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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 29th December 2012

No. 10826—li-I(SS)-29/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th September 2012 in I. D. Case No. 5 of 2007 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Executive Engineer, Minor Irrigation Division, Sundargarh and their Workman Shri Sadhu Nath and three others represented by North Odisha Workers' Union, Orampara, Rourkela-12 was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 5 OF 2007

Dated the 18th September 2012

*Present :*

Shri Srikanta Mishra, LL.M.,  
Presiding Officer, Labour Court,  
Sambalpur.

*Between :*

The Management of  
Executive Engineer,  
Minor Irrigation Division,  
Sundargarh.

.. First Party—Management

And

Their Workman,  
Shri Sadhu Nath and 3 (three) others  
represented through the  
General Secretary, North Odisha  
Workers' Union, Orampara,  
Rourkela-12.

.. Second Party—Workman

*Appearances :*

Shri R. K. Nayak, .. For the First Party—Management  
Jr. Clerk.

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Shri B. S. Pati, .. For the Second Party—Workman  
General Secretary, North Odisha  
Workers' Union, Rourkela.

## AWARD

This award arises out of a reference made by the Government of Odisha, Labour and Employment Department under the power 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 (14 of 1947) (for short the "Act") vide Order under Memo. No.1670 (5), dated the 24th February 2007. The dispute involved under the schedule of reference is as follows :—

"Whether the action of the Executive Engineer, Minor Irrigation Division, Sundargarh in terminating the services of Shri Sadhu Nath, Duryodhan Nath, Meghanath Rout and Indra Naik, N.M.R. (Unskilled) with effect from the 2nd October 1998 is legal and/or justified ? If not, to what relief they are entitled ?"

2. The fact of the case in brief is that Shri Sandhu Nath, Duryodhan Nath, Meghanath Rout and Shri Indra Naik hereinafter called as the workmen were employed by the management and posted under the SDO, M. I. Subdivision, Rourkela. Later on their services were regularised in the month of January 1996. They were receiving Rs. 700 per month as wages and were also entitled to other benefits admissible to similar employees of the first party management. The workmen allege that the first party without any reason refused employment to them on 2-10-1998. Though the first party assured them to consider their case waiting advice from the Government for further engagement, they delayed the matter. The second party then represented before the Deputy Labour Commissioner, Rourkela on 24-1-2000 to intervene in the matter for their employment which yielded no result through the North Odisha Workers' Union, Orampara, Rourkela-12 and industrial dispute was raised and demand was made for reinstatement of the workmen with full back wages. On failure of the conciliation process the matter was referred to the Government for adjudication of the dispute. According to the second party, the action of the first party in refusing employment to the aforesaid workmen with effect from the 2nd October 1998 is arbitrary and without following the principles of natural justice so also in violation of the provisions of the Industrial Disputes Act and as such they should be reinstated in the service with full back wages and all consequential benefits with effect from the said date.

3. The first party management filed their written statement in which they have asserted that some labourers including the aforesaid four persons were temporarily and verbally engaged on daily wage basis for watch and ward of T & P materials and other site materials laying at Bisrapara Minor Irrigation Project site. The first party admit that the workmen were disengaged from the work with effect from the 2nd October 1998 as it was then felt that their services were no more required by them. On their request they were assured to be given preference for engagement as and when required in future. It is specifically mentioned in the written statement that the first party has given

compensation to deprived labourers but they did not turn over to receive the same and put the management in a embarrassing situation. According to the first party the Government of Odisha has no provision regarding regularisation of daily wage workers to regular establishment and therefore their action cannot be said to be unjustified with such averments the first party submit that the claim of the second party should be dismissed.

4. On the basis of pleadings of the parties, the following issues have been settled for adjudication :

#### ISSUES

- (i) "Whether the action of the Executive Engineer, Minor Irrigation Division, Sundargarh in terminating the services of Shri Sadhu Nath, Duryodhan Nath, Meghanath Rout and Indra Naik, N.M.R. (Unskilled) with effect from the 2nd October 1998 is legal or justified ?
- (ii) If not, what relief they are entitled to ?"

