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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 30th December 2011

No. 11860—li/1(B)-98/2005-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd November 2011 in Industrial Dispute Case No. 72 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Bhubaneswar Municipal Corporation, Bhubaneswar and its workman Shri Dilip Kumar Bisoi was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 72 OF 2005

Dated the 2nd November 2011

*Present :*

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

*Between :*

The Management of Bhubaneswar .. First Party—Management  
Municipal Corporation, Bhubaneswar.

*And*

Its workman .. Second Party—Workman  
Shri Dilip Kumar Bisoi

*Appearances :*

For the First Party—Management .. Shri B. Pati, Assistant Law Officer

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For the Second Party—Workman himself .. Shri D. K. Bisoi

## AWARD

The Government of Odisha in exercise of powers conferred 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 matter in dispute to this Court vide Order No. 9221—li/1(B)-98/2005-LE., dated the 29th October 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of Bhubaneswar Municipal Corporation, Bhubaneswar in terminating the services of Shri Dilip Kumar Bisoi, Amin with effect from the 22nd December 2000 is legal and/or justified ? If not, to what relief Shri Bisoi is entitled ?”

3. The case of the workman in brief is that he was engaged under the establishment of the management with effect from the 22nd December 1998 as a C. C. R. Amin and continued with the employment till the 22nd December 2000. It is averred by the workman in his statement of claim that without any rhyme or reason, his service was terminated with effect from the 22nd December 2000 without any notice or notice pay or compensation. As there was no response, the workman approached the labour machinery. Conciliation proceeding having failed on the basis of the failure report submitted to the State Government, the present reference was made for adjudication. As the workman's service was terminated illegally, he prayed for reinstatement in service with full back wages and other service benefits.

4. The management appeared and filed written statement. The workman's claim was resisted by the management on the ground that he voluntarily abandoned his job with effect from the 22nd December 2000. The management took stand that the workman's service was never terminated and that he voluntarily abandoned the employment. The workman being a casual worker in view of voluntary abandonment of his service is not entitled to any relief. It was further averred that due to austerity measure imposed by the State Government and there was no sufficient work for the regular employees in the management for which the workman's case could not be considered. In these averments the management has prayed for dismissal of the present reference.

5. In view of the above pleadings of the parties, the following issues are settled :—

## ISSUES

- (i) “Whether the action of the management of Bhubaneswar Municipal Corporation, Bhubaneswar in terminating the services of Shri Dilip Kumar Bisoi, Amin with effect from the 22nd December 2000 is legal and/or justified ?
- (ii) If not, to what relief Shri Bisoi is entitled ?”

6. In order to substantiate his plea, the workman has examined himself as W. W. 1 and relied upon the documents under the cover of Exts. 1 to 8. It is pertinent to mention here that the management has appeared and filed written statement but subsequently remained absent and did not take part in the hearing through sufficient opportunities were given to him.

### FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience.

In his affidavit evidence, the workman has fully corroborated the facts already averred in his statement of claim. In his affidavit evidence he has categorically stated that he was engaged as Amin under the management with effect from the 22nd December 1998 and he rendered continuous service till the 22nd December 2000. But the management without any rhyme or reason had illegally terminated him from service without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947. The evidence of the workman in this respect has nowhere been challenged by the management in the pleading. In absence of any rebuttal evidence, I find no cogent reason to disbelieve his evidence. Rather, the unchallenged testimony of the workman clearly goes to show that he had rendered continuous service with effect from the 22nd December 1998 till the 22nd December 2000 when he was illegally terminated from service and the management while terminating the workman from service had not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 which in my view are in complete violation of the provisions of the Industrial Disputes Act, 1947. Law is well settled that onus lies on the management to substantiate the plea of abandonment by adducing cogent evidence. Retrenchment of an employee without following the mandatory provisions under Section 25-F of the Industrial Disputes Act, 1947 is not only unsustainable but also illegal. No evidence has also been adduced from the side of the management to indicate that any notice directing the workman to join in his duty or to show cause for unauthorised absence was issued. Further law is well settled that the provisions of Section 25-F of the Industrial Disputes Act, 1947 is mandatory and any violation thereof will render the termination void *ab initio*. So after carefully examining the entire evidence on record and the documents already relied upon by the workman, I am of the considered view that the action of the management in terminating the services of the workman with effect from the 22nd December 2000 is illegal, unjustified and against the mandate of Section 25-F of the Industrial Disputes Act, 1947. In view of the matter the workman is entitled to be reinstated in service.

8. Regarding back wages when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of full back wages is not justified. However, on the facts and circumstances of this case, as discussed above, in my opinion instead of granting full back wages, 50% back wages will meet the ends of justice. Both the issues are answered accordingly.

9. Hence ordered :

That the action of the management of Bhubaneswar Municipal Corporation, Bhubaneswar in terminating the services of Shri Dillip Kumar Bisoi, Amin with effect from the 22nd December 2000 is neither legal nor justified. The workman Shri Bisoi is entitled to be reinstated in service with 50% back wages. The management is directed to implement the Award within a period of one month from the date of its publication failing which the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K.Z. AHAMED  
02-11-2011  
Presiding Officer  
Labour Court, Bhubaneswar

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02-11-2011  
Presiding Officer  
Labour Court, Bhubaneswar

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