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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 29th June 2012

No. 5044—li-1(B)-29/2003(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2012 in I. D. Case No. 56 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Assistant Fruit Utilisation Officer (Odisha), Bhubaneswar, M/s Odisha State Co-op. Milk Producers Federation Ltd., (OMFED), Bhubaneswar and their Workman Smt. Pravati Kar was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.56 OF 2003

Dated the 31st March 2012

#### *Present :*

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

#### *Between :*

The Management of the Asst. Fruit  
Utilisation Officer (Odisha), Bhubaneswar,  
M/s Odisha State Co-op. Milk Producers  
Federation Ltd. (OMFED), Bhubaneswar.

.. First Party—Management

And

Their Workman  
Smt. Pravati Kar.

.. Second Party—Workman

*Appearances :*

Shri S. K. Swain, Sr. Clerk.	..	For Management No. 1
Smt. A. Nanda, Advocate	}	.. For Management No. 2
Shri J. Senapati, Advocate		
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Shri T. Lenka, Advocate	..	For the Second Party—Workman

## AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them 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 following dispute to this Court for adjudication vide their Order No. 9164—li-1 (B)-29/2003-LE., dated the 12th September 2003 :—

“Whether the termination of service of Smt. Pravati Kar, Unskilled Labour with effect from the 21st May 1999 by way of refusal of employment by Asst. Fruit Utilisation Officer, Fruit Preservation Factory, Samantrapur, Bhubaneswar, subsequently taken over by the management of M/s Odisha State Co-op. Milk Producers Federation Ltd. (OMFED), Bhubaneswar is legal and/or justified ? If not, to what relief she is entitled to ?”

2. The case of the workman in brief, as set out in her statement of claim is that she was engaged as unskilled labour on a daily wage of Rs. 30 under the management No. 1 from 1993 to 1998. On being satisfied with the performance of the workman, the management No. 1 recommended her name for selection of Gardener Training and accordingly the workman had undergone Gardener training for ten months from 29-7-1998 and after completion of her training on 20-5-1999, when she reported for duty, the management No. 1 informed the workman that the factory has already been taken over by the management No. 2, so her service was terminated with effect from the 21st May 1999. Further according to the workman, at the time of termination of her service by way of refusal of employment the management has not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. So she raised an industrial dispute before the Labour Authority and when the conciliation failed, the matter was referred to the Government and accordingly the Government have referred the matter in dispute to this Court for adjudication. In these averments, the workman has prayed for her reinstatement in service with full back wages and other service benefits.

3. On the other hand, the management No. 2 appeared and filed written statement denying the claim of the workman. According to the management No. 2, the management No. 1 has not furnished the name of the workman in the list of labourers who were working under the management No. 1. The workman had neither worked under the management No. 2 nor any way related to this case. Therefore the management No. 2 has stated that the case is not maintainable and prayed that the case may kindly be dropped against the management No. 2.

The management No. 1 though appeared and contested the proceeding, but did not file any written statement in support of its case.

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

#### ISSUES

- (i) “Whether the termination of services of Smt. Pravati Kar, Unskilled labourer with effect from the 21st May 1999 by way of refusal of employment by the Asst. Fruit Utilisation Officer, Fruit Preservation Factory, Samantrapur, Bhubaneswar, subsequently taken over by the management of M/s Odisha State Co-op. Milk Producers Federation Ltd. (OMFED), Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief she is entitled to ?”

5. In order to substantiate her plea, the workman has examined herself as W.W. 1 and proved documents such as, copy of Physical Handicapped Certificate, copy of Gardener Training Certificate and copy of the settlement, Dt. 29-7-1995 under the cover of Exts. 1 to 3 respectively. Similarly the management No. 2 has examined its Production In-charge as M.W. 1 and proved the copy of list of casual labourers, copy of provisional gradation list of casual labourers and copy of Memorandum of Understanding between the management No. 1 and the management No. 2 under the cover of Exts. A to C respectively. On the other hand, though the management No. 1 has cross-examined the W.W. 1 but did not adduce any evidence in support of its case.

#### FINDINGS

6. *Issue Nos. (i) & (ii)*—Both the issues are taken up together for the sake of convenience.

W.W. 1 in her affidavit evidence has fully corroborated the facts stated in her statement of claim. During cross-examination, the management No. 1 has suggested the W.W. 1 that she has worked for 796 days in total under the management No. 1 to which the workman has replied in negative. So from the above suggestion of management No. 1 it is clear that the workman had worked under the management No. 1 for more than 240 days in a year. So the workman is coming under the purview of Section 25-B of the Industrial Disputes Act, 1947 and is entitled to get the protection as provided under the Industrial Disputes Act, 1947. On perusal of Ext. C, the Memorandum of Understanding (in short MoU) clearly shows that the said MoU was executed between the management No. 1 and the management No. 2 only on 7-3-2001. So from Ext. C it is clear that at the time of termination of service of the workman by the management No. 1, the management No. 2, was not in existence. So the plea of the management No. 1 that as the factory of the management No. 1 has been taken over by the management No. 2, her service has been terminated without any force. Ext. 3, the Memorandum of Settlement in Form K, it is agreed by and between the parties that the workman will be joined in her duty on 1-8-1995 and the period from 18-12-1994 to 31-7-1995 will be treated as continuity of service without any back wages. So from the above settlement, Ext. 3, it is clear that the workman was in continuous service till the date of her termination. More over Ext. 2, the Gardener Training Certificate issued by the Government of Odisha, Director of Horticulture, Bhubaneswar clearly shows that the workman had undergone Gardener Training and successfully completed the course during the Session 1999 which was issued on 25-10-1999. So from Ext. 2, it is clear that when the workman was in Gardener Training for ten months, the management No. 1 had illegally terminated her service without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is accordingly to law is illegal and unjustified. So the workman is entitled for reinstatement in service with continuity of service and all service benefits.

7. Regarding back wages, as per 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. Further according to the authority reported in 2004 (Supp.) OLR 694, it has been held that :

“When the workman had not worked for the management during the period in question and she had not proved by cogent evidence that she 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 as discussed above, I am of the opinion that instead of granting full back wages, 50% back wages will meet the ends of justice in this case. Hence, both the issues are answered accordingly.

8. Hence, it is Ordered :

That the termination of services of Smt. Pravati Kar, Unskilled labourer with effect from the 21st May 1999 by way of refusal of employment by the Asst. Fruit Utilisation Officer, Fruit Preservation Factory, Samantrapur, Bhubaneswar, subsequently taken over by the management of M/s Odisha State Co-op. Milk Producers Federation Ltd. (OMFED), Bhubaneswar is neither legal nor justified. The workman Smt. Kar is entitled to be reinstated in service with continuity of service and all service benefits so also 50% back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
31-3-2012  
Presiding Officer  
Labour Court  
Bhubaneswar

S. A. K. Z. AHAMED  
31-3-2012  
Presiding Officer  
Labour Court  
Bhubaneswar

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