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## LABOUR & E.S.I. DEPARTMENT

### NOTIFICATION

The 15th November 2012

No. 9327—IR (ID)-2/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th August 2012 in Industrial Dispute Case No. 45 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Ruchika Social Service Organisation, Sriram Nagar, Samantarapur, Bhubaneswar and its workman Shri Ramesh Chandra Sahoo was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 45 OF 2010

Dated the 4th August 2012

Present :

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

Between :

The Management of M/s Ruchika Social  
Service Organisation,  
3731-A, Sriram Nagar,  
Samantarapur, Old Town,  
Bhubaneswar.

. . First Party —Management

And

Shri Ramesh Chandra Sahoo,  
C/o Smt. Sanjukta Samantaray,  
Plot No. 466, Nayapalli,  
Bhubaneswar.

. . Second Party —Worman

## Appearances :

Shri R. N. Rath, Authorised Representative.	. . For the First Party —Management
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Shri Ramesh Chandra Sahoo	. . For the Second Party —Workman himself.

## AWARD

The Government of Odisha in their Labour & E.S.I. Department, exercising power conferred upon them by Section 12 (5) read with Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, 'the Act') have referred the following dispute to this Tribunal for adjudication vide their Order No.6394—ID-2/2010-LE., dated the 30th July 2010 :—

“Whether the action of the management of M/s Ruchika Social Service Organisation, Bhubaneswar in terminating the services of Shri Ramesh Chandra Sahoo, Project Officer with effect from the 16th July 2009 is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?”

2. M/s Ruchika Social Service Organisation which is the first party -management in this case is also hereinafter referred to as the “Organisation”. Similarly, the second party -workman of this case is also hereinafter referred to as the ‘disputant’.

3. The case of the second party/disputant is that since 4-7-1990 he had been continuously working under the first party till termination of his services with effect from the 16th July 2009. Initially, he used to get Rs. 105 per month which stood revised from time to time and his last drawn salary was Rs. 5,000 per month. Although he was designated as Project Officer but he used to discharge clerical and manual work under the direct control and supervision of the Programme Manager. He had no supervising or managerial power. He had no subordinate staff under him to supervise their work.

On the circumstances that led to termination of his service, he has pleaded that when the employees of the first party formed a Trade Union in 2008 and submitted a charter of demands on raising of the pay structure and better service conditions the management coerced all the employees including the second party to enter into contract with the management agreeing for contractual employment. But, it was with an evil intention to get rid of all the old employees on completion of the proposed contractual period. Since the employees in the past had rendered long continuous service without any stipulation of contractual employment, they did not agree to accept the proposed contractual appointment. So, the management became vindictive and terminated the services of all those old employees who refused to accept the proposal. In this manner the second party who was the Assistant Secretary of the Employees’ Association became a victim and suffered retrenchment which is in contravention of Sections 25-F and 25-G and 25-H of the Act.

4. The first party in its written statement claims that neither it is an ‘industry’ nor the second party is a ‘workman’ as defined under the Act. The Organisation is a voluntary Social Service Organisation providing free services to the destitutes. Being a charitable Institution having no profit

motive it cannot be said to be an 'industry'. The second party and other persons, engaged by the Organisation to implement the latter's objectives are not its employees. They have employed themselves to render free service in lieu of small honorarium. So, there is no employer-workman relationship between the parties. That apart, the job of the second party as "Project Officer" was mostly supervisory in nature.

Further stand of the first party is that the disputant used to be engaged in different Projects from time to time and each Project being for a specific period his engagement for the respective Project was for a fixed period co-terminous with the Project. It was in the year 2007 the first party on the request of different Fundings Agencies, introduced its Human Resource Policy with a view to protect the interest of the workers. The disputant was given the responsibility to explain about the said policy to his colleagues. Instead of doing so he refused to follow the Rules and Regulations of the amended policy. Immediately before disengagement the disputant was engaged in a specific Project which was a fixed period. After closure of the Project work the disputant was paid two months honorarium and with the closure of the Project his engagement automatically came to an end. This has nothing to do with the Trade Union activities of the disputant. The impugned retrenchment being covered under Section 2 (oo) (bb) of the Act, there is no violation of Sections 25-F, 25-G and 25-H of the Act.

