

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1563 CUTTACK, FRIDAY, AUGUST 16, 2013/SRAVANA 25, 1935

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 6th August 2013

No. 10184—IR (ID)-72/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th June 2013 in Industrial Dispute Case No. 10 of 2010 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Management of Senior General Manager, (Electrical), Upper Kolab Hydro Electric Project, Bariniput and their workman Shri Suryanarayan Mohapatra was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 10 OF 2010

Dated the 28th June 2013

Present :

Shri D. C. Mishra, o.s.j.s., (Jr. Branch)
Presiding Officer,
Labour Court, Jeypore,
Koraput.

Between :

The Management of
Senior General Manager
(Electrical), Upper Kolab
Hydro Electric Project,
Bariniput, Jeypore,
Dist. Koraput.

.. First Party—Management

Versus

Its workman,
Suryanarayan Mohapatra,
Operator-C, Represented
through the General Secretary,
O.H.P.C. Employees' Union,
Bariniput, Jeypore, Koraput.

.. Second Party—Workman

Under Sections 10 & 12 of the Industrial Disputes Act, 1947

Appearances :

For the First Party—Management	..	Shri Trinath Das, Advocate Jeypore.
<hr/>		
For the Second Party—Workman	..	Shri B. Padhy, Advocate, Jeypore.
Date of Argument	..	19-6-2013
Date of Award	..	28-6-2013

A W A R D

1. The matter arises out of a reference made by the State Government in their Labour & E.S.I Department, Odisha, Bhubaneswar under Section 12 (5), read with Section 10 (1) of the Industrial Disputes Act, 1947 vide their Memo. No. 7142 (5)-LE., dated the 26th August 2010 for adjudication of the following disputes :—

SCHEDULE

“Whether the demand of the General Secretary, O.H.P.C. Employees’ Union, Bariniput, Koraput for absorption of Shri Suryanarayan Mohapatra, Operator-C Mechanical, M/s Upper Kolab Hydro Electric Project, Bariniput, Koraput as Driver in the work charged establishment with effect from the 1st July 1990 is legal and/or justified ? If not, what relief the workman is entitled to ?”.

2. The workman has filed this case through his Union with prayer to direct the management to appoint him as a Driver with effect from the 30th June 1990 and to give him all subsequent financial and service benefits.

3. The workman’s case runs thus—

That the second party workman Shri Suryanarayan Mohapatra, worked as a Male Mulia in N.M.R. capacity under the first party management from 10-5-1979 and continued in service. According to the workman, he acquired motor vehicle driving licence No. C-11680/R, Dt. 24-1-1981 from Raipur. It is avered that, since the workman had driving experience and licence, the first party utilised his service for driving light motor vehicle by engaging him as a N.M.R. Helper. It is further pleaded that the workman was enrolled as a N.M.R. Driver from 1985 upto 30-6-1990 and paid wages fixed by Government of Odisha for the N.M.R. Driver post. It is alleged by the workman that, he was brought to work charged establishment with effect from the 1st July 1990 in pay scale of Rs. 800 to Rs.1,150 as an Operator-cum-Maintenance Technician (Crane) Gr.-III, instead of absorption in the Driver post having pay scale of Rs. 950 to Rs. 1,500. According to the workman, due to above wrong absorption by the management he was initially loser by Rs. 150 per month with effect from the 1st July 1990 and subsequently he lost very high amount during entire service period. The workman has specifically pleaded that, since he was doing the work of a Driver under the management up to 30-6-1990, he should have been absorbed in the Driver post with effect from the 1st July 1990 instead of in the Operator-cum-Maintenance Technician (Crane), Gr.III post. It is further avered that, the workman approached the authorities (Management) to finalise his

matter but in vain for which he approached the Union and ultimately the Union raised Industrial Disputes before the D.L.O., Jeypore, Koraput. The D.L.O. enquired into the matter and tried for conciliation but the conciliation failed for which he submitted a failure report to the Government. The Government has referred this case under Sections 10 & 12 of the I.D. Act. Hence this case.

