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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 2nd April 2011

No. 3497—li/1 (B)-8/2006-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th December 2010 in Industrial Dispute Case No. 33/2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of Assistant Director of Fisheries, At Kausalyaganga, Dist. Puri and their workman Smt. Lata Mallick was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 33 OF 2006

The 27th December 2010

Present :

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

Between :

The management of Assistant Director .. First-party Management  
of Fisheries, At Kausalyaganga,  
Dist. Puri.

And

Their workman .. Second-party Workman  
Smt. Lata Mallick

Appearances :

Shri S. C. Mohanty .. For the first-party Management

Smt. Lata Mallick .. Second-party Workman herself

## 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. 3461—li/1 (B)-8/2006-L.E., dated the 2nd May 2006 of the Labour and Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

"Whether the action of the management of Assistant Director of Fisheries, At Kausalyaganga, Dist. Puri in terminating the services of Smt. Lata Mallick, unskilled worker by way of refusal of employment with effect from the 1st June 2004 is legal and/or justified ? If not, what relief she is entitled to ?"

3. The case of the workman in brief is that she was appointed by the management with effect from June 1998 on rehabilitation ground due to death of her husband on the 9th May 1998 who was working as N. M. R. She has rendered continuous service from the June 1998 to the 31st May 2004 and had completed more than 240 days of continuous employment in a twelve calendar month. Her employment was terminated by the management without complying the mandatory provisions of the Industrial Disputes Act. No enquiry or proceeding was held against the workman during her service period. On the 10th June 2004 the workman had submitted a representation for reinstatement of employment which was not considered by the management. Her termination of service with effect from the 1st June 2004 was bad in law and was of unfair labour practice. At the time of termination she was drawing Rs. 1,575.00 per month towards her wages. So in this back ground she 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 her 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 him, the first-party is not a management and the second-party is not a workman as such this I. D. Case is not maintainable. The Government of Orissa in Finance Department have put a total ban for engagement of N. M. R. or D. L. R. employee with effect from the 12th April 1993. As such, the averment taken by the workman to have worked as N. M. R. from June 1998 is not tenable. The Government has formulated a scheme for absorption of N. M. R./D. L. R. workers under regular establishment and according to such scheme, the N. M. R. working minimum 10 years prior to the 12th April 1993 are to be brought under the regular establishment. As the workman has not completed the 10 years service prior to the 12th April 1993, the claim of the workman is not tenable. There is no provision under the Government to make any payment towards compensation. The workman has received her salary till the 31st March 2001. Thereafter she was not in employment. 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 action of the management of Assistant Director of Fisheries, At Kausalyaganga, Dist. Puri in terminating the services of Smt. Late Mallick, unskilled worker by way of refusal of employment with effect from the 1st June 2004 is legal and/or justified ?

(ii) If not what relief she is entitled to ?

6. In order to substantiate her plea, the workman has examined herself as W. W. 1 and proved the documents marked as Exts. 1 to 9. Similarly the management has examined his Assistant Director of Fisheries as M. W. 1 and proved documents marked as Exts. A to C.

#### FINDINGS

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

According to W. W. 1 she was appointed by the management as a D. L. R. worker from the June, 1998 to the 31st May 2004 on rehabilitation ground due to death of her husband. She has completed more than 240 days of work in every twelve calendar months. She was terminated from service with effect from the 1st June 2004. M. W. 1 deposes by admitting that workman was engaged as daily wage labourer during June, 1998. She had worked till the 31st March 2001 and was paid her wages till that date and she has no pending wages. The workman was not engaged after the 31st March 2001. There was a ban order of the Government regarding engagement of N. M. R. after the 12th April 1993. Perused the documents marked as exhibits on behalf of both the parties. So from the above evidence, it is admitted by the management that the workman has worked under the management from June 1998 to 31st March 2001 and thereafter the workman was not engaged. But the workman has deposed that she has continued her duty till the 31st May 2004. The management has filed the xerox copies of the muster rolls for the month of May 2000 to August 2000 (four sheets) which has been marked as Ext. C. But it is for the period for which the management has admitted that the workman was working under him. But for the disputed period the management is silent regarding duty of the workman though the workman has specifically deposed that she was working under the management till the 31st May 2004. The management has not filed any document to show that all the dues of the workman up to the 31st March 2001 has been paid. The workman in the cross-examination denied to have received the same. According to the settled principle of law as reported in AIR 2010 S. C. 1236, the workman would have difficulty in having access to all official documents, muster rolls etc. in connection with his service which the the workman claimed and deposed that she had worked for 240 days which is the statutory requirement, burden of proof shifts to employer to prove that she did not complete 240 days of service in requisite period to constitute continuous service. But in the instant case the management is silent in this regard and has not proved anything to contradict the plea of the workman regarding her service under the management up to the 31st May 2004. So the mandatory provision of Section 25-F of the Industrial Disputes Act is required to be complied with at the time of termination of service of the workman which has not been followed. The ban order of the Government cannot over-ride the mandatory provisions of Section 25-F of the Industrial Disputes Act regarding termination of service. So on careful consideration of entire evidence of both the parties as discussed above, I am inclined to hold that the action of the management in terminating the service of the workman with effect from the 1st June 2004 is neither legal nor justified.

8. Regarding reinstatement in service and 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 an appointment had been made in terms with specific rule. But in the instant case the workman has not filed any documentary evidence in support

of her appointment. However on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that it is a fit case to grant compensation in lieu of reinstatement and back wages and an amount of Rs. 25,000 as compensation which will meet the ends of justice. Both the issues are answered accordingly.

9. Hence Ordered :

That the action of the management of Assistant Director of Fisheries, At Kausalyaganga, Dist. Puri in terminating the services of Smt. Lata Mallick, unskilled worker by way of refusal of employment with effect from the 1st June 2004 is illegal and unjustified. The workman Smt. Mallick is entitled to get a lump sum amount of Rs. 25,000 (Rupees twenty-five thousand) only as compensation in lieu of reinstatement and 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  
27-12-2010  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. DASH  
27-12-2010  
Presiding Officer  
Labour Court, Bhubaneswar

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