

The Odisha Gazette

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 321 CUTTACK, TUESDAY, FEBRUARY 28, 2012 / FALGUNA 9, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th February 2012

No. 1205—IR-(ID)-104/2010-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th January 2012 in I. D. Case No. 16/2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Principal, Veer Surendra Sai Medical College, Burla, Sambalpur and their Workman Shri Khirod Kumar Sahu, Ex-Gate Keeper and Electrician (DLR) was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 16 of 2010

The 10th January 2012

Present :

Shri Pradipa Kumar Sasmal,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Principal, . . . First-party Management
Veer Surendra Sai Medical College,
Burla, Sambalpur.

And

Their Workman Shri Khirod Kumar Sahu, . . . Second-party Workman
Ex-Gate Keeper and Electrician (DLR),
S/o. Late Dayanidhi Sahu,
At Jharbandha, P. O. Nimabahali,
P. S. Palimi, Dist. Dhenkanal.

Appearances :

<u>Shri A. K. Panigrahi, Autho. Representative</u>	. .	<u>For the First-party Management</u>
Self	. .	For the Second-party Workman

AWARD

The present dispute arose out of the reference made by the Government of Odisha (now Odisha), Labour & Employment Department, vide their Order, dated the 8th October 2010 under letter No. 8572—ID/104/2010-L.E., giving rise to the registration of the present case under Section 10 and 12 of the Industrial Disputes Act 1947 (for short the "Act"). The dispute involved is scheduled as follows :—

"Whether the termination of services of Shri Khirod Kumar Sahu, Ex-Gate Keeper and Electrician (DLR) workman by Principal, Veer Surendra Sai Medical College, Burla, Sambalpur with effect from the 1st June 2007 is legal and/or justified ? If not, to what relief the workman is entitled ?"

2. The workman in his statement of claim submitted that in a meeting held on 24th December 1990 in presence of all the Administrative Officers of the first-party management he was decided to be engaged in the Girls' Hostel No. 1 by providing him boarding besides fooding with the assurance that he would be absorbed in the job in the event of the vacancy and with such decision he was ordered to work as Electrician and the Gate Keeper of that hostel from dated the 1st January 1991. The workmank said to have resumed duty as such Electrician and Gate Keeper from that day onwards. He however, submitted that since the fooding and sheltering was arranged for him, he was not paid with any salary for the services rendered but vide letter No. 4688/MC, dated the 17th June 1993 he was permitted by the first-party management to work as Electrician-*cum*-Gate Keeper in the said hostel with the assurance to absorb him on priority in the event of the subsequent vacancy to be arose. The workman said to have submitted educational qualification and the Trade Certificate before the authority.

In the passage of time, vide Notice No. 5147, dated the 14th July 1995 the office of the first-party management invited applications for filling up of Class-III posts and accordingly the workman said to have applied for the post of Electrician-*cum*-Mechanic vide his application dated the 18th July 1995. But when he was not appointed in the post, he called on the Principal of the first-party management who said to have disclosed that he being the only applicant having the required qualificatin for the job would get the same one day or the other and, as such, he should continue with the service. Subesequent thereafter the workman stated to have represented the Principal in writing on the 28th November 1995, 18th September 1996, 26th April 1997, 16th December 1998, 6th May 1997 and 29th December 2000 requesting his appointment in the job which has not yet been considered and kept pending by the Principal. On the other hand for the service rendered by him satisfactorily the inmates of the hostel were said to have apprised the Revenue Divisional Commissioner, Sambalpur, the Member of Parliament and the Chief Minister as well on the 7th January 2007 and 26th February 2007. But it was alleged by the workman that since the 14th July 1995 the process of appointment in the establishment of the first-party management was stopped but when during the year 2005 the advertisement was published in the different Newspapers inviting applications to fill up different posts he along with the other labourers then working in the management approached the Principal and in a written representation submitted to absorb them first and to fill up

the remaining posts through the interview. The Principal did not pay any heed and went on conducting successive interviews and appointments were given to the new hands ignoring his claim. For the above inaction of the first-party management the workman said to have approached the Administrative Tribunal at Cuttack Bench and filed a proceeding vide Case No. 916 (c)/2007 which after considering his case directed the Principal to consider his case for appointment but the Principal did not and instead, on the 1st June 2007 terminated him from the service without any notice or reason. The same day, the workman and others said to have approached the Principal for his reinstatement and also submitted a written representation but no reply was given thereto and on the other hand an amount of Rs. 2,880.00 was paid to him for the service rendered from the 1st January 1991 to 31st May 2007 as the Electrician-*cum*-Gage Keeper. He submitted further that from April 2006 he was paid with an amount of Rs. 320.00 P. M. and since then till May 2007 he was paid with an amount of Rs. 320.00 and Rs. 2,560.00 in total.