4. The first party management has contested this case by filing W.S. denying all the claims and allegations levelled against it by the workman. According to the management, the workman was engaged as casual/temporary N.M.R. in U.K.H.E.P. from the year 1979-80 for rendering different types of service according to the requirements in the project sites. It is specifically averred that, the workman was never engaged as N.M.R. Driver and paid wages meant for that post but he was only engaged as N.M.R. worker. It is further averred that, during the year 1990, the Water Resource Department, Government of Odisha, required some persons in the work-charged establishment of the U.K.H.E.P. and considering the case of the workman, he was engaged as Operator-cum-Maintenance Technician, Gr.-III (Crane), in the scale of pay of Rs. 625 to Rs. 940 per month, subsequently which was enhanced to Rs. 850 to Rs. 1,150 per month. The management has specifically pleaded that, the N.M.R. workers had no claim or right to be absorbed in any post but due to long work and experience of the workman under the department as N.M.R. worker, his case was considered sympathetically and the post has been given to him. It is further pleaded that the workman has never worked as Driver from 1-7-1990 i.e. from the date of his absorption and he silently accepted and continued in the Operation-cum-Maintenance Technician GR.-III post (Crane) and he has never made any claim before the authorities for a long period of 20 (twenty) years for which his case has become stale and not maintainable. In the above premises the management has prayed for dismissal of the case as not maintainable, barred by limitation and no case of action.

5. In view of the rival contentions of the parties and reference of the Government the following issues have been framed in this case for adjudication :—

ISSUES

- (i) “Whether the demand of the General Secretary, O.H.P.C. Employees Union, Bariniput, Koraput for absorption of Shri Suryanarayan Mohapatra, Operator-C Mechanical, M/s Upper Kolab Hydro Electric Project, Bariniput, Koraput as Driver in the work-charged establishment with effect from the 1st July 1990 is legal and/or justified ?”
- (ii) If not, what relief the workman is entitled to ?”

6. In order to substantiate the case the workman has examined 3 (three) witnesses in total. Workman Witness No.1 Shri Suryanarayan Mohapatra is the workman. W.W. No.2 Shri Debendra Prasad Nayak and W.W. No.3 Shri Prasanta Kumar Mohapatra are the employees under the management.

Documents marked Exts.1 to 23 have been proved from workman side. Ext.1 is the Xerox copy of application Dt. 18-8-1992 of the workman to the management and Ext.2 is the copy of L. No. 226, Dt. 30-1-1996 of the General Secretary of the Union to the management. Ext.3 is the copy of L. No. 9161, dated the 24th June 1994 of the D.L.O., Jeypore to the management and Ext.4

is the copy of L.No. Nil, Dt. 20-9-2001 of the workman to the Director of the Management. Ext.5 is the letter Dt. 21-12-1994 of the workman to the Superintending Engineer and Ext.6 is the copy of L.No. 8555, Dt. 9-10-2007 addressed to the Senior General Manager of the management. Ext.7 is the copy of memorandum Dt. 15-7-2008 addressed to the M.D. of the Management and Ext.8 is the letter Dt. 19-1-2009 of the workman addressed to the D.L.O., Jeypore. Ext. 9 is the L.N.O. 3059, Dt. 12-10-2000 (service regularised order of the workman). Ext.10 is the shift roster duty assigned to the workman by the S.D.O., Ext.11 is the letter Dt. 20-9-2000 of the workman to the Director of the management and Ext.12. is the xerox copy of N.M.R. payment sheet No. 164 from 1982 to 1983. Ext.13. is the xerox copy of N.M.R. payment register for November 1982 and Ext.14. is the xerox copy of N.M.R. payment sheet from 1-4-1983 to 15-4-1983. Ext.15 is the muster roll No. 54/1983-84 and Ext. 16 is the xerox copy of payment of voucher for May 1994. Ext. 17. is the xerox copy of log book of vehicle ORK-2592 and Ext.18. is the xerox copy of log book of vehicle ORK-3758. Ext.19. is the xerox copy of log book of vehicle ORK-5174. Ext.20 is the xerox copy of log book of vehicle ORK-7715. Ext. 21 is the xerox copy of log book of vehicle No. ORK-5174 and Ext. 22 is the xerox copy of log book of vehicle No. ORK-7804. Ext. 23. is the xerox copy of log book of vehicle No. ORK-3758.

7. In support of the plea of the management, Shri P.K. Meher, serving as Manager under the management has been examined as management witness No.1.

