

# The Odisha Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

---

No. 2260 CUTTACK, WEDNESDAY, DECEMBER 12, 2012/MARGASIRA 21, 1934

---

---

## LABOUR & E. S. I. DEPARTMENT

### NOTIFICATION

The 4th December 2012

No. 9971—li/1(B)-67/2007-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 13th September 2012 in Industrial Dispute Case No. 15 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Neelachal Gases (P) Ltd., At Allia, P.O. Dhaneswar, Dist. Jajpur and their Workmen represented through Noble Gas Workers Union, Allia, Dhaneswar, Jajpur was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 15 OF 2008

Dated the 13th September 2012

Present :

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

Between :

The Management of  
M/s Neelachala Gases (P) Ltd.,  
At Allia, P.O. Dhaneswar,  
Dist. Jajpur. . . . . First Party—Management

And

Their Workmen represented  
through Noble Gas Workers' Union,  
At Allia, P.O. Dhaneswar,  
Dist. Jajpur. . . . . Second Party—Workmen

## Appearances :

Shri R. N. Rath, Authorised Representative. . . For the first Party–Management

Shri B. K. Boitai, General Secretary of the Union. . . For the Second Party—Workmen

## 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. 7475—li/1(B)-67/2007-LE., dated the 9th July 2008.

“Whether the action of the management of M/s Neelachal Gases (P) Ltd., Allia, Dhaneswar, Dist. Jajpur in terminating the services of Shri Satrugan Behera, Ajaya Ku. Dhal, Pramod Ku. Behera and Ganeswar Jena with effect from the 12th April 2007 is legal and/or justified ? If not, what relief the workmen are entitled to ?”

2. The case of the second party Union representing the workmen of the present reference, in short, is that the workmen named in the reference were all working under the first party-management. In the claim statement the dates of engagement of all the workmen except Shri Ajaya Kumar Dhal is mentioned. As per the claim, Shri Satrugan Behera was working as a Driver since January 2005, Shri Pramod Kumar Behera was working as a Loader-cum-Delivery Man with effect from January 2004 and Shri Ganeswar Jena was working as a Delivery Man-cum-Cook with effect from the 21st May 2003. It is averred in the claim statement that all the workmen had rendered continuous and uninterrupted service under the first party-management till they were retrenched from service with effect from the 12th April 2007. The retrenchment on the plea of closure taken by the management is stated to be false, baseless and motivated. It is alleged that after retrenching the workmen the management has continued its operation through a contractor who has employed its own labourers. The termination of service of the workmen being in contravention of the provisions of the I.D. Act, the second party has prayed for their reinstatement with full back wages.

3. Resisting the claim advanced by the second party, it is contended, *inter alia*, by the first party in its written statement that owing to closure of its Transport Wing the workmen were issued notice on 12-4-2007 intimating that their services would be terminated after 30 days from the date of the said notice. It is stated in the written statement that the notice 12-4-2007 was served on the workmen in accordance with the provisions contained in Section 25-FFA and 25-FFF of the I.D. Act. The management has further taken the stand that out of the workmen, Shri Ajaya Kumar Dhal has already settled his case with the management and he has taken his full and final benefits. There being no illegality in terminating the services of the workmen, the management has prayed to answer the reference in its favour.

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

#### ISSUES

- (i) “Whether the action of the management of M/s Neelachal Gases (P) Ltd., Allia, Dhaneswar, Dist. Jajpur in terminating the services of Shri Satrugan Behera, Ajay Ku. Dhal, Pramod Ku. Behera and Ganeswar Jena with effect from the 12th April 2007 is legal and/or justified ?
- (ii) If not, what relief the workmen are entitled to ?”

5. To substantiate their respective stand, both the parties have examined one witness each W.W. No.1 is the General Secretary of the Union and M.W. No.1 is the Managing Director of the first party. Exts. 1 to 11 are marked on behalf of the second party and Exts. A to G have been marked on behalf of the management. All the documents exhibited in this reference have been marked without objection.

#### FINDINGS

6. In respect of workman Ajaya Kumar Dhal, the management has filed the bipartite settlement entered into between the parties which has been marked Ext.F. It appears from Ext. F, which has been marked without any objection from the second party, that he has already settled his dispute with the management. Basing on such document, therefore, there is absolutely no need to adjudicate on the claim of Shri Ajaya Kumar Dhal.