3. The workman further submitted that for the assurance given to him by the Principal of the first-party management he rendered the service for a period of 16 years and 5 months anticipating a regular post but when instead of regularising his service he was terminated therefrom he approached this Court vide Misc. Case No. 26/2007 to get the arrear dues. According to him, this Court on consideration of the matter disposed of the said Misc. Case on the 19th July 2009 directing the opposite party Principal to pay him an amount of Rs. 2,00,665.50. But since the Principal failed to comply the orders of the Court and did not pay him the amount he intimated the Labour Commissioner about the same which is pending consideration.

4. Alleging the irregularities done by the Principal of the first-party management in appointing the new hands in gross violation of the norms of the appointment procedure, the workman asserted further by citing some of the examples of irregularities done that the matter was brought to the notice of the District Administration and other investigating agencies for the needful and prayed on the other hand to the Court to consider his case and reinstate him with full back wages as the Principal remained mum even after issuance of different letters to him by other higher authorities of the Health Department to consider his case.

5. The management in the written statement challenged the maintainability of the proceeding before this forum by submitting that the management is not an "Industry" and does not come under the purview of the Act; whereas the proceeding would otherwise be bad for non-joinder of the necessary party.

Further case of the management is that the second-party was never engaged against any sanctioned post and since he was asked to work only on stop gap arrangement that too, as contract labourer to work for two days in a week and eight days in a month he would not be entitled to get any relief in the case with the existing law of the land. Denying the appointment of the workman in the ladies hostel as Electrician-*cum*-Gate keeper from 1991 and denying further the issuance of any appointment order vide letter No. 4688/MC. dated the 17th June 1993 the management submitted that such a communication of the year 1993 related to other official matter and not the appointment order of the petitioner. It is therefore, alleged that the petitioner by fabrication of the documents made claim and filed Misc. Case No. 26/2007 in which he could be successful but due to the above action of the petitioner, the matter was reported to the Vigilance/Police and other authorities for necessary

actions besides filing a Writ Petition against him before the Hon'ble High Court of Odisha for the illegal claim made. The management also denied to have given any assurance to the petitioner for his future appointment in any post and submitted further that no specific order was given to them by the Odisha Administrative Tribunal in the judgement of the case initiated by the workman and since he had no merit and eligibility his case was rejected by the Director of Medical Education and Training (DMET), Odisha on the 17th September 2007 after taking into consideration the relevant fact. Saying so, the management submitted further that the entire case of the petitioner is based on false claim, self founded story and false documents and prayed consequently the Court to reject his claim for the above conduct.

In his rejoinder the workman submitting the assertions of the management to be suppression of the material facts and truth and gross violation of the orders of the Court prayed to reject the same and to order for his reinstatement with full back wages; whereas in his additional rejoinder to the consolidated written statement prayed for the similar relief reiterating almost all the claim made by him in the statement of claim.

ISSUES

6. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication :

- (i) "Whether the termination of service of Shri Khirod Kumar Sahu, Ex-Gate Keeper and Electrician (DLR) workman by Principal, Veer Surendra Sai Medical College, Burla, Sambalpur with effect from the 1st June 2007 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?"

7. The workman himself and the Associate Professor of the Management Institution, who is also found to be the authorised representative of the first-party management were only examined as the lone witness on their respective behalf. Photo copies of number of letters, circular orders and the orders passed by different authorities including the Hon'ble High Court were brought into record by the parties as the documentary evidence.