Documents marked Exts.A to M have been proved from management side. Ext.A is the xerox copy of the Office Order No. 2403, Dt. 25-6-1990 of the Executive Engineer and Ext. B. is the xerox copy of joining report of the workman dated the 30th June 1990. Ext.C. is the xerox copy of L.No. 12823, Dt.6-10-1998 of Energy Department and Ext.D. is the xerox copy of Office Order No. 15058, Dt. 19-11-1998 of the management. Ext.E. is the xerox copy of L.No. 12766 (5), Dt. 4-9-2000 of the management and Ext. F. is the xerox copy of office order No. 11405, Dt 4-9-2001 of the management. Ext.G. is the xerox copy of Office Oder No. 551, Dt. 27-1-2004 and Ext. H. is the xerox copy of Office Order No. 5016, Dt. 21-10-2005 of the management. Ext. J. is the the xerox copy of Service Ruel Vol.I of the workman and Ext. K. is the xerox copy of Service Rule Vol.II of the workman. Ext. L. is the xerox copy of Service Rule Vol.III of the workman and Ext. M. is the xerox copy of Office Order No. 5687, Dt. 2-4-1996 of the management.

8. *Issue Nos. i & ii*—This count is to decide whether the demand for absorption of Shri S. N. Mohapatra, Operators 'C' (Mechanical) as Driver in the work-charged establishment of U.K.H.E.P. with effect from the 1st July 1990 is legal or not. In this regard, W.W. No.1, the workman has deposed that he has worked under the management from 10-5-1979 up to 30-6-1990 in different Grades in N.M.R. capacity. Admittedly, the workman was a N.M.R. under the management up to 30-6-1990. It is a fact that the workman was absorbed in the work -charged establishment of the management with effect from the 1st July 1990 as an Operator-*cum*-Maintenance Technician, Gr.III (Crane) in the scale of pay of Rs. 625 to Rs. 940 per month and subsequently his pay was enhanced to Rs. 850 to Rs. 1,150 per month retrospectively from the date of his joining i.e. from 1-7-1990. The W.W. No.1 has specifically deposed that, since he had worked as N.M.R. Driver from 1979 to 30-6-1990, he should have been appointed as Driver instead of a Gr. III Operator having a lower scale. According to W.W.No. 1, during his service as an N.M.R., he acquired Driving Licence No. C-11680-R from Raipur on 24-1-1981. The management side has strongly opposed to it and

has stayed that the workman had no valid Driving Licence. In the cross examination, W.W. No. 1 explained that although he is claiming Driver post but no where and never during his service period till today he has submitted the original Driving Licence or the copy thereof. Admittedly he has not submitted the original Driving Licence in the court for perusal. When the workman (W.W. No.1) was serving under the management at Jeypore in the district of Koraput from 1979 till filing of the case, why he did not obtain the Driving Licence from Koraput district but preferred to get it from Raipur and Visakhapatnam which are far away from Jeypore. As the workman is claiming for the post of Driver, production and proof of the original Driving Licence in the court is necessary but for reasons best known to him, the workman did not do so. Therefore, presumption can be drawn that the workman had no valid Driving Licence.

To prove that the workman was serving as a N.M.R. Driver, he has relied on Exts.12 to 23. W.W. No.1 explained in the cross-examination that during his service period he has worked for about 124 days in different vehicles. Therefore, it cannot be said that the workman served as a N.M.R. Driver under the management from 1979 to 30-6-1990. So the claim of the workman that he was working as N.M.R. Driver under the management from 1979 to 30-6-1990 is not worthy of acceptance.

W.W. Nos.2 and 3 have deposed that Shri S. N. Mahapatra (workman) was working as Driver upto 1996 although he was designated as Mistry in the work-charged establishment. W.W. No.2 joined as a N.M.R. worker in the year 1986 and W.W.3 joined as N.M.R. Helper on 1-8-1988. So from their evidence it cannot be said that the workman was serving as N.M.R. Driver under the management from the year 1979. W.W. No.3 admitted that, as sometimes the workman was coming to the office garage, driving the office Jeep, he thought that the workman was a Driver. W.W. No. 3 very clearly admitted that some times he also drives the office vehicle as per instructions of the officers although he is a Helper in the Garage. So, seeing the workman coming to the Garage some times driving the office jeep does not mean that the workman was permanently doing the work of a Driver or appointed as Driver. Further, the question is whether the workman was engaged as N.M.R. Driver prior to 30-6-1990 or not. Driving the office Jeep occasionally after appointed as an Operator-*cum*-Technician Gr.III (Crane) does not confer any right on the workman to be appointed as a Driver. From the evidence of W.W. Nos.1,2 & 3, it cannot be said that the workman was engaged as N.M.R. Driver continuously from 1979 to 30-6-1990.