7. In respect of the other three workmen, there is no dispute regarding the dates of their engagement under the first party. So, all of them are found to have been employed under the first party continuously for a period of one year.

8. Much emphasis has been given by the first party on its stand of closure which led to the termination of services of the workmen. But, for the reasons to follow the plea closure taken by the management in the present proceeding is not tenable.

Section 25-FFA of the I.D. Act deals with closure of an undertaking. It stipulates that :—

“(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking :

Provided that nothing in this section shall apply to—

(a) an undertaking in which—

(i) Less than fifty workmen are employed, or

(ii) Less than fifty workmen were employed on an average per working day in the preceding twelve months.

- (b) an undertaking set up for the construction of building, bridges, roads, canals, dams or for other construction work or project.

(2) Notwithstanding anything contained in sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like, it is necessary so to do, by order, direct that provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.”

The provision is very clear that notice for closure of an undertaking is to be served on the appropriate Government sixty days before the date on which the intended closure is to become effective and further such a course is not required to be adopted where less than fifty workmen are employed. In the case at hand, the documentary evidence i.e. Ext.4 shows that less than fifty workmen were employed under the first party when the alleged closure took place. Solely basing on such documentary evidence (Ext.4) it can therefore be concluded that Section 25-FFA of Chapter VA of I.D. Act is not applicable to the first party.

9. Conceding for the sake of argument that Section 25-FFA of the Act is squarely applicable to the present case, still the management is liable to pay compensation to the workmen as per Section 25-FFF of the Act which provides that upon closure of an undertakings the workmen, who have been in continuous service for not less than one year immediately before such closure, shall be entitled to notice and compensation in accordance with the provisions of Section 25-F of I.D. Act. Although admittedly the management has given notice, to the workmen, but it has not paid compensation to them.

In the claim statement the date of initial engagement of each of the workmen is reflected as follows :—

- |                                                     |    |              |
|-----------------------------------------------------|----|--------------|
| 1. Satrugan Behera, Driver                          | .. | January 2005 |
| 2. Pramod Kumar Behera,<br>Loader-cum-Delivery man. | .. | January 2004 |
| 3. Ganeswar Jena, Delivery<br>Man-cum-Cook.         | .. | 21-5-2003    |

10. All of them have faced termination of their services on 12-7-2009 and by that time each of them had completed more than one year of continuous service. The admitted non-compliance of the provisions of Section 25-F of the I.D. Act therefore renders their termination illegal as well as unjustified.

*Issue No. (i)* is, therefore, answered in favour of the second party

11. *Issue No. (ii)*—Now, it is to be seen as to what relief the workmen are entitled to. M.W. No.1 in Para. 7 of his evidence has stated that the Transport Wing of the first party has already been closed with effect from the 12th May 2007 i.e. after one month of issuance of the notice, Ext.E. His aforesaid evidence has not been shaken in any manner by the second party although M.W. No.1

has been cross-examined at length. Not even a suggestion was put to the witness that his aforesaid statement is false and that the Transport Wing is operational by way of employing other workmen. W.W. No.1 has stated that he has never worked under the first party. It is also elicited from him that he is not a workmen in the present reference. On the face of the aforesaid evidence it is therefore to be concluded that the Transport Wing of the first party was not at all operational after 12-5-2007 for which one of the workmen namely, Ajaya Kumar Dhal has closed to settle his dispute with the management. On this factual backdrop, the relief of reinstatement claimed by the workman is not found to be the appropriate relief. The admitted fact is that no compensation was paid to the workmen while issuing the notice Dt. 12-4-2007. Hence, in my considered view, the grant of compensation in lieu of reinstatement and back wages in favour of the three workmen namely, Satrugan Behera, Pramod Kumar Behera and Ganeswar Jena will be the appropriate relief in the present proceeding. Accordingly, each of the workmen named above is awarded a compensation of Rs. 10.000 (Ten thousand) only in lieu of their reinstatement and back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K.Z. AHAMED  
13-9-2012  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED  
13-9-2012  
Presiding Officer  
Labour Court, Bhubaneswar

---

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