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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 10th April 2012

No. 2826—li/1 (B)-78/2003 (Pt.)-L & ESI—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd November 2011 in I. D. Case No. 51 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Magnum Apparel Pvt. Ltd., Bhubaneswar and its workmen Smt. Banaja Prusty and others represented through Magnum Employees Union, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 51 OF 2003

The 22nd November 2011

#### *Present :*

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

#### *Between :*

The Management of M/s Magnum  
Apparel (Pvt.) Ltd., Bhubaneswar. .. First Party—Management

And

Their Workmen Smt. Banaja Prusty  
and others represented through  
Magnum Employees Union,  
Bhubaneswar. .. Second Party—Workmen

#### *Appearances :*

Shri C. V. Padmarajan, Executive Director .. For the First Party—Management  
Shri T. Senapati, Executive

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Smt. T. Pradhan .. For the Second Party—Workmen  
Smt. P. Sasmal

## 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. 8981—li/1 (B)-78/2003-LE., Dt. 9-9-2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the actions of the management of M/s Magnum Apparel Pvt. Ltd., 132-A, Section A, Zone-A, Macheswar Industrial Estate, Bhubaneswar-10 in ceasing the factory operation with effect from 10th May 2003 and terminating the services of workmen vide their notice, Dt. 9-5-2003 and subsequently re-engaging only 30 regular workmen as Contract Labour with effect from 12th July 2003 as per their Notice, Dt. 7-7-2003 are legal and/or justified ? If not, what relief are the workmen entitled to ?”.

3. It is pertinent to mention here that inspite of several communications made by this Court to the Government of Odisha for supplying of the names of 30 numbers of workmen, the Government of Odisha in the Labour & Employment, Bhubaneswar turned a deaf ear. During the course of hearing, out of 30 numbers of workmen, only 10 numbers of workmen appeared and filed their statement of claim.

4. The case of the 10 numbers of workmen, in brief, as set out in their statement of claim is that they were working under the management as regular employee since 1989. All of a sudden, the management on 10-5-2003 arbitrarily took a decision for closure of its factory and thereby took a stand of retrenchment of the workmen without following the mandatory provisions of the Industrial Disputes Act. Thereafter the management invited to give employment to some of the so-called retrenched employees on contract basis without protecting the pay, allowances and other service conditions of the workmen. According to the workmen, the management had neither served any notice nor paid the salary to them. So according to the workmen, the action of the management is illegal and not tenable in the eye of law and therefore, prayed for their reinstatement in regular service with full back wages.

5. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to the management, though the factory of the management has been started from the year 1989, but due to labour unrest, financial crisis and lack of adequate orders, there had been absolute stoppage of production in the factory for quite some time in the year 2003. So considering the above such matters, the management decided to cease the factory operations with effect from 10th May 2003 as per the notice, Dt. 9-5-2003. Thereafter as the management obtained some work orders, and decided to engage some of the workmen on casual basis in a temporary arrangement to fulfil the said requirement. So the terminated workmen were accordingly issued a notice on 7-7-2003 to contact the management. Therefore, according to the management, due compliance of Section 25-H of the Industrial Disputes Act has been made in the case of the retrenched workmen. So the management has contended that the action taken by the management is legal and justified and prayed that the workmen are not entitled to get any relief in this case.

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

#### ISSUES

- (i) Whether the actions of the management of M/s Magnum Apparel Pvt. Ltd., 132-A, Section-A, Zone-A, Mancheswar Industrial Estate, Bhubaneswar-10 in ceasing the factory operations with effect from 10th May 2003 and terminating the services of workmen vide their notice, Dt. 9-5-2003 and subsequently re-engaging only 30 regular workmen as Contract Labour with effect from the 12th July 2003 as per their Notice, Dt. 7-7-2003 are legal and/or justified ?
- (ii) If not, what relief are the workmen entitled to ?

7. In order to substantiate their pleas, one of the workmen namely Smt. Tunibala Pradhan has been examined as W.W. 1 and proved the documents under the cover of Exts. 1 to 14. It is pertinent to mention here that the management has appeared and filed written statement but subsequently remained absent and did not take any steps though sufficient opportunities were given to him.

#### FINDINGS

8. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

Before going to discuss the evidence in detail, it is pertinent to mention here that the Section 25-FFA of the Industrial Disputes Act, 1947 reads as follows :

“25-FFA—Sixty days’ notice to be given of intention to close down any undertaking —

- (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.”

Further Section 25-H of the Industrial Disputed Act, 1947 reads as follows :

“25-H—Re-employment of retrenched workmen—where any workman is retrenched, and the employer proposes to take into his employ any person, he shall, in such manner as may be prescribed, give in opportunity (to the retrenched workmen who are citizen of India to offer themselves for re-employment and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons.”

9. It is an admitted fact that no express permission has been obtained from the appropriate Government by the management to close down its factory. No witnesses were examined on behalf of the management. Since the management has clearly violated the provisions of Sections 25-FFA and 25-H of the Industrial Disputes Act, I am of the view that the above named workmen are entitled to be reinstated in their regular posts. However, as the workmen have not worked under the management for the period in question, they are entitled to get 50% of back wages. Hence both the issues are answered accordingly.

10. Hence it is ordered :

That the actions of the management of M/s Magnum Apparel Pvt. Ltd., 132-A ,Section-A, Zone-A, Mancheswar Industrial Estate, Bhubaneswar-10 in ceasing the factory operation with effect from 10th May 2003 and terminating the services of workmen vide their notice, Dt. 9-5-2003 and subsequently re-engaging only 30 regular workmen as Contract Labour with effect from 12th July 2003 as per their Notice Dt. 7-7-2003 are neither legal nor justified. The workmen are entitled to be reinstated in their regular posts with 50% back wages. The management is directed to implement this Award within a period of two months 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  
22-11-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

S. A. K. Z. AHAMED  
22-11-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

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