5. Basing on the pleadings of the parties, the following issues have been settled :—

#### ISSUES

- (i) "Whether the first party is an 'Industry' as defined in the I.D. Act ?
- (ii) Whether the second party is a workman as defined in the I.D. Act ?
- (iii) Whether the action of the management of M/s Ruchika Social Service Organisation, Bhubaneswar in terminating the services of Shri Ramesh Chandra Sahoo, Project Officer with effect from the 16th July 2009 is legal and/or justified ?
- (iv) If not, what relief Shri Sahoo is entitled to ?"

6. To substantiate their respective case the parties have examined witnesses and exhibited documents. The disputant has examined himself as W.W. No.1 and exhibited documents marked Exts.1 to 10. The management has examined its Project Manager as M.W. No.1 and one Cluster Educator as M.W. No.2. Exts.A to EE have been marked on behalf of the management.

#### FINDINGS

7. *Issue No.(i)*—In support of the claim that the activities of the Organisation do not make it an 'industry', the first party has pleaded that it is a Voluntary Organisation registered under the Societies Act, 1860 and is also qualified for deduction under Section 80-G of the Income Tax Act. It gets financial aid from the Central and the State Governments and Non-Government Organisations aswell and utilises the same in providing free services to the disabled and destitutes including imparting of free education to the destitute children. The Organisation engages some stray servants on hire for manual and technical work, but its main activities are performed by volunteers who come forward to engage themselves free or for small honoraria, to serve the destitutes without any remuneration.

The second party does not dispute that the first party is Charitable Organisation. But, it is contended that all Charitable Institutions are not excluded from the definition of the word 'industry' as explained by the Hon'ble Supreme Court in Bangalore Water Supply and Sewerage Board Vrs. A Rajappa, AIR 1978 (SC) 548. In the afore-cited case their Lordships have observed that in any profession, club, educational institution, co-operative, research institute, charitable projects and other kindred adventure where systematic activity organised by co-operation between the employer and employee for production and/or distribution of goods and/or services calculated to satisfy human wants and wishes is undertaken, it comes within the definition of the word 'industry'. In respect of Charitable Institutions it is further observed that if they fulfil the afore-stated tests they cannot be exempted from the definition 'industry'. Hon'ble Supreme Court have further held that the following two categories of Charitable Institutions would fall within the definition of 'industry'.

- (i) Where the enterprise, like any other, yields profits but they are siphoned off for altruistic objects ;
- (ii) Where the Institution makes no profit but hires the services of employees as in other like businesses but the goods and services, which are the output, are made available at low cost or no cost to the indigent needy who are priced out of the market.

The first party of this case may come within category (ii) above Charitable Institutions. Before coming to a final conclusion on this point it is necessary to examine the materials available on record.

From the oral evidence of M.W. No.1 it transpires that the first party takes up Projects for imparting primary education to children residing at Railway Platforms, Bustis and Slum Areas. It also runs shelter homes. Under Educational Guarantee Scheme of 'Sarba Sikshya Avijan' the first party had taken-up Alternative School Project. To run different projects the first party has a number of teaching centres manned by a number of Teachers/Educators, Supervisors, Project Co-ordinator/ Officers, etc.

M.W. No.2 has stated that the Organisation accepts various Project works from different Project Sponsors. According to him, the Organisation is a via-media to provide education free of cost to orphans/poor children dwelling in slums, bustis, road sides, railway platforms, etc.

