

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1119 CUTTACK, TUESDAY, JUNE 5, 2012/JAISTHA 15, 1934

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 23rd May 2012

No. 4066—li/1(BH)-20/2006-(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th October 2011 in Industrial Dispute Case No. 77/2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Jambhira Canal Division, Laxmiposi, Mayurbhanj and its Workman Shri Basant Kumar Mahalik, N.M..R. was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 77 OF 2006
Dated the 25th October 2011

Present :

S. A. K. Z. Ahamed,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of Executive Engineer, Jambhira Canal Division,
Laxmiposi, Mayurbhanj. First-party Management

And

Its Workman Shri Basant Kumar Mahalik, N.M.R. Second-party Workman

Appearances :

Shri P. K. Samal, Jr. Clerk . . . For the First-party Management

Shri S. Mishra, Advocate

Smt. Manasi Parhi, Advocate . . . For the Second-party Workman

AWARD

The Government of Odisha in exercise of the 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. 9672–li/1(BH)-20/2006-L.E., dated the 4th November 2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the termination of services of Shri Basant Kumar Mahalik, N. M. R. with effect from the 1st July 2001 by the Executive Engineer, Jambhira Canal Division, Laxmiposi, Dist. Mayurbhanj is proper and justified ? If not to what relief Shri Mahalik is entitled ?"

3. The case of the workman, in brief, as set out in his statement of claim is that he was appointed as D. L. R. Watchman under the management on the 1st January 1990. From the 1st April 1995 he was treated as N. M. R. workman. While the workman was working as such, he remained on leave from the 1st July 2001 due to illness of his father. After recovery of his father from illness, when he reported for duty on the 16th August 2004, the management did not allow him to resume any duty. Ultimately, the management vide its letter dated the 29th March 2005 has terminated his service giving retrospective effect from the 1st July 2001 on the ground of his unauthorised wilful continuous absence from duty. According to the workman, from the date of his joining till the date of termination, he has worked continuously and worked for more than 240 days in every year, but the management without following the provisions of Section 25-F of the Industrial Disputes Act 1947, has illegally terminated his service. The management has also neither charge-sheeted nor conducted any domestic enquiry against him for any misconduct. Therefore, according to the workman, the termination of his service is illegal, *mala fide* and arbitrary. So, the workman has prayed for his reinstatement in service with full back wages and all consequential service benefits.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the workman remained absent unauthorisedly with effect from the 1st July 2001 for which the S. D. O., Laxmiposi vide its letter dated the 9th February 2004 directed the workman to resume his duty within 7 days, but he did not respond. Thereafter, once again directed the workman on the 6th May 2004 to report for his duty with due explanation. But after lapse of three months, on the 16th August 2004 the workman submitted a representation for allowing him to join in his duty which was rejected. As per the direction of the

Chief Engineer and Basin Manager, Laxmiposi vide letter dated the 13th January 2005 the workman was asked to show cause as to why his joining report would not be rejected, but the workman did not submit any explanation to it. Finally, the service of the workman has been terminated with effect from the 1st July 2001 vide office letter dated the 9th March 2005. Therefore, the management has prayed for dismissal of the present case.

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

ISSUES

- (i) "Whether the termination of services of Shri Basant Kumar Mahalik, N. M. R. with effect from the 1st July 2001 by the Executive Engineer, Jambhira Canal Division, Laxmiposi, Dist. Mayurbhanj is proper and justified ?"
- (ii) If not, to what relief Shri Mahalik is entitled ?

6. In order to substantiate his plea, the workman has examined himself as W. W. 1 and proved the documents under the cover of Exts. 1 to 12. It is pertinent to mention here that the management has appeared and filed written statement but subsequently remained absent and did not take part in the hearing though sufficient opportunities were given to him.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For the sake of convenience, both the issues are taken up together

The workman in his affidavit evidence in corroborating the facts as stated in his statement of claim, has stated that he proceeded on leave from the 1st July 2001 by intimating the authority of the management for urgent medical treatment of his father. As the condition of his father was serious, he extended his leave from time to time under due intimation to the authorities and lastly he joined on the 16th August 2004 in his duty, but his joining report was not accepted by the management and was not allowed to perform any duty. According to the workman, no charge was framed and no domestic enquiry was conducted against him by the management.

8. On perusal of the documents, it shows that the management had issued a Memo. vide No. 297 dated the 9th February 2004 to the workman regarding wilful absent in duty under the cover of Ext. 1. Thereafter the management again issued a letter bearing No. 953 dated the 6th May 2004 regarding wilful absent from duty with effect from the 1st December 2003 under the cover of Ext. 2. The workman submitted his reply on the 30th October 2004 and the 10th November 2004 under the cover of Exts. 3 and 4 respectively. The management has terminated the service of the workman with effect from the 1st July 2001 vide its Office Order No. 10/2005 communicated to the workman vide Letter No. 213 dated the 29th March 2005 under the cover of Ext. 12.

9. So from the above documents, it appears that though the workman was remained absent with effect from the 1st July 2001, the management has issued a letter under the cover of Ext. 1 wherein it has been mentioned that it is learnt from the Muster Roll for the period from the 1st January 2004 to the 31st January 2004 that the workman was remained absent from duty unauthorisedly full month. Similarly, the letter dated the 6th May 2004 under the cover of Ext. 2

shows that the workman was in wilful absent from duty with effect from the 1st December 2003. So it is presumed that till the 1st December 2003 the workman was on leave with due permission and knowledge of the management. The management has taken the plea in the written statement that as per the direction of the Chief Engineer and Basin Manager, Laxmiposi, the workman was asked to show cause as to why his joining report would not be rejected but the workman did not respond to it. The said fact has not been substantiated by the management in anywhere by adducing any evidence or by proving any document. Moreover, when the management has knowledge about the unauthorised and wilful absence is a misconduct, but without initiating any Departmental Proceeding or domestic enquiry, whimsically terminated the service of the workman under the cover of Ext. 12 giving retrospective effect from the 1st July 2001 which is a clear violation of the principles of natural justice. The management has also violated the provisions of Section 25-F of the Industrial Disputes Act 1947, which is a mandatory and precondition one.

10. So on careful consideration of all the materials available in the case record, as discussed above, and in view of the unchallenged testimony of the workman, I am of the view that the termination of service of the workman with effect from the 1st July 2001 by the management is neither proper nor legal. So the workman is entitled to be reinstated in service.

11. Regarding back wages, 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, he is not entitled to get any back wages. Hence both the issues are answered accordingly.

12. Hence Ordered :

That the termination of services of Shri Basant Kumar Mahalik, N. M. R. with effect from the 1st July 2001 by the Executive Engineer, Jambhira Canal Division, Laxmiposi, Dist. Mayurbhanj is improper and unjustified. The workman Shri Mahalik is entitled to be reinstated in service but without any back wages. The management is directed to implement this Award within a period of one month from the date of its publication failing which the workman shall be entitled to get full wages with interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
25-10-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
25-10-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government