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No. 804 CUTTACK, THURSDAY, APRIL 26, 2012/BAISAKHA 6, 1934

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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 12th April 2012

No. 2910—li/1-(B)-27/2000(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd December 2011 in Industrial Dispute Case No. 216/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Kandoi Transport Ltd. Cuttack and its Workman Late Lingaraj Sahoo substituted by his legal heirs was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 216 OF 2008 (Previously Registered as I. D.  
Case No. 71 of 2000 in the file of the P. O., Labour Court, Bhubaneswar).  
Dated the 3rd December 2012

Present :

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

Between :

The Management of M/s. Kandoi Transport Ltd., . . . First-party Management  
Professorpara, Cuttack.

And

Lingaraj Sahoo (since dead), . . . Second-party Workman  
substituted by his Legal heirs namely,  
(1) Basanti Sahoo,  
(2) Ranjita Sahoo,  
(3) Sujata Sahoo,

- (4) Sangita Sahoo,  
 (5) Jemamani Sahoo,  
 Represented through Cuttack  
 Commercial Workers Union,  
 Gosala Road, Nuabazar, Cuttack.

Appearances :

Shri R. N. Rath, Authorised . . . For the First-party Management  
 Representative.

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Shri T. Lenka, Authorised Representative . . . For the Second-party Workman

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 8865–li/1 (B)-27/2000-L.E., dated the 1st July 2000 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswr for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138–li/21-32/2007-L.E., dated the 4th April 2008. The Schedule of reference runs as follows :—

"Whether the termination of services of Shri Lingaraj Sahoo, Driver by the Management of M/s. Kandoi Transport Ltd., Professorpara, Cuttack with effect from the 22nd October 1998 is legal and/or justified ? If not to what relief Shri Sahoo is entitled ?"

2. The case of the second-party is that the deceased workman, namely, Lingaraj Sahoo joined as a Driver in the establishment of the first-party in the month of June 1995 and worked as such continuously for about three years without any stigma. He was employed to drive one Ambassador Car bearing No. OR 05E 0925. On the 19th September 1998 night he took the vehicle on duty. While on duty the vehicle developed some mechanical problem. On being directed by the management he got the vehicle repaired in a Garage. The repairing work got completed by the night of the 22nd September 1998. On the 23rd September 1998 the workman requested the management to pay the repairing charges but the management deferred payment till the 22nd October 1998. On the 23rd October 1998 the management refused to pay the repairing charges and also refused employment to the workman. Thus, the service of the workman was terminated with effect from the 22nd October 1998 without compliance of Section 25-F of the Act.

3. In the written statement the first-party has taken the stand that it carries on Transportation work pertaining to cargoes, etc. One of its partners had a Car and the workman was temporarily engaged in the month of April 1996 to drive the said Car. From the 22nd October 1998 the workman did not report for duty. He also did not give any intimation to the management. The management sent a letter to the workman on the 29th October 1998 calling upon him to explain why he remained absent from duties. In the same letter he was also asked to report for duty but the workman did not respond. After leaving the employment of the first-party the workman remained gainfully employed

in the Health Care, Cuttack. It is asserted that the management had never terminated the services of the workman. It is also asserted that later on the management disposed of the Car.

Regarding the repairing of the Car, the first-party takes the plea that all on a sudden on the 21st September 1998 the workman submitted some bills showing repairing of the vehicle but he had never before intimated the management about the fact of repairing of the vehicle.

4. The following issues are framed :—

#### ISSUES

- (i) "Whether the termination of services of Shri Lingaraj Sahoo, Driver by the management of M/s. Kandoi Transport Ltd., Professorpara, Cuttack with effect from the 22nd October 1998 is legal and/or justified ?"
- (ii) If not, what relief Shri Sahoo is entitled to ?

5. On behalf of the second-party two witnesses have been examined. The General Secretary of the Union who represents the workman is examined as W. W. No. 1 and the widow of the workman is examined as W. W. No. 2. On behalf of the management its Senior Manager (Admn.) is examined as M. W. No. 1. Both sides have exhibited some documents.

#### FINDINGS

6. *Issue No. (i)*—According to the second-party, the employment of the workman continued from the June 1995 to 22nd October 1998. But, according to the management the employment of the workman commenced in the month of April 1996 and lasted till the 22nd October 1998. There is no documentary evidence to support the respective stand taken by the parties. However, the disagreement between the parties on this aspect is not very much material so far the eligibility of the workman to attract the provisions of Section 25-F of the Act is concerned. Even on the admission of the first-party that the workman had worked from the April 1996 till the 22nd October 1998 it can be concluded that he had completed more than one year of continuous service as on the date of the alleged termination. Therefore, if it is found to be a case of termination of service, then it is not done in accordance with the mandatory provisions contained in Section 25-F of the Act. Therefore, before going to the conclusion that the termination of service of the workman is illegal, it is necessary to thrash out whether it is a case of retrenchment or voluntary abandonment of job.