Exts. 2 and 2/1 are the Organisation's Annual Reports for the year 2006-2007 and 2007-2008 where from it can be gathered that the *motto* of the Organisation is to advance opportunities to the under privileged children through education and other services. The Reports further reflect that annually 3,000 to 4,000 children receive primary education and 900 children receive free school education through different projects under-taken by the first party. Page-7 of Ext.2 further reflects that the Organisation's staff strength is 244 out of which 154 are part-timers. It also reflects the salary structure of the staff belonging to different categories. The reports further reflect that the Organisation has one S.N. Adalakha & Co. as its Auditor. The annual reports further reflect that in the year 2006-2007 the Organisation had 19 projects and in the following year it had 16 projects to execute.

The materials available on record establish that the Organisation gets donations from private persons/institutions, besides financial aid from the governmental agencies. Though it is claimed that most of its activities are done by persons who do not get salary or wages from the Organisation, it is not proved that such persons render free services for the Organisation. It is claimed that persons rendering free service for the Organisation get small honoraria but the annual reports reveal that the Organisation has a good staff strength who get salary as either part-timers or full-timers. With the staff strength as shown in the annual reports the management's plea that it has engaged some stray servants on hire for manual and technical work cannot be accepted. The first party claims that the Organisation carries-out different activities through a number of volunteers who get honoraria from the Organisation. But, in the annual reports there is no mention about engagement or volunteers as well as the amount paid to them towards honorarium. M.W. Nos.1 and 2 have stated during cross-examination that they get honorarium. M.W. No.1 is the Programme Manager of the Organisation. In Para.8 of Ext.2 his name finds place as a Member of the Governing Board/Managing Committee. Thus, he is in a Managerial post. He says that he gets an honorarium of Rs. 11,000 per month, but in another case (I.D. Case No.43 of 2010) he had stated in his deposition (Ext.11) that he gets an honorarium of Rs.18,000 per month. He admits that he has been with the Organisation since 1985. Initially, he was in the post of a Teacher. Then he became a Project Officer and thereafter, he became the Project Manager. M.W No.2 has stated that he has been with the Organisation since 1998. He admits that initially he used to get an honorarium of Rs. 200 per month and presently he gets honorarium of Rs. 1,500 per month. He admits that he is going to be covered under the E.P.F. Scheme. However, M.W. No.1 admits that since 2010 all the staff of the Organisation are covered under the E.P.F. Scheme.

While the second party claims that each of the staff members gets salary from the first party, M.W. Nos.1 and 2 claim that the staff including themselves get honorarium. It is difficult to get materials to determine whether the staff get salary or honorarium. But, it is quite evident that each gets certain amount every month in lieu of the service/work he/she renders for the Organisation. With the Annual Reports remaining silent on payment of honorarium and instead reflecting salary structure of staff belonging to different categories it is to be held that the Organisation pays salary to its staff, but consciously uses terms like 'volunteers' and 'honorarium' instead of 'employees' and 'salary' in an attempt to claim that there is no employer-employee relationship between the Organisation on one hand and its staff on the other.

8. It is stated by M.W. No.1 that the second party has worked under the first party as Teacher, Supervisor, Project Co-ordinator and Project Officer. He himself was initially working as a Teacher and subsequently became a Project Officer and then a Project Manager while rendering continuous service under the first party. It implies that the staff who have worked for a long period under the first party have got promotions from lower rank to higher rank. This is another ground for a presumption that there is employer-employee relationship between the Organisation and its staff. For the purpose of the Act, Whether the employees get honorarium or salary makes no difference. Because, all that the Act requires is that a workman is employed for hire or reward.

