

# The Odisha Gazette

**EXTRAORDINARY  
PUBLISHED BY AUTHORITY**

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**No. 1995 CUTTACK, FRIDAY, OCTOBER 12, 2012/ASWINA 20, 1934**

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

**NOTIFICATION**

The 3rd October 2012

No. 8417—li/1(BH)-75/2008 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th August 2012 in I. D. Case No. 21 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Venkateswar English Medium School, Bhubaneswar and its Workman Smt. Sulochana Biswal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 21 OF 2008

Dated the 25th August 2012

*Present :*

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

*Between :*

The Management of M/s Venkateswar .. First Party—Management  
English Medium School, Bhubaneswar.

And

Its Workman .. Second Party—Workman  
Smt. Sulochana Biswal

*Appearances :*

Shri Patitapaban Panda .. For the First Party—Management  
Shri Sridhar Mishra .. For the Second Party—Workman

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## 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 matter to this Court for adjudication vide Order No. 8795—li/1(BH)-75/2008-L.E., dated the 16th August 2008 :

"Whether the action of the management of M/s Venkateswar English Medium School, Unit-IV, Bhubaneswar in terminating the services of Smt. Sulochana Biswal with effect from the 19th March 2008 is legal and/or justified ? If not, what benefit she is entitled to ?".

2. The case of the workman in brief, as set out in her statement of claim is that she joined as a Peon under the management on the 1st July 1994. Thereafter, she was transferred to Chandrasekharpur Branch with effect from the 1st January 2006. The workman worked continuously without any interruption till the 2nd February 2007. On the 2nd February 2007, the management directed the workman to report for duty at 6 A. M. But as the workman was going to her duty by school bus, she expressed her inability to report at 6 A. M. and requested the management she would be permitted to report for duty at the 7.30 A. M. But the management became vindictive and refused employment with effect from the 2nd February 2007. At the time of termination of her employment, she was getting Rs. 3,300 per month. Thereafter, the workman raised an industrial dispute before the labour authority on the 14th May 2007. According to the workman, while the conciliation notice was served and the management appeared in the conciliation proceeding, the management initiated a domestic enquiry vide letter No. 117, dated the 21st September 2007 on false and fabricated charges of gross misconduct and unauthorised absence from the 1st February 2007. According to the workman, the enquiry was conducted in a biased manner and she was not allowed to cross-examine the management witnesses. Thereafter the management issued a second show cause notice vide letter, dated the 1st February 2008. Therefore, according to the workman, the enquiry was not conducted fairly and properly. On these averments, the workman has prayed for her reinstatement in service with full back wages.

3. On the other hand, the management appeared and filed written statement stating that the management School has not been registered as an industrial undertaking within the ambit and scope of Industrial Disputes Act, 1947. According to the management, it is not an industrial School nor the second-party was a workman. The management has admitted that the workman was engaged as an Aya/Caretaker of small children between the age group of 4 years to 6 years and the salary of the workman has been paid regularly till the month of January 2007. Her last wage was Rs. 2,010 per month. According to the management, due to continuous unauthorised absence from duty for months together, a departmental proceeding was drawn up against the workman, but the workman did not participate in the said proceeding even though she has appeared in two occasions during the course of domestic enquiry. According to the management, the workman was transferred to different branches of the management School and on last such transfer, she was placed at Chandrasekharpur Branch School. While working as such, the workman remained absent unauthorisedly with effect from the 1st February 2007 without any leave application. So the management issued a letter, dated the 9th February 2007 directing the workman to join in her duty

