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LABOUR & E.S.I. DEPARTMENT  
NOTIFICATION  
The 4th July 2012

No. 5115—IR-(ID)-5/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th June 2012 in Industrial Dispute Case No. 18 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Women's Polytechnic, Chandrasekharpur, Bhubaneswar and their Workman Shri Sibaram Mohanty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 18 OF 2011  
Dated the 11th June 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

Between :

The Management of  
Women's Polytechnic,  
Chandrasekharpur,  
Bhubaneswar.

.. First Party—Management

And

Their Workman  
Shri Sibaram Mohanty,  
S/o Shri Uchhaba Mohanty,  
At Bajapayi Nagar, Salia Sahi,  
Ward No.15, RRL Campus,  
Jayadev Vihar,  
Bhubaneswar.

.. Second Party—Workman

Appearances :

Smt. Sabita Dash . . . For the First Party—Management  
 Authorised Representative.

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Shri Sibaram Mohanty . . . 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 Odisha in the Labour & Employment Department vide their Order No. 2882—ID-5/2011-LE., dated the 23rd March 2011. The Schedule of Reference runs as under :—

“Whether the action of the management of Women’s Polytechnic, Chandrasekharpur, Bhubaneswar in terminating the services of Shri Sibaram Mohanty with effect from the 1st May 2008 is legal and/or justified ? If not, what relief Shri Sibaram Mohanty is entitled to ?”

2. As per the averments made in the claim statement of the second party workman, he was appointed as a Peon-*cum*-Watchman to work in the establishment of the first party, i.e., Women’s Polytechnic, Bhubaneswar on daily wage basis. He worked as such from September 1999 till 31-10-2007. After that he was engaged to work as a Watchman at Sailashree Vihar to watch the staff quarters of the Directorate of Technical Education and Training, Odisha (D.T.E.T.) with a consolidated pay of Rs. 1,800 per month. He worked as such till the end of April 2008. The Principal of the first party asked him to stop duty at Sailashree Vihar with instruction to resume duty as a Peon in the office of the first party with effect from 1-5-2008. But, surprisingly, when he reported for duty at the office of the first party he was not allowed to resume duties. Thus, his services has been terminated with effect from the 1st May 2008 which is illegal and unjust inasmuch as the mandatory provisions of Sections 25-F and 25-G of the Act were not complied with . It is claimed by the second party that since the date of his retrenchment he has been out of gainful employment.

3. In the written statement the first party has taken the stand that the second party was never employed to work in the establishment of the first party According to the first party, in the year 1991-1992 Community Polytechnic Scheme was introduced at the first party Polytechnic by the Ministry of Human Resources Department (MHRD), Government of India, New Delhi which was registered as a Society, in the name and style of Community Polytechnic Society, Womens Polytechnic, Bhubaneswar with effect from 1994. The Scheme was being funded by MHRD. The second party was engaged on and from 1-11-1999 to work under the said Scheme as a helper. Since then he had been receiving his wages from the MHRD fund meant for the Scheme. On the basis of the order dated 4-10-2007 of the MHRD the Board of Governors of the Society in its meeting held on 24-8-2007 passed Resolution that the Society be finally closed on 30-11-2007 with further Resolution to disengage all the core staff of the Society including the second party who were engaged to work under the Scheme.

With regard to the workman's engagement in Sailashree Vihar to watch the staff quarters of the D.T.E.T., the first party's plea is that prior to the closure of the Society the Project Engineer of the Society had engaged the second party as a Watchman of D.T.E.T. staff quarters campus without obtaining any approval of the Principal of the first party. Three Watchmen including the second party were engaged there to watch the staff quarters. The second party was junior to the other two Watchmen.