Apart from all these, the second party has also relied on Ext.3, which is the Human Resource Policy formulated by the Organisation. It appears to be just like the Certified Standing Orders of an industrial establishment. It embodies, *inter alia*, the definition of employee, method of recruitment of

employees, policy on the salary structure of the employees, provisions on the conduct of employees and procedure as to how charges on employees' misconducts ought to be dealt with. No doubt, it is stated in Ext.3 that the policy shall be effective from 1st January 2009. But, there is no explanation as to how all the matters specified in Ext.3 used to be dealt with by the management before the policy was formulated. From Clause-1 of the policy it is to be construed that the Organisation had a verbal Human Resource Policy prior to formulation of Ext.3. This gives rise to further inference that the Organisation was having its employees prior to 1-1-2009 who used to be governed by unwritten Rules. Thus, there are ample materials to record a finding that the Organisation functions by engaging employees and not volunteers.

The management fails to establish that its Charitable activities are performed by persons who work not because they are paid wages but because they share the passion for the cause and derive job satisfaction from their contribution. In Bangalore Water Supply and Sewerage Board's case (supra) the Hon'ble Supreme Court have observed that Institutions which are called to be Philanthropic entities are industries if they involve co-operation between employers and employees to produce and/or supply goods and/or services. In the case at hand, the first party is found to have been undertaking its social service activities with co-operation of its employees who get salary from the management. In *Thilagavathi S Vrs. P.O. Labour Court, Madurai, 2010(I) LLJ 101* the Hon'ble High Court of Madras have observed that Madurai Children Aid Society is an 'industry'. In that case the Society was being used as an observation Home for children and the Government was providing aid to the Society which also used to receive donations from other sources. The Society was giving educational training to the children for self-help jobs and the like. The Society used to get the allocated works carried out as per its Rules and Regulations and in accordance with the duty hours. Its accounts were being audited every year. With such factual aspects their Lordships held that there were systematic activities in the Society carried out for human necessities with the joint efforts by the employer and employees. The materials which having already been taken into consideration make it clear that the first party of this case stands in the same footing as Madurai Children Aid Society. The first party has placed reliance on another decision of the Hon'ble Madras High Court, reported in 1996 (III) LLJ (Supp.) 482 in which a Single Judge of the Hon'ble Madras High Court have held that Madurai Children Aid Society is not an 'industry'. In this case his Lordship have observed, *inter alia*, that the said Society was discharging sovereign functions as an Agent of the State Government. This reported case is not applicable to the first party inasmuch as it has not shown to be discharging sovereign functions.

In the result, it is held that the Organisation though not a profit earned Institution, it hires the services of employees and its services are made available at no cost to the indigent needy who are priced out of the market. Therefore, it is an 'industry'.

9. *Issue No. (ii)*—According to the second party, though he was designated as Project Officer, but all along he used to discharge clerical and manual duties under the direct control and supervision of the Programme Manager. He has further contended that no other person was working as subordinate to him. The management, on the other hand, takes the stand that the jobs the second party used to perform were of supervisory nature. Detailing the jobs that the second party was to discharge as Project Officer it is stated in the written statement that he was to visit all the Platform Schools and supervise the work of Cluster Educators and School Teachers, guide the Teachers and Cluster Educators in discharging their duties, train the staff working under him, supervise the

work of over 100 persons who were working as Teachers and Supervisors, etc. It is further claimed that he had the power to sanction leave to the Teachers and Supervisors up to three days and that beyond three days he used to recommend their leave applications to the Secretary of the Organisation for sanction of leave. He was marking attendance of the Teachers and Supervisors. He had the power to take independent decision in the matter of procurement of materials for the project. He was also conducting meetings and preparing plan of action for the projects. He also used to represent the Organisation in various meetings organised by the Funding Agencies of the projects concerned. Also he used to prepare policy for effective management of the project and when it was approved by the management he used to implement the same in the field. He was also selecting and appointing Platform School Teachers and part-time doctors for the projects. He was also deciding all matters related to admission of students as well as curricular and co-curricular matters.

Since both the parties have adduced evidence on their respective stand, it is to be considered as to how far they have established their respective stand.