5. In support of their case the second party examined only one witness i.e. Sadhu Nath. The management examined the Executive Engineer, Minor Irrigation Division, Sundargarh as sole witness. No document was filed on behalf of the second party but the first party filed several documents which were marked as Ext. M-1 to Ext. M-8.

#### FINDINGS

6. *Issue No. (i)*—There is no dispute that Shri Sadhu Nath, Duryodhan Nath, Meghanath Rout, Indra Naik and some other labourers were engaged to work in the Minor Irrigation Project at Bisrapara and they were posted under the SDO, M.I. Subdivision in the month of January 1994. The second party witness No. 1 has clearly deposed that he and the other three claimants joined in their respective job in 1994 on temporary casual basis. He further deposed that on January 1996 they became N.M.R. and were drawing salary at the rate of Rs. 700 per month. The management witness has deposed that the aforesaid four persons were engaged temporarily as daily labourers verbally by Shri B. K. Mohanty the then Assistant Engineer at Bisrapara MIP under M.I. Section, Kuarmunda for maintenance, watch & ward of site and tools & plant materials lying in the site. Such evidence is not challenged by the second party. Regarding payment of daily wages the first party has filed 41 (forty-one) numbers of original hand receipts which were marked Ext. M-8 (Series). On perusal of these receipts I find, the second party witness No. 1 himself has received his wages of different amount on different dates during the year 1997-1998. Similarly his co-labourers namely Meghanath Rout, Indra Naik and Duryodhan Nath have also received payment on different dates and executed hand receipts during the year 1997-1998. The management has also proved the copies of Form No. 2 (Imprest Cash Account) maintained under the payment of wages Act for the period from 9-12-1996 to 31-3-1998 which was marked as Ext. M-6. It reveals from these document that for engagement of Sadhu Nath and other labourers engaged on different types of works, payments were made to them on different dates. The management witness has deposed during cross-examination that as the second party workmen were working as N.M.R. their Attendance Register were not maintained by the management. But their attendance were taken on the date of their engagement and a Muster Roll is also maintained. The Muster Roll has however, not been filed in this case. It reveals from the records that the reference was initially answered against the second

party and they were held not entitled to any relief as per Award, Dt. 9-2-2010. The second party workmen then filed writ petition (civil) No. 19567/2010 before Hon'ble High Court of Orissa and the award was set aside. While reminding the matter to this Court the Hon'ble Court directed that both the parties should be given opportunity to lead evidence and opportunity was granted to the management to produce necessary documents to enable to this Court to determine whether Section 25-F and 25-G of the I. D. Act have been violated or not vide Order, Dt. 15-9-2011. In the said order the Hon'ble Court observed that the second party did not produce the Attendance Register, Muster Roll and hand receipt and in absence of such documents it is possible for the Labour Court to raise a presumption against the management and in favour of the workman in this respect. The management however has not filed the Attendance Register and Muster Roll and they only filed the hand receipts. Since the Attendance Register and Muster Roll are admitted to have been maintained by the management and the same are not filed, an adverse inference must be drawn against them that had the same been filed, the claim of the workmen that they were engaged continuously for the period from January 1994 to 1-10-1998 could have been established. Though the management denies the status of Sadhu Nath, Duryodhan Nath, Meghanath Rout and Indra Naik as workman, I am of considered view that each of them worked not less than 240 days in a year the preceding the date of their refusal of employment i.e. 2-10-1998. Therefore, they are the workmen within the meaning of Section 2 (s) of the Industrial Disputes Act 1947 and the first party is their employer.

7. Since I have already held that Sadhu Nath and three others were the workmen under the first party and the first party has admittedly terminated their services by not employing them from 2-10-1998, the management was bound to comply the provisions of Section 25-F by giving the workmen one month notice in writing indicating the reasons for retrenchment and they should also have been paid compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. In absence of compliance of the aforesaid provision, it can safely be said that the termination of service of Shri Sadhu Nath, Duryodhan Nath, Meghanath Rout and Indra Naik with effect from the 2nd October 1998 is illegal and unjustified. The issue No. (i) is accordingly answered in favour of the second party workmen.