There is no clear averment in the written statement as to how the employment of the second party was continued till 31-4-2008 despite of the Resolution passed by the Board of Governors that all the core staff of the Society be disengaged with effect from the 30th November 2007. But, it is gathered from the contents of the written statement that on being engaged by the Project Engineer of the Society to watch the D.T.E.T staff quarters the second party continued to watch the staff quarters till he was disengaged with effect from the 1st May 2008. It further transpires that three Watchmen were engaged to watch the staff quarters but due to increasing fund constraints only two of the Watchmen were continued to be on watch and ward duty who were engaged much prior to the engagement of the second party. The management takes the stand that compliance of Section 25-F of the Act was not applicable in the case of the second party as he was engaged in a Scheme which was closed on 31-10-2007. On the alleged non-compliance of Section 25-G of the Act, it is contended that the second party was the last person engaged in the category of Watchman to watch the D.T.E.T. staff quarters at Sailashree Vihar.

4. The following issues have been settled :—

#### ISSUES

- (i) "Whether the action of the management of the Women's Polytechnic, Chandrasekaharpur, Bhubaneswar in terminating the services of Shri Sibaram Mohanty with effect from the 1st May 2008 is legal and/or justified ?
- (ii) If not, what relief Shri Sibaram Mohanty is entitled to ?"

5. The workman has examined himself as W.W. No.1 and has exhibited documents marked Exts. 1 to 10 series. On the other hand, the first party has examined its present Principal In-charge as M.W. No.1 and has exhibited documents marked Exts. A to F.

#### FINDINGS

6. *Issue No. (i)*—According to the second party, he was initially engaged to work as a Peon-cum-Watchman under the Principal, Women's Polytechnic, Bhubaneswar with effect from September, 1999 with wages @ Rs. 40 per day. But, according to the first party, the workman was never engaged to work in the Women's Polytechnic. He was engaged to work as a Helper under a Scheme called "Community Polytechnic Scheme" which was introduced at the Women's Polytechnic, the Scheme being funded by MHRD, Government of India, New Delhi. It is also the case of the first party that though in the 4th Board of Governors' meeting (of the Community Polytechnic Scheme) held on 31-12-1999 a decision was taken to engage core staff for the Scheme on contractual basis but much prior to that the Scheme was registered as a Society in the name

and style of "Community Polytechnic Society" (for short, C.P. Society), Women's Polytechnic, Bhubaneswar with effect from the 1994. It is further pleaded that prior to the Resolution of the 4th Board of Governors' meeting Dt. 31-12-1999 the second party was engaged with effect from the 1st November 1999 to work as a Helper under the Scheme at the Government prescribed rate of wages. There are materials on record (Exts. 6/2 read with Ext.7) which reflect that the workman had received his wages even for the month of October, 1999. Thus, it can be said that the management's plea that the second party was engaged with effect from the 1st November 1999 is incorrect. On the other hand, the workman claims that he was first appointed in September 1999. But he has failed to bring materials to support that plea. In the absence of any other materials it is to be held on the basis of Ext.7 that the second party was engaged with effect from 1st October 1999.

But, the contradiction noted above does not appear to be very much material. The real dispute is on the question as to who is the employer of the second party. Ext.7 is the absentee statement-*cum*-Muster Roll of the second party for the month of October 1999. Ext.7 reflects that the second party was working as a Helper on daily wages @ Rs. 40. It further reflects that "the Supervisor, C.P. Society" has certified the workman to have attended the "C.P.Work" and "the Project Engineer, C.P.Society" has passed the bill for payment of Rs.880 for 22 days work rendered by the workman in the said month. Ext.7 further reflects that the absentee statement/Muster Roll is in respect of the workman engaged in the "C.P. Society, Women's Polytechnic, Bhubaneswar". It further reflects that the D.D.O., Women's Polytechnic, Bhubaneswar has paid the wages of the workman. Therefore, basing on Ext.7 it is to be held that the workman was engaged as a Helper in the project called "C.P. Society, Women's Polytechnic, Bhubaneswar" and not under the Principal, Women's Polytechnic, Bhubaneswar.

Ext.2 is the workman's application, dated 5-6-2008 addressed to the Principal, Women's Polytechnic wherein he has admitted that for eight to ten years he had been working in the C.P. Society Office. Ext.A is yet another application of the workman, probably written a few days prior to 28-9-2008, wherein he has admitted that he was working in the "Community Polytechnic Office".

