

# The Odisha Gazette

**EXTRAORDINARY  
PUBLISHED BY AUTHORITY**

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**No. 416 CUTTACK, WEDNESDAY, MARCH 14, 2012 / FALGUNA 24, 1933**

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**LABOUR & EMPLOYMENT DEPARTMENT  
NOTIFICATION**

The 18th February 2012

No. 1246—IR-ID-27/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st January 2012 in I. D. Case No. 17/2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Odisha State Road Transport Corporation, Bhubaneswar and its Workman Shri Sukanta Kumar Dash was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 17 OF 2010  
Dated the 21st January 2012

*Present :*

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

*Between :*

The Divisional Manager (T), . . . First Party—Management  
Odisha State Road Transport Corporation,  
Baramunda, Bhubaneswar.

And

Shri Sukanta Kumar Dash, . . . Second Party—Workman  
S/o. Shri Umashankar Dash,  
At/P.O. Aggarapada, P.S. Chandaka,  
Dist. Khurda.

*Appearances :*

Shri Ghasiram Tudu, Labour Welfare Officer . . . For the First Party—Management

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Shri Sukanta Kumar Dash . . . Second Party—Workman himself

## 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 (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short, 'the Act') have referred the following dispute for adjudication vide their Order No. 3254—ID-27/2010-LE., dated the 22nd April 2010.

"Whether the termination of services of Shri Sukanta Kumar Dash with effect from the 16th March 1999 by the Management of Odisha State Road Transport Corporation, Baramunda, Bhubaneswar represented by the Divisional Manager (T) is legal and/or justified ? If not, to what relief Shri Dash is entitled ?"

2. The case of the second party workman is that he had been working as a Sweeper Supervisor in the establishment of the first party since the 15th November 1992. He had been discharging his duty satisfactorily. Yet, the management refused employment to him with effect from the 16th March 1999 without complying with the provisions of Section 25-F of the Act. Even Section 25-G of the Act has been violated in as much as the management has allowed some of the workmen junior to him to continue. It is further alleged that after his retrenchment the management has given employment to freshers in his place.

3. In the Written Statement filed by the first party it is admitted that the second party was working as a Sweeper on daily wage basis from the year 1991. He was engaged in Sanitation & Sweeping of Baramunda Bus Stand. When that work was handed over to the Private Bus Owners' Association the second party did no more report for work. Thus, he has voluntarily remained absent from work since the 16th March 1999 and the plea of refusal of employment is false. It is asserted that raising a dispute after a very long period operates as a bar against the workman claiming for his reinstatement and back wages.

4. The following issues have been settled :—

## ISSUES

- (i) "Whether the termination of services of Shri Sukanta Kumar Dash with effect from the 16th March 1999 by the management of Odisha State Road Transport Corporation, Baramunda, Bhubaneswar represented by the Divisional Manager (T) is legal and/or justified ?
- (ii) If not, to what relief Shri Dash is entitled ?
- (iii) Whether the second party has voluntarily abandoned the job ?"

5. At the stage of hearing the management participated in the proceeding till the workman adduced evidence from his side. Thereafter, the management failed to appear on several occasions. Though opportunities were given, the management at last failed to take part in the proceeding. Thus, the management has not adduced any evidence in this case.

6. The workman has examined himself as W. W. No. 1 and exhibited documents marked Exts. 1 to 6.

## FINDINGS

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

There is no dispute that the second party had been working in the establishment of the first party as a workman from the 15th November 1992 till the 16th March 1999. To prove the factum of employment the workman has exhibited documents marked Exts. 1 to 5. Ext. 5 reflects that vide Order dated the 8th January 1996 the daily wage of the second party was raised from Rs. 25.00 to Rs. 30.00 with effect from the 1st August 1995. The workman claims that he was working as a Sweeper Supervisor. However, his monthly wages at the relevant time did not exceed Rs. 1,600. The management also does not take the stand that the second party being a Supervisor was not coming within the definition of 'Workman' under the Act.