The second party (W.W. No.1) has stated in Para. 4 of his affidavit that his duty was to collect survey data and children's data from different centres functioning under the Organisation by making personal visit to the centres from time to time to distribute nutrients, learning materials, books and stationeries to the centres, to attend the community Awareness Meetings at slum areas and to consolidate reports of different activities of the Organisation, to submit half-yearly and annual report to the Secretary/Programme Manager. In Para. 28 of his cross-examination he has admitted that sometimes he used to verify records/registers of different centres including the Attendance Register, Fee Realisation Register etc. He also admits that he used to issue Certificates to the children. However, he used to prepare programme for imparting teaching to the children in different Schools and that he had the power to select the teaching staff. In Para. 29 of his cross-examination he admits that he used to impart training to the Teachers and students as a Resource person and that he used to disburse salary/honorarium of the Staffs of the Schools/Centres. He denies that he had the power to grant or refuse leave to the Teachers and other staff of the School/Centres. However, he admits that after taking consent of the Programme Manager he used to dispose of the leave applications.

M.W. No.1 has stated in Para.7 of his affidavit that as Project Officer the second party used to visit different places to the Platform Cluster Educators/School Teachers; that he used to check the daily work of the Teachers and submit report to the Organisation about the effective running of the project work; that he used to sanction leave of Teachers/Supervisors up-to three days and leave applications exceeding three days used to be recommended by him and that he used to prepare honorarium list of the Teachers and recommend for payment and disbursement of the honorarium. He has further stated that the second party was dealing with student admission matter and was deciding which activities were necessary to be undertaken for smooth functioning of the project. He has further claimed that he was attending various meetings organised by the Funding Agencies and taking independent decisions for and on behalf of the Society. However, in his cross-examination he has admitted that he cannot produce documents in support of the facts stated in Para.7 of his affidavit. Though he has claimed that the second party had removed several Teachers from different Schools and reported against the supervisors and had passed orders for closure of Schools, the first party has not produced any document in support of these contentions.

M.W No.2 says that the second party, as Project Officer, was sanctioning leave of the Teachers, looking after proper distribution of mid-day meal and maintaining Busti Education Committee Register.

Some exhibited documents speak of the nature of work the second party used to perform. Ext. A is a School Transfer Certificate which the second party has issued as Project Officer. Ext.G is copy of one sheet of Attendance Register which the second party has verified as Project Officer. Ext.H is copy of one sheet of the Teachers' Attendance Register which has also been verified by the second party. Ext.H/1 is a sheet of Student Admission Register which has also been verified by the second party as Project Officer. Exts.L, L/1 and L/2 are the leave applications of Teachers addressed to the Project Officer. The signature of the second party appears on each of the leave applications denoting that the Teachers used to submit their leave applications before the Project Officer. The second party has not made any endorsement on the leave applications signifying either grant or refusal of the leave, but the fact that the Teachers have addressed leave applications to the Project Officer gives an impression that the Project Officer was the leave sanctioning authority. Ext.M reflects that the second party was a Resource person in a training programme for Teachers.

Thus, from the admission of the second party and the evidence adduced by the parties it is found that as Project Officer. the main work the second party was required to perform was to collect survey data and children data from different centres functioning under the Organisation, to distribute nutrition and learning materials to the centres, to attend Community Awareness meetings in slum areas and to submit half-yearly and yearly reports to the management on different activities of the centres. He also used to issue certificates to the students of different centres, verify attendance of the students as well as the Teachers and grant leave to the Teachers up to a period of three days. Though the second party claims that he was discharging other multifarious activities including putting up tents for awareness meetings, selling items in the first party's food stall at the exhibition Ground, Unit-I, Bhubaneswar during Adivasi Mela on January 26th each year and at other stalls organised by the management at Saheednagar, Bhubaneswar, but all these do not appear to be the main or daily work of the second party. That apart, he has not produced any documentary evidence to support this claim. To ascertain whether one is employed in a supervisory capacity the dominant nature of the work done by the employee is the determining factor. Materials on record show that the second party was not doing any clerical or manual work as claimed by him. The dominant nature of his work appears to be more in the nature of supervisory than either manual or clerical. It is found from the materials that he used to supervise the work of Teachers in different manner such as verification of Attendance Registers, collection of survey data from different centres manned by the Teachers, submission of half-yearly and annual reports on the activities of the centres and attending community awareness meetings. He had also the power of control over the Teachers, inasmuch as he was authorised to grant them leave up to three days. All these duties are neither of clerical or manual nature. Therefore, in the considered view of this Tribunal the second party, who was getting monthly remuneration of Rs. 5,000 as Project Officer at the relevant time, was employed to do supervisory work. Therefore, he is not a 'workman' as defined under the Act.