7. It is true that the 4th meeting of the Board of Governors of the Society was held on 31-12-1999 and it was decided, *inter alia*, that the core staff of the Society be engaged on contractual basis. The said resolution is marked Ext.B. Resolution No.6 reflects that the full time Helper as a core staff member should get wages @ Rs.1,000 per month. It is argued by the first party that consequent upon the Board Resolution the second party who was a full time Helper under the Society and one of the core staff of the Society started receiving wages @ Rs.1,000 per month and not on daily wage basis. This is not refuted by the second party. Thus, it is found that from the very commencement of his employment the second party was working as a "Helper" under the Society and it was only after the Board Resolution Dt. 31-12-1999 his wage structure underwent a change but he continued to be an employee of the Society. The workman has not exhibited a single document in support of his contention that he was an employee of the Women's Polytechnic, Bhubaneswar. The Board Resolution (Ext.B) reflects that the Principal, Women's Polytechnic was also the Chief Co-ordinator of the C.P. Society. Thus, the Principal was acting in dual capacity.

Ext.C is a letter from the MHRD, Government of India Dt. 4-10-2007 wherein it is indicated that the Schemes of Community Polytechnic were to be wound up and no fresh expenditure should be incurred after 31-7-2007. It is further stated in the said letter that since the closing of the Scheme from 31-7-2007 was going to cause accounting and administrative problems those were allowed additional three months time, i.e., till 31-10-2007 to wind up the on going programmes and settle the financial liabilities. It is clearly indicated in the letter that no new activity or financial liability under the Scheme after 31-7-2007 was to be permitted. Prior to this letter the same ministry had issued a letter Dt. 30-7-2007 informing that the Scheme would be wound-up after 31-7-2007. Ext.D is the resolution of the Board of Governor's meeting held on 24-8-2007 wherein it is resolved, *inter alia*, that the Project Engineer and all other contractual staff working under the Scheme would continue till completion of the on going programmes, i.e., 30-11-2007. On the basis of that resolution the Principal-*cum*-Chief Co-ordinator issued office Order Dt. 30-11-2007 (Ext.F) to the effect that all the employees of the C.P. Society were disengaged from 30-11-2007.

Thus, it is found that the project of the C.P. Society was finally wound up with effect from the 30th November 2007. If the second party is deemed to be an employee of the said project, then his employment automatically terminated with the termination of the project itself. But, according to the reference, the employment of the second party was terminated with effect from 1st May 2008. It is admitted by the first party that the workman has received his wages till 30-4-2008. But, the first party has an explanation to off and, now, it is to be thrashed out as to how far that explanation is acceptable.

8. It is explained by the first party that though the services of the workman under the C.P. Society were to terminate with effect from the 30th November 2007, the Project Officer of the C.P. Society engaged the second party as a watchman at Sailashree Vihar Campus with effect from the 1st November 2007. Here, it is to be stated that vide Order No. 18599, Dt. 12-12 -2006, (Ext.E) the Government of Odisha, Industries Department had restored some Government quarters at Sailashree Vihar to remain at the disposal of the D.T.E. &T. for the establishment of Regional Educational Training Centres and/or other approved purpose. The first sheet of Ext.5 which is exhibited on behalf of the workman reflects that to watch the quarters at Sailashree Vihar the Project Officer, C.P. Society had put up a note for approval of the Commissioner-*cum*-D.T.E.&T. to engage three Choukidars from December 2006 on consolidated wages of Rs.1,500 per month. Materials are not on record to say whether approval to the said note sheet was accorded. But, the second and third sheet of Ext.5 reflect that as on 9-10-2007 two Choukidars namely, Dharani Sahoo and Pravakar Patnaik were already engaged on watch and ward duty and, subsequently, on 1-11-2007 Sibaram Mohanty, the second party of this case, was engaged as the third Watchman as per the approval of the D.T.E.&T., Odisha with consolidated wages of Rs.1,800 per month. Thus, it is found that on and from 1-11-2007 the second party, on the approval of the D.T.E.&T., Odisha, was engaged as a Watchman to watch quarters at Sailashree Vihar, the possession whereof was restored to the D.T.E.&T. vide Ext.E. Prior to that the second party was working as a helper in the Community Polytechnic Scheme with consolidated wages @ Rs.1,000 per month. Thus, the materials placed on record show that before termination of his service under the Scheme the second party opted for another employment to work as a watchman to watch the D.T.E.&T.

