

# The Odisha Gazette



**EXTRAORDINARY  
PUBLISHED BY AUTHORITY**

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**No. 1651 CUTTACK, SATURDAY, AUGUST 18, 2012/SRAVANA 27, 1934**

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**LABOUR & E. S. I. DEPARTMENT**

NOTIFICATION

The 4th August 2012

No. 7026—li/1-(B)-70/2003(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th May 2012 in Industrial Dispute Case No. 79/2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Konark Jute Ltd., Dhanmandal and its Workman Shri Ratnakar Moharana was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 79 OF 2003

Dated the 17th May 2012

*Present :*

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

*Between :*

The Management of Konark Jute Ltd., .. First Party—Management  
Dhanmandal.

And

Their Workman Shri Ratnakar Maharana .. Second Party—Workman

*Appearances :*

For First Party—Management .. Shri P. K. Lenka, Advocate

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

**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 Order No. 12053—li/1(B)-70/2003/LE., dated the 16th December 2003 :—

“Whether the action of the management of M/s. Konark Jute Ltd., in denying the employment of Shri Ratnakar Maharana, P. L. Weaver with effect from the 16th June 2000 is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. In response to the notice issued from this Court, both the parties have filed their respective pleadings.

It has been urged by the workman that he was working under the management with effect from 1979. During 1997 due to his illness, he remained absent and leave was granted by the E.S.I. During leave period, while he was moving to his native place, he met an accident and was treated under Subdivisional Medical Officer, Jajpur till the 15th June 2000. During that period of treatment, he applied for leave. On the 16th June 2000 on being recovered when he was proceeded to join on the very date, he was not allowed to enter inside the Mill. Finding no other way out, he sent his joining report along with fitness certificate by registered post with A.D. in favour of the management. When the management turned deaf ear, he met the Personnel Manager of the management and on his intervention the workman joined and performed his duty. After completion of his duty for two months, the workman was not paid his wages for which he made a representation on the 24th January 2001 through General Secretary, Konark Jute Mill Mazdoor Union with a copy to the Labour Officer, Jajpur, but the management turned deaf ear. As the management had illegally terminated the workman without complying the provisions under Section 25-F of the Industrial Disputes Act, 1947, he has raised the present dispute praying for reinstatement in service with full back wages and other service benefits.

3. The management in its turn has filed the written statement refuting the claim of the workman. While admitting the facts of engagement of the workman, the management has stated that the workman was very irregular in attending the duty and was warned vide their letter No. 218—J/PNL., dated the 17th April 1993 for his unauthorised absence from duty, dated the 1st November 1993 to the 25th March 1993. The management has further stated that in spite of disciplinary action he again remained absent unauthorisedly from the 2nd April 1993 for which charge-sheet was issued, explanation was called for and in spite of receiving the notice, the workman remained absent. Accordingly a domestic enquiry was conducted against the workman, notice was issued in the daily Newspaper ‘The Samaj’, dated the 6th March 1995 and in spite of the notice, the workman remained absent. The Enquiry Officer submitted his enquiry report on the 7th April 1997 and ultimately second show-cause notice was issued and the workman submitted his explanation in response to the second show-cause notice. Finally the workman was removed from the service. On the above backdrops, it has been urged by the management that the reference should be answered in negative against the workman.

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

#### ISSUES

(i) "Whether the action of the management of M/s. Konark Jute Ltd., in denying the employment of Shri Ratnakar Maharana, P. L. Weaver, with effect from the 16th June 2000 is legal and/or justified ?

(ii) If not, what relief the workman is entitled to ?”

5. In order to prove his case, the workman has examined himself as W. W. 1 and on the other hand, the management has examined two witnesses namely, Shri Aditya Prasad Das and Shri Asis Kumar Dash as M. Ws. 1 and 2 respectively. Both the parties have filed bunch of

documents during the course of hearing. Exts. 1 to 11 are marked on behalf of the workman and Exts. A to T are marked on behalf of the management.