10. *Issue No. (iii)*—Admittedly, the services of the second party got terminated with effect from the 16th July 2009. Ext.9 is the management's letter putting an end to the second party's service with effect from the 16th July 2009. The reason of termination is said to be closure of the project in which he was working. It is claimed by the management that he was working as a Project Officer in the Alternative School Project for the period from January 2005 till the end of the project.



Thus, an attempt has been made to bring the termination under Section 2(oo) (bb) of the Act, Admittedly, no appointment order containing terms of employment was issued to the second party. It is also not in dispute that the second party had been working with the Organisation since 4-7-1990 in different capacities. It is not shown by the management that the second party was employed in any particular project for a specific period and that after closure of the project his employment terminated and thereafter he was engaged in some other project. As it appears from the Annual Reports the first party takes up several projects at a time and executes them with the help of its staff. Even though it is claimed that at the relevant time the second party was engaged in the Alternative School Project, it is not shown that the second party was employed on contract containing the condition that his employment would come to an end on the expiry of the project. No material is placed showing that the second party was made aware of the terms of employment from the very commencement of his employment under the said project. In *S.M. Nilajkar and Others Vrs. Telecom District Manager, Karnatak*, 2003 (97) FLR 608(SC) the Hon'ble Supreme Court have laid down certain criteria which are to be considered to ascertain whether a workman is engaged in a Scheme or Project and whether the termination of services of such a workman would fall within Clause (bb) of Section 2(oo) of the Act. In this regard, the Hon'ble Supreme Court have observed as follows :—

“The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied :—

- (i) that the workman was employed in a project or scheme of temporary ;
- (ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided *inter alia* that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract ;
- (iv) the workman ought to have been appraised or made aware of the above said terms by the employer at the commencement of employment.”

All these criterias are not found satisfied so far this case is concerned. It is found from the pleadings in the written statement that the project was forcibly closed by the first party because of some alleged misconduct on the part of the second party. It is claimed that due to some activities of the second party which ran against the interest of the organisation the latter was forced to close down a number of Platform Schools and ultimately it decided to close down the project (Alternative School Project) and with the closure of the project the engagement of the second party came to an end. The second party, on the other hand, has established that sometimes prior to the impugned retrenchment the second party and some other staff of the organisation had formed an Employees' Association and taken up trade Union activities to secure better service conditions. It appears, being dissatisfied with such trade union activities the management terminated the services of the second party and some other staff on the plea of closure of projects. If the second party is held to be a workman then the termination of his service is not legal due to non-compliance of Section 25-F of the Act. It is also not justified in view of the fact being dissatisfied with the activities of the second party the management denied him employment.

11. *Issue No. (iv)*—Since the second party is found to be not a ‘workman’ as defined under the Act, he is not entitled to any relief. In the event it is held that he is a workman, then his retrenchment would be illegal and unjustified and for that matter he would be entitled to reinstatement in service with full back wages. Since Issue No. (ii) is answered against the second party, he is not entitled to any relief and the reference is answered against him.

Dictated and Corrected by me.

RAGHUBIR DASH  
4-8-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
4-8-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor  
J. DALANAYAK  
Under-Secretary to Government