8. The real dispute is on the manner in which the employment of the workman came to an end. When the workman claim that he was denied employment with effect from the 16th March 1999, the management has disputed it by taking the plea of voluntary abandonment of service with effect from the same date. The workman has adduced oral evidence stating that he was refused employment. There is no evidence from the side of the first party. However, the management's plea on the delay in raising the industrial dispute needs careful consideration. The employment of the workman disrupted with effect from the 16th March 1999. It is not on record as to on which date the workman first raised the dispute. The conciliation failure report annexed to the order of reference received from the State Government does not reflect as to on which date the workman made the complaint before the labour machinery alleging the wrongful retrenchment. However, it is found from the failure report that the Conciliation Officer admitted the dispute into conciliation on and from the 15th October 2008. Ext. 6 is a copy of a notice to the D. T. M. (Admn.) of the first party inviting views from the management on the workman's complaint that he had been wrongfully retrenched. Ext. 6 was issued on the 20th June 2006. From this document it is found that the workman made the complaint prior to the 20th June 2006. The workman has not shown to have made any representation before the first party, soon after the alleged retrenchment, that the Manager, Baramunda Bus Stand verbally refused him employment with effect from the 16th March 1999. From all these facts and circumstances an inference may be raised to the effect that the workman raised the dispute by making a complaint to the labour machinery some months prior to the 20th June 2006 i. e., the date of issue of Ext. 6. Thus, there is a delay of around five years in raising the dispute. The silence maintained by the workman for such a long period is a strong circumstance in favour of a presumption that he had voluntarily remained absent from duties with effect from the 16th March 1999.

But, the management on its part should have issued a notice to the workman soon after he stopped reporting for duty with effect from 16th March 1999 calling upon him to resume his duty. It is only when the employee does not turn-up despite of such notice there may be a strong presumption that he abandoned his job voluntarily. The burden is on the management to prove that the alleged retrenchment is in fact a case of voluntary abandonment of job. Whether the employee has abandoned the service or not is a question of fact which has to be adjudicated on the basis of evidence and attending circumstances. Mere inordinate delay on the part of a workman to raise the dispute is not sufficient for a conclusion that it is a case of voluntary abandonment of employment. In the facts and circumstances, it is held that the workman was refused employment with effect from the 16th March 1999 possibly when the sanitation work was handed over to the Private Bus Owners' Association.

But, it is stated by the first party in its written statement that similarly situated co-workers of the second party are still working in the establishment of the first-party which gives rise to a presumption that the services of the second-party were terminated when work was still available. There is no assertion that there was compliance of the provisions of Section 25-F of the Act. The workman was under continuous employment for more than six years. Therefore, it is held that the refusal of employment which amounts to retrenchment is neither legal nor justified.

9. *Issue No. (ii)*—From the pleadings of the first-party there arises a presumption that had the second party not abandoned his job the management would have continued him even till date. It is also found from the pleadings that similarly situated co-workers are still working in the establishment of the first party. Therefore, this Tribunal holds that the second party is entitled to reinstatement. The workman claims that since his retrenchment he is unemployed. He was working as a daily wager. At the time of his retrenchment he was aged about 27. It is difficult to believe that a daily wage earner would sit idle for such a long period. That apart, he is found to be guilty of causing a long delay in raising the dispute. For all these reasons back wages should not be Awarded to him. Thus, the workman is held entitled to be reinstated without back wages.

10. The reference is answered accordingly. The first party to implement the Award within a period of two months of the date of its publication in the Official Gazette, failing which it shall be liable to pay full wages to the second party from the date the Award become enforceable till the date of his actual reinstatement.

Dictated and corrected by me.

RAGHUBIR DASH  
21-1-2012  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH  
21-1-2012  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

By order of the Governor  
T. K. PANDA  
Under-Secretary to Government