7. There is no dispute that the employment of the workman was terminated with effect from the 22nd October 1998. Also it appears from the pleadings of the parties that about one month prior to that a kind of dispute over repairing of the vehicle had come-up. It is admitted by M. W. No. 1 that on the 19th September 1998 the workman was asked to take the Ambassador Car and to attend to the Assistant Commissioner of Income Tax, Cuttack and that the vehicle did not return in the night of the 19th September 1998. The witness has further admitted that the workman had reported to the management that the vehicle had suddenly developed mechanical defect for which he could not come back with the vehicle. The witness is not able to say whether the workman was instructed by the Accountant of the first-party to get the vehicle repaired in a Garage. In the written statement it is stated by the first-party that on the 21st September 1998 the workman had submitted some bills showing repairing of the vehicle. According to the second-party the management did not pay the bill amount to the workman to be paid to the Garage owner. From the pleadings in the written statement it can be construed that according to the management since the workman had not intimated to the management about the fact of repairing of the vehicle before hand, the bill amount

was not handed over to the workman. Thus, it is quite clear that a dispute arose between the workman and the management over the payment of bills raised by the Garage. According to the workman he had repeatedly asked the management to pay the bill amount. At last on the 22nd October 1998 he was denied employment. It is further pleaded in the written statement that the workman had taken advances on different occasions amounting to Rs. 3,928.00 which was not repaid by him. In support of this claim the management has exhibited Ext. B series. The workman has pleaded that the management refused to pay him wages for the number of days he had worked in the month of October 1998. This is not specifically denied by the first-party nor any document has been exhibited to disprove this claim. From all these facts and circumstances there may be a presumption that the employment of the second-party came to an end when there was some dispute between the parties regarding repairing of the vehicle as well as payment of wages.

8. The management takes the plea that on the 29th October 1998 a notice was sent to the workman calling upon him to report for duty to which the workman did not respond. Ext. A is said to be the office copy of that notice. The workman has admitted in his claim statement that the management had sent to him a letter dated the 29th October 1998. Therefore, it can be said that the workman had received the notice. But, according to the workman, the management issued the notice to make-out a false case of abandonment of employment. According to him, first the workman served a notice on the management on the 27th October 1998 alleging illegal termination of service and thereafter being conscious of the consequences of illegal termination the management issued a notice (Ext. A) on the 29th October 1998. However, the workman does not take the plea that on receipt of that notice he had reported for duty. That apart, the workman has not exhibited the notice dated the 27th October 1998 which he claims to have sent to the management. Therefore, it is doubtful whether such a notice was sent to the management. But, in the facts and circumstances under which the cessation of employment took place there may not be a valid presumption that the workman had voluntarily abandoned the job. There was a sort of compulsion which dissuaded the workman from reporting for duty in response to the notice marked Ext. A. By the standard of preponderance of probability it is proved that when the vehicle developed mechanical defect the workman had got it repaired in a Garage but the management did not agree to meet the Garage bill. It may also be presumed that on the ground that the workman had taken advance from the management the latter had withheld the former's wages for the days he had worked in the month of October 1998. If at all the management found that the workman was guilty of misconduct such as carelessness in keeping the vehicle in good condition it could have started a disciplinary proceeding against the workman. Instead of doing so the management seems to have created circumstances under which the workman did not report for duty despite of the notice, Ext. A. So, it cannot be said to be a case of voluntary abandonment of service. Consequently, it is to be held that it is a case of termination of service by way of denial of employment. Since the statutory provisions contained in Section 25-F of the Act have not been complied with such termination is found to be illegal as well as unjust.

9. *Issue No. (ii)*— During pendency of this case the workman died and his Legal Representatives are allowed to contest the case. Therefore, the question of reinstatement does not arise.

In this case the workman has not pleaded that after his termination of service he was not in gainful employment. On the other hand, the management has pleaded so also adduced oral evidence to the effect that after leaving the job under the first-party the workman was gainfully employed in the Health Care, Cuttack. But, there is not documentary evidence in support of that contention. Be

that as it may, the workman being an experienced Driver it may be presumed that there was ample opportunity for him to take up job under some other employer and he had not sat idle during the pendency of the conciliation proceeding as well as the proceeding before the Labour Court/Tribunal. Absence of pleading that he was not in gainful employment corroborates this presumption. Therefore, the workman, if he were alive, would not have been awarded the relief of full back wages.

The workman was in continuous service under the first-party for a period of about three years. He was given opportunity to resume duties but he did not respond. It is not proved that he was not in gainful employment during the pendency of the proceeding. Under such circumstances, payment of compensation to the tune of Rs. 50,000 (Rupees fifty thousand only) is considered to be just and appropriate. Accordingly, the management is to pay a compensation of Rs. 50,000 (Rupees fifty thousand only) to the Legal Representatives of the workman within two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated & corrected by me.

RAGHUBIR DASH  
3-12-2011  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH  
3-12-2011  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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