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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 19th August 2013

No. 10631—IR-(ID)-67/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th February 2013 in I. D. Case No. 12 of 2011 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Vaaman Engineers (India) Ltd., with its Corporate Office at 510, Sai Leela Commercial Complex, S.V. Road, Borivali (West), Mumbai-400092, Maharashtra and its workman Shri Srikanta Panda 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. 12 OF 2011

Dated the 19th February 2013

*Present :*

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

*Between :*

The Management of  
the Managing Director,  
M/s Vaaman Engineers (India) Ltd.,  
510, Sai Leela Commercial Complex,  
S. V. Road, Borivali (West), Mumbai-400 092.

.. First Party—Management

And

Its Workman,  
Shri Srikanta Panda,  
At/P.O. Chattisandore,  
Via Arnabal, Dist. Bhadrak.

.. Second Party—Workman

*Appearances :*

|                                  |                                   |
|----------------------------------|-----------------------------------|
| Shri S. S. Singha, H. R. Manager | .. For the First Party—Management |
| Self                             | .. For the Second Party—Workman   |

## AWARD

This award arises out of a reference made by the Government of Odisha, Labour & Employment Department, under the 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 (14 of 1947) (for short “the Act”) vide Order under Memo. No. 7593 (5), dated the 19th August 2011. The dispute involved under the schedule of reference is as follows :—

“Whether the alleged termination by way of retrenchment of Shri Srikanta Panda, Fitter, with effect from the 3rd February 2010 by the management of M/s Vaaman Engineers (India) Ltd., by way of paying him the rate of wages as per the order of appointment, effective from the 1st November 2008 instead of 1-11-2009 is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The case of the second party (workman) in brief is that he was appointed as a Fitter under M/s Vaaman Engineers (India) Ltd., (Management) on 1-11-2008. His salary was fixed at Rs. 197.75 paise par day and allowances @ Rs. 900 per month as per offer letter, Dt. 1-11-2008 issued by the management. The workman alleged that the management did not pay him full salary for four months i.e. for April, June, December, 2009 and January, 2010. The workman felt that such conduct of the management amounted to illegal termination of his service with effect from the 3rd February 2010 and he raised a dispute before the District Labour Officer-*cum*-Conciliation Officer, Jharsuguda. Since the matter could not be settled by the Conciliation Officer, the same was referred to the Government and hence this case.

3. The plea of the management as per their written statement is that since November, 2008 to October 2009, the workman worked under them as a Technician and was being paid wages @ Rs. 162.75 paise per day with other allowances and time to time increments. On 1-11-2009 the management gave an offer letter to the workman enhancing his daily wages to Rs. 197.75 per day with other allowances. According to the management, no offer letter was issued to the workman on 1-11-2008 and the said document, if any is a fabricated one. The management denies non-tender of wages and allowances to the workman for the month of April, June, December, 2009 and January, 2010. The management alleges that the workman was in the habit of making false allegation and blackmailing the management to extract money. He worked till February, 2010 and received his salary till January, 2010. Thereafter he did not turn up to work site voluntarily in spite of repeated telephonic request. He joined under M/s Rajendra Engineering on dated the 1st March 2010 without informing the management and without tendering resignation. The management plead that they have never retrenched the workman at any point of time with such averments the management submit that they are not liable to pay any amount to the workman as nothing is due to him.

4. On receipt of the written statement, the second party workman filed a rejoinder stating therein that he has been illegally terminated from service and also not paid his wages for the month of April, June, December, 2009 and January, 2010 by the first party management. He prays for reinstatement with full back wages.

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

#### ISSUES

- (i) “Whether the alleged termination by way of retrenchment of Shri Srikanta Panda, Fitter with effect from the 3rd February 2010 by the management of M/s Vaaman Engineering (India) Ltd., by way of paying him the rate of wages as per the order of appointment effective from 1-11-2008 instead of 1-11-2009 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?”

6. The workman is examined as sole witness and proved several documents which are marked Ext. 1 to Ext. 15. The management on the contrary examined its H.R. Manager as sole witness but they did not file any document.

#### FINDINGS

7. *Issue No. (i)*—The workman during course of his evidence has proved the copy of one office letter issued by the management company on dated the 1st November 2008 which has been marked Ext. 1. As per this document, the second party was offered the post of Fitter for their work side as Jharsuguda with salary @ Rs. 197.75 paise per day and other allowances @ Rs. 900 per month. Though the management challenged the genuineness of the document they have not come up with any official letter of appointment in favour of the workman. However, the workman himself has deposed that since November, 2008 he was getting salary @ 162.75 paise per day without any allowance. It appears that he did not make any grievance regarding payment of less daily wage to him by the management. Therefore it is not possible to hold that he is entitled to the balance salary of daily wages for the period from November, 2008 to February, 2010. The workman has clearly deposed that his entire salary for the month of April, June, December, 2009 so also January, 2010 has not been paid by the management to him and besides that he has not been paid Holiday Allowance, Medical Allowance, Yearly Bonus and other allowances since the date of his joining till 2010. The workman has admitted that he did not turn up to the work site after February, 2010 due to non-payment of salary and other dues by the management and such conduct of his appears to be voluntary quitting of service. Non-payment of salary for certain period does not amount an act of termination of service. Besides the workman has admitted that he has taken up job under another Company in the meantime. It is crystal clear from the evidence on record that there was no termination of service of the workman and rather there was only some dispute regarding non-payment of actual wages.

8. The management witness deposed that the second party was working in their company as Fitter from December, 2008 to February, 2010. He further deposed that the second party discontinued service and joined another company namely M/s Rajendra Engineering Company, Jharsuguda. Such fact is not challenged by the workman during cross-examination. The management witness has further deposed that the second party is no more interested to work in their Company and such fact is also not challenged in cross-examination. During course of hearing the management witness deposed that the Company has decided to pay a sum of Rs. 70,000 (Rupees seventy thousand) to the second party and settle the matter forever. During cross-examination he also deposed that the said amount is to be paid to the second party by way of cheque within a period of one week. It reveals from record that on the date of final hearing of the case both parties filed a memo regarding full and final settlement between them under which the first party issued Cheque bearing No. 216303, Dt. 12-2-2013 in favour of the second party for an amount of Rs. 70,000 (Rupees seventy thousand). Parties also filed a xerox copy of Cheque signed by both of them. Therefore, I am constrained to hold that though the workman raised industrial dispute, he has already been satisfied by accepting the amount of Rs. 70,000 (Rupees seventy thousand) from the first party.

9. Considering the evidence on record and discussion made above I have no hesitation to hold that the second party workman was never terminated from service by way of retrenchment by the first party management and only there was some dispute regarding non-payment of wages for a certain period which has been settled in the meantime. Therefore, the reference needs be answered against the workman and he should be held not entitled to any further relief. Hence, the following award.

#### AWARD

The reference is answered on contest against the workman. It is held that the second party Shri Srikanta Panda, Fitter under the management from 3-2-2010 was not retrenched by the first party and his service was not terminated by the Company. The workman has already received the difference in wages due to him and therefore he is not entitled to any further relief.

Dictated and corrected by me.

SRIKANTA MISHRA  
19-2-2013  
Presiding Officer  
Labour Court  
Sambalpur

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19-2-2013  
Presiding Officer  
Labour Court  
Sambalpur

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