

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 837 CUTTACK, FRIDAY, APRIL 8, 2011 / CHAITRA 18, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th March 2011

No. 3196—li/1-(B)-93/2004-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th January 2011 in I. D. Case No. 8/2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Orissa Forest Development Corporation Ltd., Bhubaneswar and their Workman Shri Jaladhar Parida, Ex-Watcher, Tangi Plantation Subdivision was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 8 of 2005

The 29th January 2011

Present :

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

Between :

The Management of M/s. Orissa Forest Development Corporation Ltd., Bhubaneswar. First-party Management

And

Their Workman Shri Jaladhar Parida, Ex-Watcher, Tangi Plantation Subdivision. Second-party Workman

Appearances :

Shri B. K. Pattnaik, A. L. O. For the First-party Management

Shri J. Parida 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. 1752—li/1(B)-93/2004-L.E., dated the 19th February 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the termination of services of Shri Jaladhar Parida, Watcher of Tangi Plantation Subdivision, Tangi by the Divisional Manager, O. F. D. C. Ltd., Bhubaneswar with effect from the 1st August 2001 is legal and/or justified ? If not, to what relief Shri Parida is entitled ?"

3. The case of the workman in brief is that he joined as Watcher under the management on the 1st November 1988. He was getting wages at the rate of Rs.10.00 per day except the Sundays. The management had served a show cause notice to him as to why he should not be retrenched from the service. Thereafter the management terminated his service without any cause or notice and pay arbitrarily. However, the management had issued a cheque of Rs. 5,100 which was less as his juniors have received more than Rs. 9,000 by cheque. He continued in service till the 31st July 2001 and his service was terminated with effect from the 1st August 2001. So in this background the workman 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 from the Government and this I. D. Case has been initiated wherein the workman has prayed for his reinstatement in service with all his arrear dues.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the workman joined on daily wage basis under the management on the 1st November 1988 at the rate of Rs. 10.00 per day. The Corporation has already stopped regularisation of services of daily rated workers since 1991 due to surplus manpower as well as ban of felling trees of timber. As per circular issued by the head office, no staff has been engaged on daily wage basis after the 31st December 1986. Due to excess manpower the O. F. D. C. sustained loss. As per the decision of the Board of Directors, the precautionary measure has been taken for survive of the organisation and retrenched the 1,047 numbers of daily rated employees. The workman has paid his legal dues amounting to Rs. 5,100. So the workman is not entitled to get any benefit in this case.

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

ISSUES

- (i) "Whether termination of services of Shri Jaladhar Parida, Watcher of Tangi Plantation Subdivision, Tangi by the Divisional Manager, O. F. D. C. Ltd., Bhubaneswar with effect from the 1st August 2001 is legal and/or justified ?
- (ii) If not, to what relief Shri Parida is entitled ?"

6. In order to substantiate his case, the workman has examined two witnesses altogether

out of which the W. W. 1 is the workman himself and W. W. 2 is a retrenched employee of the management and proved documents marked as Exts. 1 to 3. Similarly the management has examined its Subdivisional Manager In-charge of Tangi as M. W. 1 and proved documents marked as Exts. A to L.

FINDINGS

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

W. W. 1 deposes that he joined in the management as daily wage labourer Watcher at the rate of Rs. 10.00 per day. But his service was terminated with effect from the 1st August 2001 without any reason. He has received a cheque of Rs. 5,100 as retrenchment benefit. In the cross-examination he has admitted that he has received a show cause notice from the management before retrenchment and accordingly he had submitted his show cause on the 13th July 2001 vide Ext. B. He also appeared for personal hearing on the 23rd July 2001 before the management but he had denied about the following of the provisions of law properly for his retrenchment from service. W. W. 2 deposes in support of the workman. According to him, the workman was working as a Watcher under the management from the 1st November 1988 to 31st July 2001 continuously which is about 13 years but only compensation for 90 days has been given to the workman. No permission has been obtained from the Government regarding termination of service of the workman. M. W. 1 deposes that in view of the decision of the Board of Directors an instruction was given to all General Managers and Divisional Managers to retrench all daily wage employees positively by 31st July 2001 following due procedures under the Industrial Disputes Act and accordingly the workman was retrenched from the service. No daily wage employees are continuing in service except one Dandapani Mall who is continuing in the service on the strength of the order of the Hon'ble Court passed in O. J. C. No. 9413/2001. Perused the documents marked as exhibits on behalf of both the parties.

8. As per the xerox copy of document Ext. A, a notice was issued to the workman regarding his retrenchment. Ext. B is the xerox copy of the reply to the show cause of the workman as mentioned earlier. Ext. G is the xerox copy of the Office Order No. 163, dated the 27th July 2001 regarding non-retention of the workman in the service and rejection of his representation. These documents clearly show that the Board of Directors in their 188th meeting held on the 26th June 2001 decided to retrench 1,047 numbers of daily wage employees designated as daily wages/consolidated/*ad hoc*/N. M. R. basis. Ext. H is the xerox copy of the retrenchment letter of the workman which discloses that notice pay for 30 days and compensation for 90 days has been given to the workman by way of cheque. The cheque was signed on the 28th July 2001 but it was received by the workman on the 15th August 2001 vide Ext. J. It has been argued by the workman that the provisions of the Industrial Disputes Act has not been followed while terminating the service by the management. Though he is entitled for three month's notice pay only 39 days notice pay was paid to him and compensation amount has been paid only for 90 days though he has completed 13 years of service starting from the 1st November 1988 to the 31st July 2001. When it is admitted that 1,047 employees were terminated from the service by the management, so the provisions of Section 25-N of the Industrial Disputes Act has not been followed which covers in Chapter V-B of the Industrial Disputes Act. Prior permission of the Government has also not been obtained at the time of termination of service of the workman. No clear evidence has been put forth by the management also. So in this background I am of the opinion that it is a fit case to follow the mandatory provisions of Section 25-N of the Industrial Disputes Act but the same was not followed by the management at

all. Hence the termination of service of the workman is beyond the principle of law as provided in the Industrial Disputes Act. So in this background on careful consideration of all the materials available in the case record as discussed above, I am inclined to hold that the termination of service of the workman by the management with effect from the 1st August 2001 is neither legal nor justified. The workman has prayed for reinstatement in service with his arrear dues which amounts to 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. In the instant case it is admitted by the management that one Dandapani Mall is continuing in service on the strength of the order of the Hon'ble Court as mentioned earlier. There is no clear evidence in support of the plea of the management that due to excess manpower the management sustained loss and as per precautionary measure the daily rated employees terminated and thereafter the condition is continuing as such. So in this background I am of the opinion that it is a fit case to reinstate the workman in service.

9. Regarding back wages, further according to the settled principle of law as reported in 2004 (Supp.) OLR 694 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 back wages a lump sum amount of Rs. 25,000 as compensation will meet the ends of justice in this case. Hence both the issues are answered accordingly.

10. Hence Ordered :

That the termination of services of Shri Jaladhar Parida, Watcher of Tangi Plantation Subdivision, Tangi by the Divisional Manager, O. F. D. C. Ltd., Bhubaneswar with effect from the 1st August 2001 is illegal and unjustified. The workman Shri Parida is entitled to be reinstated in service with a lump sum amount of Rs. 25,000 (Rupees twenty-five 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
29-1-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
29-1-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

P. K. PANDA

Under-Secretary to Government