FINDINGS

8. *Issue No. (i)*—The workman in his examination-in-chief submitted through the affidavit stated the facts in relation to the initiation of his job under the management till his termination by it as shown by him in the statement of claim and also alleged about the irregularities committed by the management in conducting the interviews and appointing the new hands by dishonouring his claim for the post though he had also offered his candidature for the same. While in the box, he proved as many as 34 documents in support of the statement given by him in his examination-in-chief. From the statement given by the workman (W. W. 1) among other things it appeared that at Para. 2 of his affidavit he specifically mentioned that he was not paid with any amount towards the services rendered by him as his Mess and Boarding were accommodated by the management who had assured him to absorb in a regular post in future. He even submitted that the management had issued him letter No. 4688, dated the 17th June 1993 to perform the duties of Electrician-cum-Gate Keeper at the Girls' Hostel No. 1. It is found that the workman proved the photo copy of the letter, dated the 17th June 1993 as Ext. W-2 and has also referred about the same in the representation submitted by him to the Principal, V. S. S. Medical College on the 29th December 2000, which has been proved as Ext. W-6. But from the cross-examination of this witness it appeared

that he was not appointed by any written order but admitted to have produced before them the appointment order issued to him in the year 1993. When suggested W. W. 1 denied such appointment order to be a false document by volunteering then that the witness examined on behalf of the management in I. D. Misc. Case No. 26 of 2007 has admitted about the genuinity of the appointment order of the year 1993. W. W. 1 was, however, not able to bring into evidence any such statement of the witness of the management said to have been given in that Misc. Case. On the other hand, when evidence was adduced on behalf of the management through its authorised representative (M. W. 1) the said witness among other things proved the attested true copy of the relevant entry in the register of letters issued during the year 1993 as Ext. M. 11. From the entries made in that document it is found that letter No. 4688 was issued on the 24th June 1993 but not on the 17th June 1993 and the letter was issued to the DMET, Odisha, Bhubaneswar regarding transmission of charge report of one Dr. Snehalata Das. From the entries in Ext. W 2 and Ext. W 4 it is found that Memo No. 4689, dated the 17th June 1993 in continuation of letter No. 4688 of the even date was issued to the Chairman of the Hostel Council, Warden, Ladies Hostel No. 1 and others for information and necessary action; whereas such a number (4689) was found to have been issued to the Deputy Secretary to Health & Family Welfare Department transmitting copy of the charge report of Dr. Snehalata Das. While adducing evidence M. W. 1 among other things advanced the statement that for such fabrication of the official papers, a report has been lodged before the police for the needful. Therefore, in the premises and in absence of acceptable explanation on behalf of the workman it appeared that his claim regarding issuance of any order by the management to work as the Electrician-*cum*-Gate Keeper is something not beyond a reproach. Besides that though the workman asserted that he was not paid with any wages by the management for the services rendered by him and during cross-examination at Para. 10 gave an explanation in that regard by stating that he could not raise any voice for payment of remuneration as in the appointment order of the year 1993 he was assured to be absorbed in a regular post in future. The genuinity or otherwise of the so called order issued to him in 1993 and proved Ext. W. 2 has already been discussed earlier. But from the stand taken by the workman in the other combined representation submitted by him and others and proved as Ext. W. 6 it appeared that they have agitated the grievances regarding retrenchment of daily wage workers without any reason and in the earlier Misc. Case No. 26/2007 filed before this Court, copy whereof was proved by him as Ext. W. 17, he had also styled himself to have worked as Choukidar-*cum*-Electrician on daily wage basis. To add to it in other applications filed by him before the Odisha Administrative Tribunal in O. A. No. 916 (C) of 2007 he had also prayed the Tribunal to allow him to continue in a daily wage basis till regularisation of his service. To dispel the stand taken by the workman that he was not paid with any remuneration, M. W. 1 in his examination-in-chief asserted that the workman was engaged in the stop gap arrangement and at Para. 5 of the affidavit stated specifically that he was engaged as a part time labourer on daily wage basis at Rs. 40.00 from May 2006 to March 2007 and at Para. 11 asserted that before termination of the engagement with effect from the 1st April 2007 (not 1st June 2007 as claimed by the workman) he had not at all worked without interruption for a period of 240 days. M. W. 1, however, admitted during cross-examination at Para. 3 that no notice was issued to the workman in writing while terminating his service and he was also not paid with any retrenchment compensation as the same was not necessary by admitting further at Para. 13 of the cross-examination that despite issuance of direction of the Labour Commissioner, Odisha, the entitlements of the workman were not paid to him due to pendency of the dispute before the Hon'ble High Court of Odisha. He however, admitted about the earlier Misc. Case filed by the workman before initiation of this present dispute. At Para. 6 of the cross-examination the answer of M. W. 1

was that the workman was also not given with the job of the Attendant in the employment process of the year 2005 to 2007 as he had not submitted all the required testimonials of his category. In support of his statement M. W. 1 had proved Ext. M. 2 to Ext. M 11.

