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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 30th March 2011

No. 3201—ID-7/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th January 2011 in Industrial Dispute Case No. 3/2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Kurunti Service Co-operative Society Ltd., At/P.O Kurunti P.S. Rajnagar, Dist. Kendrapara and its Workman Shri Bijaya Kumar Pradhan was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 3 OF 2010

Dated the 14th January 2010

Present :

Shri Raghubir Dash, o.s.j.s. (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

Between :

The Management of M/s. Kurunti Service  
Co-operative Society Ltd.,  
At/P.O. Kurunti,  
P.S. Rajnagar,  
Dist. Kendrapara.

.. First Party—Management

And

Shri Bijaya Kumar Pradhan,  
S/o Bhaskar Chandra Pradhan,  
At/P.O. Kurunti,  
P.S. Rajnagar,  
Dist. Kendrapara.

.. Second Party—Workman

Appearances :

Shri A. K. Pradhan, . . For the First Party—Management  
 Authorised representative.

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Shri B. K. Pradhan . . For the Second Party—Workman himself.

### AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') made by the Government of Orissa in Labour & Employment Department vide their Order No. 678-ID-07/2010-LE., Dt. 2-2-2010 for adjudication by this Tribunal. The Schedule of reference runs as follows :—

“Whether the termination of services of Shri Bijaya Kumar Pradhan, Workman with effect from 4-3-2009 by his employer M/s. Kurunti Service Co-operative Society Ltd., At/P.O. Kurunti, P.S. Rajnagar, Dist. Kendrapara is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The case of the second party is that the first party is a Service Co-operative Society and he was working in the Society as an Assistant Secretary on contractual remuneration of Rs. 1000 per month. His employment commenced from 1-6-2008, he worked continuously . There was no allegation of any misconduct against him. On 4-3-2009, his service were terminated without notice or notice pay and compensation as prescribed under Section 25-F of the Act. No disciplinary proceeding was initiated against him. It is alleged by the workman that the management demanded Rs. 50,000 to make the post permanent and when he expressed his inability, he was removed from employment and another person, namely Gagan Behari Parida, was employed in his place.

3. In the written statement, the first party takes the plea that it is not an 'industry' nor is the second party a 'workman' as defined under the Act. The Society is permitted to give employment on temporary basis for a period not exceeding eleven months. For such temporary employees notice under the Act is not necessary at the time of disengagement. The second party was engaged on temporary basis as per the decision of the Board of the Society. Subsequently, several allegations were raised against him on his performance of duty. So, he was disengaged with effect from 30-10-2008 vide Board's Resolution, dated 31-10-2008 which was subsequently approved by the General Body. Thereafter, there was a notification inviting application for the post of Assistant Secretary. The workman also applied for the post. Out of thirteen applicants, Shri Gagan Behari Parida was selected for the post and he was appointed as such with effect from 16-2-2009. The first party denies the allegation that the management had demanded Rs. 50,000 from the second party to make the post permanent. According to the management, the post of Assistant Secretary cannot be made permanent inasmuch as the nature of work assigned to the post is not perennial.

4. Following is the issue settled for adjudication of the reference :

#### ISSUE

1. Whether termination of services of Shri Bijaya Kumar Pradhan, Workman with effect from Dt. 4-3-2009 by his employer M/s. Kurunti Service Co-operative Society Ltd., At/P.O. Kurunti, P.S. Rajnagar, Dist. Kendrapara is legal and/or justified ? If not, what relief the workman is entitled to ?”

5. The second party has examined himself as W.W. No.1 and has exhibited documents marked Ext.1 to 3. Similarly, the Secretary of the first party is examined as M.W. No.1 and Exts. A to F have been marked on behalf of the management.

#### FINDINGS

6. *Issue No.1* :—From the pleadings so also the evidence adduced by the parties, it is made clear that the workman was engaged by the management to work as an Assistant Secretary on a consolidated remuneration of Rs.1000 per month. He was so engaged with effect from 1-6-2008 and subsequently he was disengaged without any prior notice or notice pay and compensation. After his disengagement another person has been engaged to work as Assistant Secretary.

But, the parties are not in agreement with regard to the date of disengagement of the workman. The workman has the positive plea that he was disengaged with effect from 4-3-2009 but the management is not consistent on the date of disengagement of the workman. In Para. 9 of the written statement, it is stated that the workman was disengaged with effect from 30-10-2008 but in Para.17, it is stated that the workman was no longer in the Society from September 2008. Ext.C is the copy of a Resolution of the Society’s Board held on 31-10-2008. It is mentioned therein that the workman was disengaged with effect from September 2008. It is not explained as to how the workman was first disengaged in Septemebr 2008 and the Board passed Resolution subsequently on 31-10-2008. Thus, the management is not giving a clear picture as to when the workman’s service was terminated.

