with effect from 23-1-1986 by the management of Orissa Forest Development Corporation Ltd., Dukura is legal and/or justified ? If not, to what relief Shri Behera is entitled ?”

3. The case of the workman in brief is that he was initially appointed as a Watcher under O.F.D.C. Ltd., Dukura in Mayurbhanj district of Orissa on daily wage basis at the rate of Rs. 210 per month with effect from Dt. 1-7-1984 and subsequently he was drawing Rs. 300 per month. But he was illegally terminated from service for such long continuous three years of service under the management without following the principle of natural justice and provisions of the Industrial Disputes Act and Rules made thereunder. Therefore the workman raised an industrial dispute before the labour authority and when the conciliation failed, a reference was 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 partly admitting and partly denying the plea of the workman. According to the management, the workman was working as a Plantation Watcher of Dukura Subdivision under Ex-S.F.D.C. with effect from Dt. 1-7-1984 but he left the job according to his sweet will with effect from Dt. 23-1-1986. He was a daily rated casual worker and was getting Rs. 7 per day. After abandonment of his service, the workman had never approached the management and has also not raised any dispute for his alleged termination of service. During October 1990, Ex-S.F.D.C. was merged with O.F.D.C. and renamed as Orissa Forest Development Corporation Ltd. By influenced by some litigant people, the workman has raised this industrial dispute and it is not maintainable. Due to ban order of felling of timber and transfer of bamboo operation to R.M.P., the workload of the management has been reduced considerably and the management is going to retrench the employees due to dirth of work. So in this background the management has prayed for answering the reference in negative.

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

## ISSUES

- (i) “Whether the termination of services of Shri Harish Chandra Behera, Watcher with effect from Dt. 23-1-1986 by the management of Orissa Forest Development Corporation Ltd., Dukura is legal and /or justified.?”
- (ii) If not, to what relief Shri Behera is entitled ?”

6. In order to substantiate his plea the workman has examined himself as W.W. 1. Similarly the management has examined two witnesses altogether out of whom M.W. 1 is an U. D. Assistant of the management whereas M.W. 2 is the Deputy S.D.M. of the management. Neither of the parties have proved any document on their behalf.

## FINDINGS

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

The W.W. 1 deposes that he joined as Plantation Watcher at Dukura on Dt. 1-7-1984 and was getting Rs. 210 per month at the initial stage and it was subsequently increased to Rs. 300 per month. On Dt. 22-1-1986 he was refused employment by the Range Officer. No enquiry was initiated against him nor he was charge-sheeted. Before refusing employment he was not given any notice or notice pay and retrenchment compensation for which he has claimed for his reinstatement in service with full back wages. On the other hand, M.W. 1 deposes that S.F.D.C. was not under the present management at the relevant time when the workman was working. The workman has voluntarily abandoned his service with effect from Dt. 23-1-1986 and was not discharged by the present management. The present management is no way responsible for the engagement and disengagement of the workman. The plantation section in which the workman was working was transferred to the control of Government of Orissa before merger of S.F.D.C. with the present management. M.W. 2 has also admitted that the workman was working as Watcher under the management on daily wage basis but he voluntarily abandoned his service with effect from Dt. 23-1-1986.

8. So in view of the above evidence of the parties in the case record, it has been argued by the workman that without following the mandatory provisions of the Industrial Disputes Act his service was terminated by the then S.F.D.C. and when the present management is the successor in interest of the previous management, he is liable to be reinstated in service with full back wages. On the other hand, it has been argued by the management that the workman was never working under the present management for which the management is not liable to be reinstated the workman in service with full back wages. The workman had also not approached for his re-engagement in service at any point of time. According to the settled principle of law as successor in interest of the management is liable for termination of service of the workman. In the instant case, even if the workman has not worked under the management the present management is the successor in interest of the previous management, S.F.D.C. and therefore any illegality committed by such management the present management is liable. The plea of the management that the workman had voluntarily abandoned his service is no way substantiated at all. From the evidence of the workman it shows that he had worked for more than 240 days in twelve calendar months preceding to the date of termination. So according to the settled principle of law when the workman claimed and deposed that he had worked for 240 days which the statutory requirement, burden of proof shift to the employer to prove that he did not complete 240 days of service in requisite period. On the other hand, it is an admitted fact that the workman was continuing in service for the period from Dt. 1-7-1984 to Dt. 22-1-1986. According to the settled principle of law when a workman fails to report for duty the management cannot presume that the workman has left the job despite being called upon to report failing which the name will be removed from the roll. The previous management is silent when the workman remained absent from duty. The present management is also duty bound to establish under what circumstance the workman remained absent and what step has been taken by the previous management. However on careful consideration of all the materials available in the case record I am of the opinion that the mandatory provisions of Section 25-F of the Industrial Disputes Act has not been followed in the instant case while terminating the services of

the workman on the ground of voluntarily abandonment of service. Therefore I came to the finding that the termination of services of the workman with effect from Dt. 23-1-1986 by the management is neither legal nor justified.

9. Regarding reinstatement in service with back wages, it is 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, one of them being as to whether such appointment had been made in terms of statutory rule. In the instant case no document has been proved regarding the appointment of the workman Watcher. However on consideration of all the materials available in the case record and the length of service rendered by the workman instead of reinstate him in service with back wages, a lump sum compensation will meet the ends of justice and in my view a sum of Rs. 10,000 will meet the ends of justice as compensation in lieu of reinstatement. Both the issues are answered accordingly.

10. Hence Ordered :

That the termination of services of Shri Harish Chandra Behera, Watcher with effect from Dt. 23-1-1986 by the management of Orissa Forest Development Corporation Ltd., Dukura is illegal and unjustified. The workman Shri Behera is entitled to get a lump sum compensation of Rs. 10,000 (Rupees ten thousand) only in lieu of reinstatement. 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 reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH  
3-9-2010  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. DASH  
3-9-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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