6. Before going to discuss the evidence in details, it is pertinent to mention here that there is no dispute regarding the appointment of the workman. The management has taken a stand that due to unauthorised absence of the workman, a domestic enquiry was conducted and after completion of the enquiry, the Enquiry Officer submitted his report to the management wherein the Enquiry Officer found the workman guilty of the charges. The management on perusal of the enquiry report and other relevant documents, observed that the workman was afforded with all reasonable opportunities to defend himself. The management has also urged that principles of natural justice were strictly followed in the domestic enquiry and the enquiry has been conducted in a fair and proper manner. As the workman was found guilty of the charges framed against him, he was given a second show-cause notice, but the workman remained absent. Again to give a further chance to the workman to submit his explanation in response to the second show-cause, the management intimated him through paper publication in the Odia daily 'The Samaj', dated the 3rd July 1997 under the cover of Ext. K. But on perusal of Ext. K, it does not disclose the name of the Odia paper and the date of the publication. On the other hand, the workman has stated that no enquiry was conducted by the management against him.

7. M. W. 1 in his cross-examination has stated that he cannot say if the workman was on leave from the year 1997 and as the workman was already discharged from his service on the 11th September 1997, the acceptance of the joining report on the 16th June 2000 does not arise and his joining was refused. The M. W. 1 has also categorically stated that no communication was made to the workman by the management from the 11th September 1997 till the 16th June 2000. The M. W. 1 though stated that the workman was participated in the enquiry, but not a single piece of paper filed to show that the workman was participated in the enquiry. M. W. 2 in his cross-examination has admitted that the workman was re-engaged as a temporary casual employee after his dismissal. On the other hand, the workman has stated that no enquiry was conducted against him. He has stated that at the time of denial of his employment, the management has not given one month prior notice or notice pay in lieu thereof and retrenchment compensation. So the management has violated the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. M. W. 2, though appointed as Enquiry Officer, has not filed a single piece of paper relating to the conduct of the enquiry. M. W. 1, who is working as an Assistant and was only dealing with the service records of the employees of the management, has filed the documents of the management during his examination including relating to the enquiry. It is not understood, when the Enquiry Officer was very much present and available and is also working under the management as a Junior Officer-cum-HRD In charge, why the management instead of proving the documents through the Enquiry Officer, proved through M. W. 1, M. W. 2 relating to the enquiry, proved the same through M. W. 1 who was totally ignorant about the conduct of the enquiry and also its day-to-day proceedings. The Enquiry Officer who has examined as M. W. 2 in this case has not proved any document to show that the charges were duly informed to the workman, the witnesses were examined in presence of the workman, the workman was also given an opportunity to cross-examine the management witnesses and also the workman was given an opportunity to examine himself and his witnesses.

8. Law is well settled that :—

"An enquiry cannot be said to have been properly held unless (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the Enquiry Officer records his findings with reasons for the same in his report."

In the instant case, above principles were not strictly followed by the Enquiry Officer, M. W. 2. In view of the above settled principles of law, in my opinion, it cannot be said that the enquiry was conducted fairly and properly. So on careful consideration of all the materials available in the case record as discussed above and also in view of the above settled principles of law, I am of the opinion that the action of the management in denying the employment to the workman with effect from the 16th June 2000 is neither legal nor justified and the workman is entitled to be reinstated in service.

9. Regarding back wages, admittedly the workman has not worked under the management for the alleged period. The workman has also clearly admitted that due to his illness since 1997 and subsequent to an accident, he remained on leave till the 15th June 2000. So from the above admission of the workman, it is clear that he had not worked under the management from 1997 till the 15th June 2000.

Law is well settled 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."

Further law is well settled that :—

"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, payment of back wages is not justified."

So in view of the above settled principles of law, as the workman had not worked under the management since 1997, I am of the opinion that the workman is not entitled to get any back wages on the principles of "no work no pay". Both the issues are answered accordingly.

10. Hence Ordered :—

That the action of the management of M/s. Konark Jute Ltd., in denying the employment of Shri Maharana, P. L. Weaver, with effect from 16-6-2000 is illegal and unjustified. The workman Shri Maharana is entitled to be reinstated in service but without any back wages. However, the workman is entitled to get full wages from the date of publication of the Award. The management is directed to implement this Award within a period of one month from the date of its publication.

The reference is answered accordingly.

Dictated and corrected by me.

S.A.K.Z. AHAMED  
17-5-2012  
Presiding Officer  
Labour Court  
Bhubaneswar.

S.A.K.Z. AHAMED  
17-5-2012  
Presiding Officer  
Labour Court  
Bhubaneswar.

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