

# The Orissa Gazette



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**LABOUR & EMPLOYMENT DEPARTMENT**

**NOTIFICATION**

The 21st March 2011

No. 2735—li-(BH)-90/1996-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd January 2011 in I. D. Case No. 136/1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s. IPISTEEL Ltd., Gundichapada, Dhenkanal and its workman Shri Gangadhar Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 136 of 1996

The 22nd January 2011

Present :

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

Between :

The Management of M/s. IPISTEEL Ltd., . . . First-party Management  
Gundichapada, Dhenkanal.

And

Its Workman Shri Gangadhar Sahoo, . . . Second-party Workman  
S/o. A. L. O., Dhenkanal.

Appearances :

S. T. Ullaha, Advocate . . . For the First-party Management  
Shri S. B. Mohanty, Advocate . . . For the Second-party Workman  
Shri S. K. Das, Advocate  
Shri S. S. Mohapatra, Advocate

## 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. 10757—li/1(BH)-90/1996-L.E., dated the 22nd August 1996 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether termination of services of Shri Gangadhar Sahoo, Charging Supervisor with effect from the 15th May 1993 by the management of M/s. IPISTEEL Ltd., Gundichapada, Dhenkanal is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?"

3. The case of the workman in brief is that the establishment of the management is a steel manufacturing unit of joint sector and is also growing and prospering unit functioning at Dhenkanal. It is an unique manufacturing undertaking having financial stability and earning high profit. The workman being a technical and high skilled experienced was appointed by the management in production wing of the factory of the management and subsequently confirmed in his service. The workman of the industry to putforth their grievances formed a registered Trade Union wherein the workman was an active member. The management has an eye on him for which they tried to suppress the Union leaders by hook or crook. While the workman was working under the management, all of a sudden on the 1st October 1992 the management declared lockout in the factory to suppress the workers for their Trade Union movement and submission of their grievances. The workman having no alternative left his working place and went to his native place due to such lockout. After lapse of some months, the workman received information from the management to join in his duty as the lockout has been lifted. The workman immediately reported in his duty but the management refused his employment on the plea that his service has been terminated. When he demanded the order of termination, no such order was given to him. After repeated request, the management issued a letter on the 30th July 1993 giving false reason that the name of the workman has been struck off from the roll of the management with effect from the 15th May 1993 as he did not attend his duty. The striking off the name of the workman from the roll is a clear violation of the Certified Standing Order which is prevailing in the establishment of the management and also the principle of natural justice. The management had never granted any opportunity to the workman and has also not paid any compensation amount or dues before striking off his name from the roll and it is also a clear violation of the Industrial Disputes Act. So in this background the workman has raised an industrial dispute before the labour authority and when the conciliation failed, the matter was referred to the Government and this reference has been received 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 workmen of S. M. S. Division went on a wildcat strike with effect from the 30th September 1992 without any ostensible cause and without any kind of prior intimation to the management. Officers were threatened and abused and there was an apprehension of violence in the plant. So the management was forced to declare a lockout due to sudden unjustified strike. The said lockout was lifted on the 2nd February 1993 with due notice to all concerned. The matter was also published in daily news paper. But still then the workman did not join in his duty. The letters dated the 5th February 1993 and the 20th February 1993 were

issued to the workman in his home address directing him to come and join in his duty, but to no effect. The brother of the workman wrote a letter on the 4th March 1993 to the management informing that the whereabouts of the workman was not known to him. As per registered letter dated the 28th April 1993 the management informed the workman that if he did not join by the 5th May 1993 then it would be presumed that he was no more interested in serving under the management and that he had abandoned service voluntarily. When the workman has abandoned his service voluntarily, his name was struck off from the muster roll. So in this background the management has prayed for answering the reference in negative in its favour.

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

#### ISSUES

- (i) "Whether termination of services of Shri Gangadhar Sahoo, Charging Supervisor with effect from the 15th May 1993 by the management of M/s. IPISTEEL Ltd., Gundichapada, Dhenkanal is legal and or justified ?
- (ii) If not, what relief Shri Sahoo is entitled to ?"

6. In order to substantiate his plea, the workman has examined himself as W. W. 1 and proved the documents marked as Exts. 1 to 4. Neither management has adduced any evidence nor proved any document on its behalf.

#### FINDINGS

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

According to W. W. 1 he initially appointed by the management on the 1st March 1985 as a Furnace Helper and subsequently promoted and confirmed in the post of Charging Supervisor in the year 1989. Due to demand of Bonus and other genuine grievances by the employees, the management declared lockout on the 1st October 1992. The lockout lifting news was published in the daily newspaper 'The Samaj' on the 29th March 1993 and accordingly the workman went to management for his joining in his duty, but he was not allowed to enter inside the factory premises. On the 30th July 1993 the management issued a letter by giving false reason that his name has been struck off from the roll retrospectively from the 15th May 1993. No proceeding was initiated against the workman for alleged no-attendance of duty nor any enquiry ever been conducted against him and no opportunity of hearing also granted by the management which violated the principles of natural justice. The management has admitted the workman to be his workman and about lockout and lifting of lockout. But according to the plea of the management is that the workman has not attended his duty after lifting of lockout in spite of due intimation to him, his name was struck off from the muster roll on the ground of voluntary abandonment of service. But such plea has not been substantiated by any evidence either oral or documentary as mentioned earlier. On the other hand, Ext. 1 discloses about striking off his name from the roll of the Company with effect from the 15th May 1993 and it was intimated to the workman on the 30th July 1993. Perused the other documents marked as exhibits on behalf of the workman. In the cross-examination W.W. 1 deposes that he was not allowed to enter into the factory premises on the 1st April 1993 by the security staff. The management has struck off the name of the workman from the roll on the sole ground of abandonment of his service voluntarily. According to the settled principle of law as reported in 2001 LLR 54 Supreme Court of India that even 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

his name will be removed from the rolls. While terminating the service of the workman on the ground of voluntary abandonment of service, the mandatory provisions of Section 25-F of the Industrial Disputes Act has also not been followed. The management has not able to establish his plea at all also. So on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the termination of the workman with effect from the 15th May 1993 by the management on the ground of voluntary abandonment of service is neither legal nor justified. The workman is entitled to be reinstated in service.

8. Regarding back wages, according to the settled principle of law 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. Further in view of the authority reported in 2004 (Supp.) OLR 694 the principle of No Work No Pay should be followed 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 back wages is not justified. However, on careful consideration of all the materials available in the case record, I am of the opinion that instead of granting any back wages to the workman, a lump sum amount of Rs. 50,000 (rupees fifty thousand) only as compensation will meet the ends of justice in this case.

#### 9. Hence Ordered

That the termination of services of Shri Gangadhar Sahoo, Charging Supervisor with effect from the 15th May 1993 by the management of M/s. IPISTEEL Ltd., Gundichapada, Dhenkanal is illegal and unjustified. The workman Shri Sahoo is entitled to be reinstated in service with a lump sum amount of Rs. 50,000 (rupees fifty 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 reference is answered accordingly.

Dictated and corrected by me.

S. K. Dash  
22-1-2011  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. Dash  
22-1-2011  
Presiding Officer  
Labour Court, Bhubaneswar

By order of the Governor

P. K. PANDA

Under-Secretary to Government