immediately failing which action shall be taken against her. The above letter was sent to the workman through the Special Messenger (Peon), but the Peon without delivering the letter reported the matter to the management that the workman was absent in the house for the last 15 days as collected from the neighbours of the workman. However, as the whereabouts of the workman was not known, suddenly the management received notice from the District Labour Officer, Khurda along with the complaint petition of the workman, dated the 14th May 2007. Due to continuous absence of the workman, the management chargesheeted her on the 30th July 2007 for gross misconduct and violation of the statutory rules and instructions. After receipt of the chargesheet, the workman submitted her show cause on the 17th August 2007. But as the show cause of the workman was found unsatisfactory, the management decided to hold a domestic enquiry by appointing one un-connected independent person experience in the administrative side as Enquiry Officer and Mr. Pabitra Sahoo, Office Executive as management representative. Thereafter the Enquiry Officer issued notice to the workman to attend the enquiry and to adduce evidence to defend the charges. On the 30th July 2007 in presence of the workman, the Enquiry Officer conducted the domestic enquiry. According to the management, the workman had attended the enquiry on two occasions, but thereafter she did not participate in the enquiry and remained absent. So the Enquiry Officer, in absence of the workman examined the witnesses on behalf of the management and submitted his enquiry report to the management on the 14th January 2008 with a finding that the charges have been proved against the workman and she was also found guilty of the charges and accordingly suggested for major punishment. After receipt of the enquiry report and after careful consideration of the materials available in the record, the management issued a second show cause notice to the workman affording opportunity to show cause as to why major punishment shall not be imposed. But the workman did not submit any reply to the second show cause. Therefore, considering the findings and the suggestion of the Enquiry Officer and after being satisfied with the materials available on record, the management finally decided to terminate the services of the workman with effect from the 19th March 2008 and accordingly vide Order, dated the 19th March 2008, the management terminated the service of the workman with immediate effect. So, according to the management, the enquiry was conducted in a fair and proper manner and after due compliance of the principles of natural justice and adequate opportunity was provided to the workman to prove her defence. On these back drops, the management has prayed that the workman is not entitled to get any relief as prayed for and the reference be answered in favour of the management.

4. On the basis of the above pleadings of the parties, the following issues are settled :

#### ISSUES

- (i) "Whether the action of the management of M/s Venkateswar English Medium School, Unit-IV, Bhubaneswar, in terminating the services of Smt. Sulochana Biswal with effect from the 19th March 2008 is legal and/or justified ?
- (ii) If not, what benefit she is entitled to ?"

5. In order to substantiate her plea, the workman has examined three witnesses altogether out of whom, W. W. 1 is the workman herself and W. Ws. 2 and 3 are ex-teacher of the management and proved the documents under the cover of Exts. 1 to 9. On the other hand, the management has

examined five witnesses altogether out of whom, M. W. 1 is the Principal-*cum*-Secretary, M. W. 2 is an Aya, M. W. 3 is the Sr. Teacher, M. W. 4 is the Cashier and M. W. 5 is the Peon of the management and proved the documents under the cover of Exts. A to Q.

#### FINDINGS

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

On perusal of the pleadings as well as the evidence adduced on behalf of both the parties, it appears that no such separate issue has been framed relating to the question of fairness of domestic enquiry in the facts and circumstances of this case.

7. On the above score, the M. W. 1 has stated that the workman was placed at Chandrasekharpur Branch School on transfer to discharge her duty along with other peons, ayas and teachers. While the workman was working at Chandrasekharpur Branch, it is noticed to the management that the workman was remained absent unauthorisedly since the 2nd January 2007 without any leave application. So the management had issued a letter on the 9th February 2007 directing the workman to join in her duty under the cover of Ext. B. But the said letter was not served as the workman was found absent under the cover of Ext. B/1. M. W. 1 has further deposed that on verification of acquittance roll and attendance register under the cover of Ext. Q it shows that the workman was found absent unauthorisedly from the 22nd January 2007 till her termination, but as the leave of the workman was available in her credit, the salary for the month of January 2007 was paid. Due to unauthorised absence of the workman, the management chargesheeted on the 30th July 2007 under the cover of Ext. E for gross misconduct and violation of the statutory rules. After receipt of the charge-sheet, the workman submitted his reply on the 17th August 2007 under the cover of Ext. F. But, as the explanation of the workman was not found satisfactory, the management decided to hold a domestic enquiry by appointing one independent person as Enquiry Officer and accordingly appointed Shri Prajeev Kumar Chhotray as Enquiry Officer and Shri Pabitra Kumar Sahoo, Accountant as Presenting Officer under the cover of Ext. G. Thereafter the Enquiry Officer issued notices to the workman as well as the management representative fixing the 6th October 2007 for enquiry. On that date both the parties were present in the enquiry. On further perusal of the documents it clearly shows that the workman was present on the 6th October 2007 and the 13th October 2007 on which dates the workman requested for an adjournment and the next date was fixed to the 3rd November 2007. But on the said date the workman remained absent. In order to provide an opportunity to the workman, the Enquiry Officer has again fixed the enquiry to 13th November 2007 and the date of enquiry was intimated to the workman by registered post with A. D. along with a Bank Draft of Rs. 200.00 for conveyance allowance. But, though the workman received the enquiry notice and Bank Draft did not participate the enquiry proceedings. So the enquiry proceeding was proceeded with an *ex parte*. M. W. 1 has further stated that the Enquiry Officer after giving sufficient opportunities to the workman closed the enquiry holding guilty of the charges. During cross-examination, nothing has been brought out from his mouth to disbelieve the sworn testimony of the M. W. 1. Almost all the same facts is in the evidence of other witnesses of the management.

