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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 21st May 2013

No. 4835—li-1-(BH-I)-17/2003-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th March 2013 in I. D. Case No. 69 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Balasore Wholesale Co-operative Stores Ltd. and its workman Shri Dinabandhu Nayak was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 69 OF 2004

Dated the 8th March 2013

#### *Present :*

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

#### *Between :*

The Management of .. First Party—Management  
M/s Balasore Wholesale Co-operative  
Stores Ltd.

And

Its Workman .. Second Party—Workman  
Shri Dinabandhu Nayak.

#### *Appearances :*

G. Q. Khan .. For the First Party—Management

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Shri D. Nayak .. Second Party—Workman himself

## AWARD

The Government of Odisha in the Labour & E.S.I. Department in exercise of powers conferred upon them 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 following dispute to this Court for adjudication vide Order No. 9642— li-1-(BH-I)-17/2003-LE., dated the 28th October 2004 :—

“Whether termination of service of Shri Dinabandhu Nayak, Night Watchman, by way of retrenchment with effect from the 30th October 1996 by the Management of M/s Balasore Wholesale Co-operative Stores Ltd., Balasore is legal and/or justified ? If not, what relief is Shri Nayak entitled to ?”

2. The case of the second party workman, in brief, as set out in his statement of claim is that he was working as Night Watchman from 14-1-1995 on daily wage of Rs. 20. thereafter vide Letter No. 184, dated the 8th September 1995 he was given in the post of Class IV in the consolidated pay of Rs. 750 per month on *ad hoc* basis with effect from the 1st September 1995 and worked continuously without any break till the date i.e. on 30-10-1996 on which date he was illegally terminated from his service by way of retrenchment without compliance of Section 25-F of the Industrial Disputes Act, 1947. On these backgrounds, the second party workman has prayed for his reinstatement in service with full back wages.

3. On the other hand, the first party management appeared and filed written statement admitting that the second party workman was issued with a letter dated 8-9-1995 to work in the post of Class IV worker in the consolidated pay of Rs. 750 per month on *ad hoc* basis with effect from the 1st September 1995, and in compliance to the said letter submitted a written declaration/undertaking on 8-9-1995 to the management stating that he will work at the rate of Rs. 25 per day on daily wage basis and he was given further declaration that his services can be terminated as and when not required by the management. The further plea of the management is that the workman voluntarily did not turn up to join in his work since 1-11-1996 and remained absent from his duty without prior information and permission of the management. So finding no other alternative, the name of the workman was struck off with effect from the 1st November 1996. The management has further stated that the workman has never worked continuously for 240 days during the period of his work on temporary basis. So he is not a workman according to law and as such, the compliance under Section 25-F of the Industrial Disputes Act, 1947 does not arise. On these averments, the management has prayed to answer the reference in favour of the management.

4. In view of the above pleadings of both the parties, the following issues have been settled :—

## ISSUES

- (i) Whether the termination of services of Shri Dinabandhu Nayak, Night Watchman by way of retrenchment with effect from 30th October 1996 by the management of M/s Balasore Wholesale Co-operative Store Ltd., Balasore is legal and/or justified ?
- (ii) If not, what relief is Shri Nayak entitled to ?

5. In order to substantiate his plea, the workman has examined himself as A.W. 1 and proved the copy of transfer Order No. 101, dated 5-7-1995, copy of appointment Letter No. 184, dated 8-9-1995 and copy of dead stock during handing over and taking over the same under the

cover of Exts. 1 to 5 respectively. On the other hand, the first party management has examined two witnesses altogether out of whom M.W. 1 is the Secretary of the management whereas M.W. 2 is the Accountant of the management and proved the copy of appointment letter of the workman, copy of undertaking, dated 8-9-1995, copy of Letter No. 5655, dated 21-12-1995 and copy of Office Order No. 250, dated 26-11-1996 under the cover of Exts. A to D respectively.

#### FINDINGS

6. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the saka of convenience.