staff quarters from 1-11-2007 which was approved by the D.T.E.&T. Odisha. He continued to work as a Watchman till 30-4-2008. This is how the second party continued in employment till 30-4-2008. The first party's explanation that the appointment of the second party as a Watchman by order of the Project Engineer which was never approved by the first party is supported by materials on record. The employment of the second party from 1-11-2007 till his retrenchment with effect from the 1st May 2008 was not under the C .P. Society. The workman had entered into a fresh contract of employment to work as a Watchman with consolidated wage of Rs. 1,800 per month to watch some quarters which were under the D.T.E.&T.

Accordingly, it is to be held that the employment of the second party under the C .P. Society came to an end with effect from the 1st November 2007 and thereafter he became an employee in the establishment of the D.T.E.&T.. It is deposed to by M.W. No.1 that the workman's wages from November 2007 to April 2008 was paid from A.C.A. Scheme fund meant for Sailashree Vihar Campus and not from the fund meant for the C.P. Scheme.

9. It is argued by the second party that since wages for the period from November 2007 to April 2008 was paid by the first party, it is to be presumed that the first party had approved the appointment of the second party as a Watchman. The first party does not dispute the fact of appointment of the second party for the said period. But, it is stated by M.W. No.1 that the wages was paid from the A.C.A. Scheme fund and not from the Community Polytechnic Scheme fund. There is nothing to disbelieve this statement of M.W.No.1. Earlier it is discussed as to how the second party was initially engaged to work in the C.P. Society and throughout he was working under the Scheme called "Community Polytechnic Society". It is also found that the Scheme was finally wound up on 31-10-2007. Order was also passed by the Chief Co-ordinator of the C.P. Society that all the employees of the society were disengaged from 30-11-2007. Prior to that the workman jumped over to another employment. Therefore, the term of employment form 1-11-2007 to 30-4-2008 cannot be tacked on to the term of his previous employment which covered the period from October 1999 to October 2007.

10. The termination of service under the Scheme is not under challenge. Therefore, it is unnecessary to deal with the submission that the workman was never made aware of the fact that his employment was under a Scheme which was co-terminus with the expiry of the Scheme . In this case the termination of his service as a Watchman which continued from 1-11-2007 to 1-5-2008 is under challenge. Under the new employment the second party did not complete one year of continuous service. Therefore, violation of Section-25-F of the Act does not arise. It is not shown by the workman that the other two Watchmen, who are still continuing, had joined after 1-11-2007 so as to be called junior to him. Therefore, the provisions of Section 25-G of the Act is also not contravened. That apart, the D.T.E.&T. with whose approval the second party was engaged as a Watchman in the D.T.E.&T. staff quarters at Sailashree Vihar has not been arrayed as a party. Ext.5 which consists of three sheets of note sheets and which is relied on by the second party reflects that so far the second party's engagement as a Watchman was concerned, the first party had no role to play. Ext.5 indicates that fresh engagement was made with the approval of the D.T.E.&T. Therefore D.T.E.&T. should have been arrayed as a party.

Considering the materials placed before this Tribunal, it is held that the termination of service of the workman with effect from the 1st May 2008 cannot be said to be illegal or unjust.

The Issue is answered against the second party workman.

11. *Issue No. (ii)*—In view of the discussions made on Issue No.(i), the second party is not entitled to any relief in the present proceeding.

Dictated and corrected by me.

RAGHUBIR DASH  
11-6-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
11-6-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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