In this regard, the workman has relied on Ext.3 to support his contention that since he had worked till the month of March 2009, the management paid him a sum of Rs. 6000 towards his wages and on such payment, he had filed a petition to withdraw I.D. Misc. case No.57 of 2009 which was filed by him in the Labour Court, Bhubaneswar under Section 33-C (2) of the Act.Ext.3 is the xerox copy of the said withdrawal petition. It reflects that in connection with I.D. Missc. case No. 57 of 2009, in which the workman had claimed a sum of Rs.6000 towards his wages, the management /O.P. in the said Misc. case agreed to pay Rs.6000 to settle the claim advanced by the workman. Ext.3 has been marked without objection. On Ext.3 M.W.1 has stated that in I.D. Misc. case No.57 of 2009 the management has paid Rs.6000 to the workman for the period from October 2008 to March 2009. Basing on this statement, the workman argues that had he not worked in the Society till 4-3-2009, the management would not have paid the amount of Rs.6000 towards his wages for the period from October 2008 to March 2009. The argument seems to be quite forceful. Though M.W. No.1 tries to explain under what circumstances Rs.6000 was paid to

the workman saying that it was not towards the wages of the workman for the aforesaid period but to avoid the present industrial dispute, the same plea is not believable. M.W. No.1 has gone to the extent of saying that the said amount Rs.6000 was paid by him not from the Society's fund put from his own pocket as there was an understanding between the second party and the witness himself that the former would not pursue this I.D. Case so that he being a diseased person would be saved from frequently coming to Bhubaneswar to prosecute the I.D. Case. This part of his evidence does not inspire confidence and credibility. Though the workman has mentioned in his claim statement that he was paid Rs.6000 towards his wages for the last six months of work, in the written statement there is no specific denial that pleading. Rather, it is pleaded in the written statement that the said amount was paid towards the workman's arrear dues. If it is accepted that the workman was paid Rs.6000 towards arrear dues, then the effect of Ext.2 series and Ext.3 taken combinedly would be that the workman had received wages of Rs. 10,000 vide those exhibits which signify that he had worked for a period of ten months. Therefore, the workman's plea that he had worked continuously from 1-6-1998 to 4-3-2009 has to be accepted. Consequently, he had completed 240 days of work during the said period which is to be deemed to be continuous work for a period of one year. If it is found that the provisions of the Act are applicable to the parties, then the termination of his service will be in violation of Section 25-F of the Act.

7. As to whether the first party is an 'industry' it is to be mention that in Bangalore Water Supply and Sewerage Board Vrs. A. Rajappa, 1978 Lab. I.C. 467 (S.C.), it is held that Co-operative Societies ordinarily cannot fall outside the scope of the definition of 'industry'. The first party herein has neither pleaded nor adduced evidence on fact showing as to how the Society will not fall within the scope of the definition of 'industry'. Therefore, it is not necessary to make further discussion on this point. The first party is held to be an 'industry'.

As to whether the Assistant Secretary is a 'workman' or not, the management has not clarified as to what is the nature of work the second party used to perform. The second party was engaged on contractual remuneration of Rs. 1,000 per month. His duty was clerical in nature. Therefore, he is to be taken as 'workman'.

As already observed, the workman completed one year of continuous service as on the date of his disengagement. Since there is no compliance to the provisions contained in Section 25-F of the Act, the disengagement/termination of service of the workman is illegal.

8. Now, it is to be considered as to whether the disengagement of the workman is justified or not.

There is no dispute that in place of the second party another person namely, Gagan Behari Parida has been appointed as the Assistant Secretary of the Society. According to the management, there was a notification inviting applications for the post of Assistant Secretary of the Society and the second party was also an applicant for the said post. During his cross-examination, the workman has denied that he had applied for the said post. Ext.A is his application Dt.21-11-2008 which reflects that having come to know from the Society's advertisement to fill up the post of Assistant Secretary he made the application offering his candidature for the said post. Along with the

application, he has enclosed documents including one experience certificate. The experience certificate has been issued by the Secretary of the first party Society wherein it is mentioned that the second party was working in the Society even as on the date of the workman's making the application for the said post. According to the management, there were thirteen applicants and out of them said Gagan Behari Parida was selected to be appointed as the Assistant Secretary. M.W.1 has stated that consequent upon his selection, Shri Parida has joined as the Assistant Secretary on 16-2-2009 and is still continuing. Thus, it is clear that while the second party was still continuing, the management wanted to fill up the post of Assistant Secretary inviting applications from interested persons and the workman himself had offered his candidature for the said post. It is not shown by the workman that the selection of Shri Parida was not made in accordance with the Bye-Laws or any other Rules and Regulations governing the first party Society in the matter of making such appointment. The workman has not taken the stand that he himself was appointed as the Assistant Secretary of the Society having been duly selected by following the procedure in accordance with the Bye-Laws of the Society. Also, the workman did not raise any dispute challenging the action of the management to make fresh appointment while he himself was continuing in the said post. The second party has been disengaged after the post was filled up by way of selection from amongst thirteen candidates who had applied for the said post. Therefore, the termination of his service, in my considered view, is justified.

9. The termination/retrenchment of the second party is found to be illegal for the reason that the requirements of Section 25-F of the Act were not complied with. The workman was entitled to get notice pay and retrenchment compensation. Therefore, he is entitled to compensation but he is not entitled to be reinstated in service inasmuch as the post has been duly filled up. The dispute was raised on 2-5-2009 and the reference has been disposed of within less than two years. In the facts and circumstances, the workman is found entitled to get a compensation of Rs.10,000 (Rupees ten thousand) only. The management to pay the amount of compensation to the workman within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated & corrected by me.

RAGHUBIR DASH  
14-1-2011  
Presiding Officer  
Industrial tribunal  
Bhubaneswar

RAGHUBIR DASH  
14-1-2011  
Presiding Officer  
Industrial tribunal  
Bhubaneswar

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By order of the Governor

P. K. PANDA

Under-Secretary to Government

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