

# The Odisha Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

---

No. 2219 CUTTACK, WEDNESDAY, DECEMBER 5, 2012/MARGASIRA 14, 1934

---

---

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 23rd November 2012

No. 9625—IR(I. D.)-27/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th October 2012 in Industrial Dispute Case No. 40 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Central Electricity Supply Utility Service of Odisha and Shri Ganesh Chandra Patra represented through Odisha Rajya Bidyut Shramika Karmachari Sangha, Power House Colony, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 40 OF 2011

Dated the 17th October 2012

*Present :*

Shri Raghubir Dash, o.s.j.s. (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal, Bhubaneswar.

*Between :*

The Management of Central Electricity Supply Utility Service of Odisha, . . First Party—Management  
2nd Floor, IDCO Towers, Janpath,  
Bhubaneswar.

And

Shri Ganesh Chandra Patra, . . Second Party—Workman  
represented through Odisha  
Rajya Bidut Shramika Karmachari Sangh,  
Power House Colony, Bhubaneswar.

*Appearances :*

For the First Party—Management	. . Shri N. K. Mohapatra, Advocate
--------------------------------	------------------------------------

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

## AWARD

The Government of Odisha in their Labour & Employment Department (presently the 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. 4219—ID-27/2011-LE., dated the 3rd May 2011:

“Whether the termination of services of Shri Ganesh Chandra Patra, Artisan-B (contract) by the Management of Central Electricity Supply Utility Service of Odisha with effect from the 11th September 2009 is legal and/or justified ? If not, to what relief Shri Patra is entitled ?”

2. The case of the second party, as narrated in the claim statement, is that Shri Ganesh Chandra Patra, the disputant workman, was initially appointed by the first party as a Junior Artisan-B on contractual basis. He joined on the 15th January 2008 and worked continuously till his service was abruptly terminated on the 11th September 2009 on the ground of indisciplined behaviour but without any domestic enquiry.

3. The case of the first party is that the disputant workman was appointed on contract basis for a period of two years. His employment was to stand automatically terminated on expiry of the said term of the contract. However, during the period of his employment he was found to have committed theft of first party’s materials. In this regard he had made a confession in writing. Since his indulgement in such misconduct amounted to breach of one of the terms of the contract, his service was terminated in terms of the contract.

4. In terms of the reference, the following issues have been settled :—

## ISSUES

- (i) “Whether the termination of services of Shri Ganesh Chandra Patra, Artisan-B (contract) by the management of Central Electricity Supply Utility Service of Odisha with effect from the 11th September 2009 is legal and/or justified ?
- (ii) If not, to what relief Shri Patra is entitled ?”

5. The disputant workman (W.W. No. 1) is examined as the sole witness for the second party, whereas the S.D.O., Electrical Subdivision, Paradeep is examined as M.W. No. 1 and the Manager (Electrical), E&MR Division II, Bhubaneswar is examined as M.W. No. 2 on behalf of the Management. Exts. 1 to 6 have been marked for the second party and Exts. A to D for the first party.

## FINDINGS

6. *Issue No. 1*—Though it is not specifically stated in the written statement that the alleged retrenchment comes within the purview of Section 2 (oo) (bb) of the Act, the tenor of the pleadings contained in the written statement and the submissions made during argument is that the action

challenged by the second party is covered by the said provision of the Act. Ext. 1 is the order of appointment of the second party which also contains the terms and conditions of the contract of appointment. It transpires that the disputant workman was offered appointment purely on contractual basis for a period of two years with stipulation that the contract of employment would stand automatically terminated on expiration of the stipulated period unless terminated earlier, or, the term is not extended further by written order. It further prescribes that the management has the right to terminate the contract before expiration of the contract period by giving one month's written notice, or, in lieu thereof one month notice emoluments. It is further contemplated that for any act of indiscipline the contract employee will be suitably punished including facing summary termination of the contractual employment. Relying on these terms and conditions the management has justified its action by adducing evidence to the effect that the disputant workman was removed from employment on the ground of act of indiscipline.

7. The second party, on the other hand, contends that in absence of any enquiry into the alleged misconduct the action of the management is illegal as well as unjustified. It is also contended that the contractual appointment is nothing but a camouflage for a sustaining nature of arrangement in which the management goes on renewing the period of contract in order to avoid giving regular employment. It is submitted that the management has employed a number of persons on contract basis and goes on renewing their contract in order to get its regular work performed by such contractual workers. In this regard the evidence of M. W. No. 1 in Para. 12 of his cross-examination is relied on M.W. No. 1 has admitted that like the disputant workman some other workers were also given appointment on contract basis and all of them are still continuing in service. He has further stated that even after disengagement of the second party many other persons have been engaged as Artisan-B. Basing on his evidence it is submitted that if the employment of the disputant workman were not terminated, he would have been still continuing under the first party. The evidence of M. W. No. 1 is suggestive of the fact that the work, in which Junior Artisan-B are engaged by the first party on contract basis, always subsists and the management employs workman on contract basis and the term of the contract is renewed from time to time.

In Deputy Director of Health Services, Nasik *Vrs.* Sau. Latabai Rajdhar Paturkar, 1996 Lab. I.C. 428 (Bombay High Court), it has been observed that the sweep of Clause-(bb) of Section 2 (oo) cannot be extended to such cases where the job continues and the employee's work is also satisfactory, and yet periodical renewal are made to avoid regular status to the employees.