8. *Issue No. (ii)*—The workmen claimed for reinstatement in their service and payment of full back wages from the date of their termination i.e. Dt. 2-10-1998 along with all consequential benefits. According to the first party management the engagement of the second party members was purely on temporary basis for watch and ward of the materials at Bisrapara Minor Irrigation Project and after completion of the Project their service was no more required. The second party witness No. 1 has not deposed in Court that the Project work at Bisrapara Minor Irrigation Project continued for any day after 2-10-1998. There was absolutely no evidence that after completion of the Project work, any service was required at the Project site. The evidence of the management witness No. 1 regarding completion of Project work having not been challenged by the second party, it can safely be said that the service of the workmen was no more required for the Minor Irrigation Project. It is well settled that when the labourers are engaged on daily wage basis to work in a Project and the Project is closed, they have no right to the post. Admittedly, the second party workmen were not appointed by way of any recruitment and therefore they cannot claim to be regularised in the service and posted in any separate unit of the first party. In this case, the second party claim that four workmen were regularised in their service but there is no admissible evidence to establish the said claim. On a close scrutiny of the evidence on record and the discussion made above I am constrained to hold that the workmen being engaged on daily wage basis in an Irrigation Project site they have no right to be reinstated. Regarding entitlement of other reliefs I find, the management both in their written statement and oral evidence admitted the fact, they wanted to pay compensation

to the deprived labourers but it is their case that the labourers did not turn up to receive the same. The workmen witness during cross-examination has admitted that the management called him and one Duryodhan to pay compensation amounting to Rs. 2400 in total. Such admission of the workmen is sufficient to believe the version of the management that they were ready to pay compensation to all the labourers engaged in the project site after the termination. It is crystal clear that the workmen were not ready to accept compensation perhaps on the ground that the same was a small amount compared to their expectation. Since I have already held that the management has not complied the conditions prescribed under the Section 25-F of the I. D. Act before the termination of the workmen, a reasonable amount of compensation should be paid to them. In the case of Senior Superintendent, Telegraph (Traffic), Bhopal *Vrs.* Santosh Kumar Seal and others (Civil Appeal No. 3815 of 2010). The Hon'ble Supreme Court while holding that the termination of workmen was illegal for want of compliance of Section 25-F of the I. D. Act, passed compensation of Rs. 40,000 to each of the workmen on the ground that though they were daily wagers, they completed 240 days of work in a year preceeding the date of termination and that they worked under the management for nearly 3 years. In the present case the workmen Sadhu Nath, Duryodhan Nath, Meghnath Rout and Indra Naik are found to have worked under the management for more than 4 years i.e. from the month of January 1994 till October 1998. There is no evidence that from the date of termination they have been gainfully employed in any other establishment and therefore in my considered opinion each of them should be paid compensation at the rate of Rs. 50,000. The issue No. (ii) is answered partly in favour of the second party.

9. In view of the determination of the issues in the manner aforesaid the following award is passed :

#### AWARD

The reference is answered on contest in part. The action of the Executive Engineer, Minor Irrigation Division, Sundargarh in terminating the services of Shri Sadhu Nath, Duryodhan Nath, Meghnath Rout and Indra Naik, N.M.R. (Unskilled) with effect from the 2nd October 1998 is illegal and unjustified. The first party management is directed to pay a sum of Rs. 50,000 (Rupees fifty thousand) as compensation to each of the above workmen within a period of two months from the date of publication of Award in the *Odisha Gazette*.

Dictated and corrected by me.

SRIKANTA MISHRA  
18-9-2012  
Presiding Officer  
Labour Court  
Sambalpur

SRIKANTA MISHRA  
18-9-2012  
Presiding Officer  
Labour Court  
Sambalpur

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