8. On perusal of the enquiry report under the cover of Ext. K and other connecting documents attached to the case record under the cover of Exts. E to Q, no apparent discrepancy has been pointed out nor proved by the workman to suggest in anyway that there has been any unfairness arose while conducting the domestic enquiry. Law is well settled that enquiry must be conducted honestly and *bona fide* with a view to determination whether the charges framed against a particular employee is proved or not, and so, care must be taken to see that these enquiries do not become empty formalities. Further 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.

9. With regard to the above settled principles of law and evidence on record, it is manifest that the enquiry was conducted strictly on the provisions of the principles of natural justice, besides affording reasonable opportunities of defence to the workman. Further on perusal of the case record, it appears that the management has issued second show cause notice affording opportunity for show cause as to why major punishment of termination shall not be taken against her, but the workman did not submit any reply to the second show cause and remained silent, thus impliedly accepting the charge levelled against her. In the present case, second show cause notice was issued to the workman, but she has not submitted any reply for which, the question of prejudice against the action of the management does not arise. So the contention raised by the workman cannot be accepted.

10. In the present case, in view of the evidence led by the parties and the enquiry report submitted by the Enquiry Officer, in my considered opinion that the enquiry report is proper and no breach of principles of natural justice took place during the course of enquiry. There is no material on record to suggest that the domestic enquiry conducted by the management against the workman was not fair and proper. But at the same time, on perusal of the case record it appears that the management Witness No. 2 (M. W. 2) during the course of her evidence has stated that the management entrusted her to discharge the duty of the absentee workman in addition to her own duty. She has further stated that from the 22nd January 2007 the workman remained absent and on the 5th February 2007 she (workman) came to the Management School for taking her salary. She has also stated that the authority of the management appointed a new Aya in place of the workman. To the same facts are the evidence of M. Ws. 3, 4 and 5. M. W. 4 has categorically stated that in the month of January 2007 the husband of the workman who was contesting the Sarpanch Election for the relevant year in Nirakarpur Gram Panchayat under Tangi Block and the workman took active role for campaigning in favour of her husband and remained absent without any leave application since the 22nd January 2007. On perusal of Ext. 5, it reveals that the management had sent a notice to the workman on the 9th February 2007 relating to her unauthorised absence from her duty with effect from the 1st February 2007 and the same was returned back unserved. M. W. 2 in her cross-examination, has stated that the workman came to the Management School on the 5th February 2007 and received her salary for the month of January 2007. On this score, it is not

understood how the management without any query and without submission of any leave application by the workman paid full salary to the workman on the 5th February 2007. From the above conduct of the management, in my opinion, is not proper to initiate a domestic enquiry against the workman.

11. So, on careful consideration of all the materials available in the case record as discussed above and in view of the above evidence of the parties, I am of the considered view that though the domestic enquiry conducted by the management against the workman appears to be fair and proper, but at the same, it is held that the action of the management in terminating the services of the workman with effect from the 19th March 2008 is neither legal nor justified. Hence, the workman is entitled to be reinstated in service.

12. Regarding back wages, it is now well settled by reason of catena of decisions of the Hon'ble Supreme Court 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, I am of the opinion that the workman is not entitled to get any back wages on the principles of "no work, no pay". Hence both the issues are answered accordingly.

13. Hence Ordered :

That the action of the management of M/s. Venkateswar English Medium School, Unit-IV, Bhubaneswar in terminating the services of Smt. Sulochana Biswal with effect from the 19th March 2008 is illegal and unjustified. However, the workman Smt. Biswal is only entitled to be reinstated in service but without any back wages. The management is directed to implement this Award within a period of two months from the date of its publication.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
25-8-2012  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED  
25-8-2012  
Presiding Officer  
Labour Court, Bhubaneswar

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