In Chairman-*cum*-Managing Director, Odisha Road Transport Co. Ltd. *Vrs.* Ramesh Chandra Gouda & Another, 1994 (II) LLJ 1127 (Odisha) our Hon'ble High Court have observed as follows :—

“ xx “Non-renewal of the contract of employment” would pre-suppose an existing contract of employment which is not renewed. It is of course true that even in respect of a daily wager a contract of employment may exist, such contract being from day to day. The position is different when such a contract is in reality a camouflage for a more sustaining nature of arrangement, but the mode of daily wager is adopted so as to avoid the rigors of the Act. To us it appears that sub-clause (bb) of Clause (oo) of Section 2 does not contemplate to cover a contract such as of a daily wager and

is rather intended to be more general class of contracts where a regular contract of employment is entered into and the termination of the service comes about because of non-renewal of that contract. Such a meaning to be given to sub-clause (bb) of Clause (oo) of Section 2 is in consonance with the substantive provision of Clause (oo) which defines “retrenchment” as a termination by the employer of services of a workman for any reason whatsoever. It is hence the general intention of the legislature that all types of termination of services are to be covered by “retrenchment” except the events excepted in sub-clauses (a) to (c). It is well known that exceptions to a general provision are to receive a rigours interpretation and only govern specifically the situations covered by them and no further. An exception cannot be permitted to frustrate the general provisions of the Act in this case to treat any termination of services as retrenchment except what is strictly excepted. xx.”

What has been observed by our Hon’ble High Court with respect to daily wagers can also be made applicable to the disputant workman of this case. Therefore, the exception provided under Clause (oo) (bb) of Section 2 of the Act is not applicable to the employment of the second party.

8. That apart, the Management ought to have conducted a domestic enquiry into the alleged misconduct of the disputant workman. It is alleged that he committed theft of materials and even submitted his confessional statement in writing. Ext. A is the confessional statement in writing signed by the disputant workman. But, Ext. 5 is another statement in writing made by the disputant workman denying that he committed theft of the materials. Ext. 5 was submitted by the disputant workman on the 28th August 2009 whereas the order of termination was passed on the 11th September 2009. When the disputant workman retracted from his confession the management should not have placed reliance solely on the retracted confessional statement and ought to have conducted an enquiry to find out whether the allegation of theft had any merit. Ext. 3, the order of termination, clearly states that on the indisciplined behaviour reported against the disputant workman the contractual appointment was terminated with immediate effect. No doubt, it is clearly mentioned in the order of appointment, Ext. 1, that for any act of indiscipline the employee would be “suitably punished including facing summary termination” of the contractual employment. However, since it is stated in the order of termination that the workman’s service was terminated on the ground of indisciplined behaviour, it casts a stigma on the disputant workman and the management was not justified in dispensing with an enquiry into the alleged indisciplined behaviour. Had it been an innocuous order casting no stigma on the second party the matter would have been viewed differently. In this regard, the following observations of the Hon’ble Supreme Court in 1998 Lab. I.C. 411 (SC) (LIC of India Vrs. Raghavendra Seshagiri Rao Kulkarni) is quoted for proper guidance :

“The requirement to hold a regular departmental enquiry before dispensing with the services of a probationer cannot be invoked in the case of a probationer especially when his services are terminated by an innocuous order which does not cast any stigma on him. But it cannot be laid down as a general rule that in no case can an enquiry be held. If the termination is punitive in nature and is brought about on the ground of misconduct, Article 311(2) would be attracted and in that situation it would

be incumbent upon the employer, in the case of Government service, to hold a regular departmental enquiry. In any other case also, specially those relating to statutory corporations or Government instrumentalities, a termination which is punitive in nature cannot be brought about unless an opportunity of hearing is given to the person whose services, even during the period of probation, or extended period, are sought to be terminated.”

In my considered view the same principle is applicable to an employee whose employment is said to be on contractual basis. Therefore, in the absence of a domestic enquiry the termination of service under the present reference is neither legal nor justified.

9. *Issue No. 2*—On behalf of the management it is argued that the relief of reinstatement cannot be extended to the second party inasmuch as the term of his employment in the absence of renewal thereof has already expired in the meanwhile. But, it is found from the evidence of M.W. No. 1 that like the second party some other workers were also given appointment on contract basis initially for a period of two years but all of them are still continuing in service. That apart, many other Junior Artisans-B have been engaged by the management after the second party’s employment was put to an end. So, it is to be presumed that if the allegation of misconduct were not made against the second party, he would have been in service till date. Since the action of the management is held to be illegal and unjustified, the second party is found entitled to reinstatement in service. But, in the absence of any pleading in the claim statement that he has been out of employment from the date of his retrenchment, he is not found entitled to back wages.

10. The reference is answered accordingly. The management shall reinstate the second party with the same terms and conditions as contained in the order of appointment marked Ext. 1. The term of his employment shall be deemed to have been extended under Sl. No. 14 of the terms and conditions of the contract marked Ext. 1. In the event the management fails to comply with the Award even after it becomes enforceable under the Act, it shall be liable to pay full back wages to the second party from the date the Award becomes enforceable. However, after such reinstatement it will be open to the management to initiate disciplinary proceeding against the second party for the alleged misconduct.

Dictated and corrected by me.

RAGHUBIR DASH  
17-10-2012  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH  
17-10-2012  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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