M.W No.1 has very clearly deposed that at that time (when the workman was brought to work-charged establishment) there was no vacant post of Driver. The workman has not proved by any cogent or documentary evidence that at that time Driver post was available and some others were appointed in the post. If there was no vacant Driver post how the workman could have been appointed as a Driver.

The learned counsel for the management vehemently argued that, since the workman was a temporary N.M.R. and getting daily wages, he had no right or claim to be permanent or regularised in the post. He also submitted that, since the workman had no right to be regularised, his claim or choice to be appointed as Driver with effect from the 1st July 1990 instead of in the post of Operator 'C'-*cum*-Technician, Gr.III (Crane) does not arise. The management has relied on the decision reported in "AIR-206, S.C. 1806, Secretary State of Karnataka & Others Vrs. Umadevi & Other", wherein it has been held that—

Regularisation of daily wager, temporary/contractual employees appointed in violation of constitutional scheme—Right of Court executive would not extend to directing regularisation to be treated as permanence in service—Fact that employee has continued for long, irrespective—That apart, principle of equal pay for equal work cannot also be applied for giving relief of permanency—Doctrine of legitimate

expectation cannot be invoked by such employees merely because in past State had regularised similarly placed employees.

If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis the same would come to an end when it is discontinued.

(B) Constitution of India Art.16—Service jurisdence-regularisation of daily wagers/temporary/contractual employee does not seek permanent in service—But only inforce compliance with one of elements in process of selection which does not go to root of the process.

(C) Constitution of India Arts.14—10 Employment on daily wage—Confers no right of permanent employment—Daily wager appointed on less than minimum wages that was made known to him—Not forced labour—Continued on post for long period—Daily wagers form a class by themselves—They cannot claim parity *vis-a-vis* those regularly recruited on basis of relevant rules and cannot be made permanent in employment. 23—Employment on daily wages—Permanent absorption of daily wager—Cannot be claimed as of right under Art. 21.

In the present case, the workman was appointed as temporary N.M.R prior to his regularisation on 1-7-1990. So, as per the above decision, the workman had no right or choice to be absorbed or regularised in any post. Therefore, the claim of the workman to be appointed as a Driver with effect from the 1st July 1990 is not justified.

The management side has also relied on another decision reported in “AIR-2000 S.C. 839, the Nedungadi Bank Ltd., Appellant *vrs.* K.P. Madhavankutty and others, Respondents.” wherein it has been held that—

“(B) Industrial Disputes Act (14 of 1947) S. 10—Reference—Order of Government making reference—Is subject to judicial review.

(C) Industrial Disputes Act (14 of 1947) S.10—Reference —Power of Government to make—No time limit prescribed—Does not mean that power can be exercised at any point of time—Stale disputes cannot be referred.”

According to the management, the present case has been filed after about 18/20 years for which it has become stale and not maintainable. The W.W.1 has proved Exts.1 to Ext. 11 to justify that he was all along approaching the authorities about his claim for which he has not made any delay. On perusal of Exts.1 to 11, it is found that some of those Exts. are not related to the claim of the workman. Also the workman could not prove by any cogent evidence that those were received by the authorities in time. Therefore, from Exts.1 to 11, it cannot be said that there is no delay in raising this dispute by the workman. The workman continued in his job as as an Operator-*cum*-Technician Gr. III, (Crane) and a very latter stage claiming Driver post carrying higher pay with effect from the date of his absorption or regularisation in service i.e. from 1-7-1990. From the above discussion it is found that this dispute of the workman has become stale and not maintainable.

The management side has proved a number of documents as exts A to M but those are not relevant for this case.

From the foregoing discussions it is found that the workman could not prove that he was continuously working as a M.N.R. Driver under the management from the year 1979 up to 30-6-1990. Also it is found that the workman being a casual and temporary M.M.R. had no right or choice to be absorbed or regularised in any post of his choice. Further, it is found that due to long delay the dispute has become stale and not maintainable.

Hence Ordered :

ORDER—The reference is answered on contest in favour of the management and against the workman. The claim of the workman to be absorbed as Driver with effect from the 1st July 1990 is not justified or legal. He is not entitled to get any relief.

Dictated and corrected by me.

D. C. MISHRA
28-6-2013
Presiding Officer
Labour Court, Jeypore

D. C. MISHRA
28-6-2013
Presiding Officer
Labour Court, Jeypore

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