On perusal of affidavit evidences of both the parties it is an admitted fact that the second party workman was working under the first party management from 1-9-1995 under the cover of Ext. 3 and Ext A. From the above document it is seen that though the Ext. 3 and Ext. A was issued on 8-9-1995, but surprisingly it was given effect from the 1st September 1995. It is well settled that a fresh appointment order cannot be given retrospective effect and it is always prospective effect. The workman in his statement of claim as well as in his affidavit evidence has stated that prior to issuance of Ext. 3 and Ext. A, he was working under the management on daily wage basis at the rate of Rs. 20 per day with effect from the 14th January 1995. But the management nowhere disputed or uttered a single word challenging the above version of the workman. So from the above documents, it is presumed that the workman prior to issuance of the appointment letter under the cover of Ext. 3 and Ext. A had worked under the management.

7. The first party management has taken the stand that the second party workman voluntarily did not turn up to join in his work since 1-11-1996 and remained absent from his duty without prior information and permission of the management. So finding no other alternative, the name of the workman was struck off with effect from the 1st November 1996 on the ground of voluntarily abandonment of service. Though the unauthorised absence is a misconduct, the management has not proved his plea by filing any supporting documents for his unauthorised absence i.e. any explanation was called for from the workman, any charge was framed against the workman and also any due domestic enquiry was conducted against him. Moreover, M.W. 2 during his cross-examination has admitted that he had no knowledge if the workman had remained absent since long and if any action was taken by the management against him. M.W. 2 has further admitted in his cross-examination that he had no knowledge if the management has taken any action for long absence of the workman. So without following the principles of natural justice, the plea taken by the management cannot be accepted.

8. The further stand taken by the first party management is that the second party workman has never worked continuously for 240 days during the period of his work on temporary basis. On the other hand, the workman has stated that he has worked continuously from the date of his initial joining till the date of termination without any break and has completed 240 days of service. To substantiate the above plea, the management has not filed a single piece of paper to that effect. In the Case of Director, Fisheries Terminal Division Vrs. Bhikabhai Meghajibhai Chavda reported in A.I.R. 2010 SUPREME COURT 1236 (placitum), where in it has been observed as follows :

“S. 25.F—Retrenchment—Continuous service of 240 days—Burden of proof—Workman hired on daily rated basis—Thus, he would have difficulty in having access to all official documents, muster rolls etc. in connection with his service—Workman claimed and deposed that he worked for 240 days—Burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.”

So, in view of the above settled principle of law, the management has miserably failed to establish that the workman did not complete 240 days of service in requisite period to constitute continuous service. Therefore, the above stand of the management cannot be accepted.

9. On a careful scrutiny and analysis of the evidences and documents, it appears that at the time of termination of service of the workman, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and precondition one. So on careful consideration of all the materials as discussed above, I am of the view that the termination of services of the workman by way of retrenchment with effect from the 30th October 1996 by the management is neither legal nor justified. Hence the workman is entitled for reinstatement in service.

10. Regarding back wages, it is an admitted fact that the workman had not worked under the management after his termination of service by way of retrenchment. In view of the settled principle of law that 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 back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. So, in the present case, on careful consideration of all the materials available in the case record, I am of the opinion that instead of granting full back wages, a lump sum amount of Rs. 40,000 (Rupees forty thousands) only as compensation will meet the ends of justice.

11. Hence, Ordered :

That the termination of services of Shri Dinabandhu Nayak, Night Watchman by way of retrenchment with effect from the 30th October 1996 by the management of M/s Balasore Wholesale Co-operative Stores Ltd., Balasore is illegal and unjustified. The workman Shri Nayak is entitled for reinstatement in service with a lump sum amount of Rs. 40,000 (Rupees forty thousands) only as compensation in lieu of back wages. The management is directed to implement this Award within a period of two months from the date of its notification, failing 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  
8-3-2013  
Presiding Officer  
Labour Court  
Bhubaneswar

S. A. K. Z. AHAMED  
8-3-2013  
Presiding Officer  
Labour Court  
Bhubaneswar

By order of the Governor  
J. DALANAYAK  
Under-Secretary to Government