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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 26th May 2012

No. 4222—li/1 (B)-43/2003(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd November 2011 in I. D. Case No. 42 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No. II, Gandarpur and their Workman Shri Premananda Mohanty was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 42 OF 2003

Dated the 23rd November 2011

#### *Present :*

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

#### *Between :*

The Management of the Executive Engineer, Mahanandi-Chitrotpala Island Irrigation Division No. II, Gandarpur, Cuttack. .. First Party—Management

And

Their Workmen, Shri Premananda Mohanty. .. Second Party—Workman

#### *Appearances :*

Shri R. P. Nanda, Govt. Pleader .. For First Party— Management

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Shri T. Lenka, Advocate } .. For Second Party— Workman

Shri B. D. Panda, Advocate }

## AWARD

The Government of Odisha 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. 8282—li/1(B)-43/2003-LE., dated the 23rd August 2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Premananda Mohanty, Ex-Chairman with effect from the 1st December 2001 by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division, No. II, Gandarpur, Cuttack is legal and/or justified ? If not, what relief is Shri Mohanty entitled to ?”

3. The case of the workman, in brief, as set out in his statement of claim is that he was working as Chairman on D. L. R. basis under the management since 1994. Due to preparation of faulty seniority list, he was terminated from service with effect from the 1st December 2001 whereas, some employees who were junior to the workman were allowed to continue in service. The condition precedent of retrenchment was not followed at the time of his termination. Therefore, the workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement admitting that the workman was working as Chairman. But due to financial stringency and reduction of work, the Department of Water Resources, Odisha, Bhubaneswar vide letter No. 20222, Dt. 29-5-2001 directed to terminate the surplus staff on the principle of ‘last come first go’. Accordingly, the Superintending Engineer, M.C.I. I. Circle, Cuttack has communicated the surplus list vide his letter No. 109, Dt. 29-11-2001 to effect retrenchment. Accordingly, the service of the workman being found surplus, terminated him service with effect from the 30th November 2001 with due compliance of the provisions of the Industrial Disputes Act, 1947 and Payment of Gratuity Act, 1972. No person junior to the workman was retained at the time of termination of services of the workman. Therefore, the question of reinstatement and payment of back wages to the workman does not arise.

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

## ISSUES

- (i) “Whether the termination of services of Shri Premananda Mohanty, Ex-Chairman with effect from the 1st December 2001 by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No. II, Gandarpur, Cuttack is legal and/or justified ?
- (ii) If not, what relief is Shri Mohanty entitled to ?”

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 8. 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 better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The W.W. 1 in his affidavit evidence has stated that he was working under the management as Chairman since 1994 till the date of his termination without any break. He has further stated that some juniors to the workman are still working under the management. At the time of termination of his service, the management has not followed the provisions of Section 25-F and 25-G of the Industrial Disputes Act. Though the management has taken the plea in the written statement that as per the orders of the Government and with due compliance of the provisions of the Industrial Disputes Act, the workman was terminated from his service, but the said stand has not been substantiated by the management in any manner by adducing any rebuttal evidence and proving by any documentary evidence. Except the above plea, the management has not disputed anything regarding the plea of the workman. Therefore, the evidence adduced by the workman remained unchallenged.

8. On perusal of the documents as available in the case record, it clearly shows that the workman has worked under the management for more than 240 days in twelve calendar months preceding to the date of termination and at the time of termination, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act which is a mandatory and precondition one. 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 came to the finding that the termination of services of the workman with effect from the 1st December 2001 by the management is illegal and unjustified. So the workman is entitled to be reinstated in service with full back wages. Hence, both the issues are answered accordingly.

9. Hence it is ordered :

That the termination of services of Shri Premananda Mohanty, Ex-Chairman with effect from the 1st December 2001 by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No. II, Gandarpur, Cuttack is neither legal nor justified. The workman Shri Mohanty is entitled to be reinstated in service with full 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 amount shall carry 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  
23-11-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

S. A. K. Z. AHAMED  
23-11-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

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