Some other evidence regarding the alleged irregularities committed by the Principal for the interview conducted by the management and the appointments made were adduced by the workman through documentary evidence and M. W. 1 was cross-examined on that score at length but, it appeared to my humble view that the same cannot be considered being redundant before this forum.

This much is the evidence adduced by the parties.

9. In the written note of argument submitted by the workman on the 20th December 2011, it was found that he has again reproduced the stand taken by him in the statement of claim and rejoinder besides reiterating the allegations against the management about the irregularities committed in the interview for different posts and the subsequent appointment given to different persons. He has also alleged about non-compliance of the statutory provisions of the Act by the management.

On the other hand, the authorised representative of the management in the written note of argument submitted almost the sum total of the evidenciary value of the documents proved by him while in the box besides mentioning certain legal position. But, when the workman did not submit any case law to substantiate his claim, the management pressed into service the case laws reported in 2009 (Supp. 1) DLR 561 (Jitendra Vs. Registrar); (2009) 2 SCC (L & S) 646 (Krishna Vs. Mohd.); (2010) 1 SCC (L & S) 1126 (Union Vs. M. K.); and (2010) 1 SCC (L & S) 545=(2009) 15 SCC 327 (Jasbir Vs. Haryana).

Out of those case laws in 2009 (Supp. 1) D. L. R. 561 (*Supra*) when it was held that any appointment made on temporary or *ad hoc* basis in violation of the mandate of the Constitution is not permissible and thus void; in (2010) 1 SCC (L & S) 545 (*Supra*), it was observed that in the event of alleged violation of Section 25 F of the I. D. Act 1947, the nature of appointment, the period of appointment, the availability of the job etc. should be weighed with the Court for determination of such an issue. In (2009) 2 SCC (L & S) 646 (*Supra*) their Lordship referring the other judicial pronouncements held that the workman has to prove completion of 240 days of work under Section 25 (F) of the I. D. Act 1947. However in (2010) 1 SCC (L & S) 545 (*Supra*). Their Lordships held further that "an order of retrenchment passed in violation of Section 25 F although may be set aside but an Award of reinstatement should not be automatically passed. "The Award of reinstatement with full back wages in a case where the workman particularly 'a daily wager' (under line mine) who has completed 240 days of work in a year preceeding the date of termination has not been found to be proper. Compensation instead of reinstatement has been held to meet the ends of justice". Saying so, their Lordships at Paras. 17 and 18 of the Judgment discussed the manner in which the compensation should be awarded and determined.

10. Keeping in mind the above principles, when the dispute involved in this case is examined it is found that the workman had rendered the job admittedly as 'a daily wager'. As such he, in view of the observation made by their Lordships in (2010) 1 SCC (L & S) 545 (*Supra*), notwithstanding the length of service rendered by him under the management, would not be entitled to the relief of reinstatement with full back wages as prayed for by him. As regards the legality or otherwise of his termination, he has admittedly filed another proceeding in Misc. Case No. 26/2007 for computation of money/benefit due to him which has already been disposed of by this Court and the parties are

now fighting such litigation elsewhere. In that view of the matter, it would in my humble view, not be proper otherwise to Award any compensation. Consequently, issue No. (i) is answered against the workman.

The principles of *res judicata* was held applicable to a dispute under the Act by different judicial pronouncements. In that view of the matter, I am of the considered view that the workman would not be otherwise permitted to agitate the grievances regarding the legality or otherwise of the termination of his service in a subsequent proceeding like the present one being barred under the principles of constructive *res judicata*. Consequently, when he remained satisfied by agitating his claim in the Misc. Case under Section 33 (C) of the Act and ultimately found to have received the amount due to him, he even otherwise would not be entitled to any compensation further in lieu of his termination from service in the light of the principles decided in (2010) 1 SCC (L & S) 545 (*Supra*).

Thus, concluding the discussion in the above manner, issue No. (i) is answered against the workman.

11. *Issue No. (ii)*—For the discussion made in issue No. 1 the workman would not be entitled to any other relief also. Hence, answering this issue accordingly, it is ordered —

AWARD

That the reference be and the same is adjudicated against the workman on contest but without any cost.

Dictated and corrected by me.

P. K. SASMAL
10-1-2012
Presiding Officer
Labour Court, Sambalpur

P. K. SASMAL
10-1-2012
Presiding Officer
Labour Court, Sambalpur

By order of the Governor

T. K. PANDA

Under-Secretary to Government