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**LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT**

**NOTIFICATION**

The 24th September 2013

No. 11620—IR(ID)-89/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th August 2013 in Industrial Dispute Case No. 9 of 2010 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of M/s Aska Co-operative Sugar Industries Ltd., Nuagaon, Aska, Dist. Ganjam and its Workman Shri Upendra Nahak 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. 9 OF 2010

Dated the 19th August 2013

*Present :*

Shri D. C. Mishra, O.S.J.S. (Jr. Branch)  
Presiding Officer,  
Labour Court, Jeypore,  
Dist. Koraput.

*Between :*

The Management of . . . First Party—Management  
M/s Aska Co-operative Sugar  
Industries Ltd., Nuagaon,  
Aska, Dist. Ganjam.

*Versus*

Its Workman . . . Second Party—Workman  
Shri Upendra Nahak,  
S/o Shri Murali Nahak,  
At/P.O. Baragaon,  
Via/P.S. Aska, Dist. Ganjam.

## Under Sections :—10 and 12 of the Industrial Disputes Act, 1947

*Appearances :*

Shri K. N. Samantra, Advocate, Jeypore	. .	For the First Party—Management
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Shri B. V. Ramana, A/R of the workman, Jeypore.	. .	For the Second Party—Workman

Date of Argument . . 24-7-2013

Date of Award . . 19-8-2013

## AWARD

1. The matter arises out of a reference made by the State Government in the Labour & E.S.I. Department, Odisha, Bhubaneswar under Section 12 (5), read with Section 10 (1) of the I. D. Act, 1947 vide Memo. No. 6895(5)-LE., dated the 18th August 2010 for adjudication of the following disputes :—

## SCHEDULE

"Whether the termination of services of Shri Upendra Nahak, ex Mazdoor, by the management of M/s Aska Co-operative Sugar Industries, Ltd., Nuagaon, Aska, Dist. Ganjam by way of refusal from employment with effect from the 14th December 1990 is legal and/or justified ? If not, to what relief the workman is entitled ?"

2. That, the workman Shri Upendra Nahak worked as N.M.R. Mazdoor under the management from dated the 1st April 1978 and continued in service. It is averred that, while the workman was continuing as N.M.R. Mazdoor, considering his seniority and efficiency, the management appointed him for the crushing season of 1985-1986 on temporary basis with effect from the 1st March 1986, on monthly basis pay of Rs. 110 only with D.A. and other allowances admissible to unskilled grade workman. As per that appointment order, the workman worked in the crushing season of 1985-1986 and thereafter continued in service till 1990. It is alleged that, in the year 1990, the management filed false G. R. Case No. 193/1990 against him in the Court of J.M.F.C., Aska for which he remained in jail custody for some days. According to the workman, after releasing on bail, he approached the management several times to allow him to continue in his job, but the management lingered the matter with assurance to consider his claim after finalisation of the aforesaid G. R. Case. It is pleaded that, in that G. R. Case, the workman (accused) was acquitted and after acquittal the workman submitted a copy of the judgment before the management and requested to allow him to continue in his job but in vain. It is further pleaded that, as the management unnecessarily lingered the matter, the workman approached the Labour Authorities for conciliation. As there was delay in finalising the conciliation proceeding the workman approached the Hon'ble High Court and the A.L.O. was directed to complete the proceeding within three (3) months and accordingly the Assistant Labour Officer, Aska, submitted failure report to the Government. Finally the Government has referred this case under Sections 10 and 12 of the I. D. Act. Hence the case.

3. The management has contested the case by filing W.S. denying all the allegations and claims made by the workman. According to the management, the workman was appointed temporarily for the crushing seasons from the year 1985-1986 and he continued up to 1990 but during off season of the year 1990, G. R. Case No. 193/1990 under Sections 457/380 and 411

of I.P.C. was initiated against the workman and he remained in jail custody for some days. It is pleaded by the management that, after arrested by police in G. R. Case No. 193/1990, the workman abandoned him from work and never presented him in the work site to do his job. It is also averred that, as the workman never turned up to work, he has not been engaged in any seasonal work from the crushing season of 1990-1991 and onwards. It is further pleaded that, in the G. R. Case, the judgment was delivered on the 21st June 1995 but the workman remained silent for 12 years and after 12 years submitted an application for his reengagement which was not considered by the management as because, the appointment of the workman was purely temporary and barred by limitation. It is further pleaded that, the workman had not completed 240 days of work during preceding 12 calendar months of disengagement for which he is not entitled to get protection under Section 25-F of the I. D. Act. The management has further pleaded that, the appointment of the workman was contractual and temporary in nature for crushing season for which after completion of the crushing season of the year, the service of the workman was deemed to be automatically terminated for which provisions of the I. D. Act was not required to be complied. In the above premises the management has prayed for dismissal of the case on the ground that the workman has no cause of action or *locus standi* to file the case.

4. In view of the rival pleadings of the parties, the following issues have been framed for adjudication in this case.

#### ISSUES

- (i) "Whether the termination of services of Shri Upendra Nahak, ex Mazdoor by the management of M/s Aska Co-operative Sugar Industries Ltd., Nuagaon, Aska, Dist. Ganjam by way of refusal from employment with effect from the 14th December 1990 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?"

5. In order to substantiate the case, the workman Shri Upendra Nahak has examined himself as W.W. No. 1. Documents marked Exts. 1 to 5 have been proved from workman side. The xerox copy of order vide Memo. No. 8456(47), dated the 23rd June 1986 of the management by which the workman was appointed with effect from the 1st March 1986 has been marked Ext. 1. The xerox copy of Acquittal order, dated the 21st June 1995 in G. R. Case No. 193/1990 of the Court of J.M.F.C., Aska is marked Ext. 2. The xerox copy of representation, dated the 1st August 2006 of the workman addressed to the management is marked Ext. 3. The xerox copy of Order in W.P.(C) No. 15891 of 2009 along with Order, dated the 27th November 2009 is marked Ext. 4. The xerox copy of L. No. 1090, dated the 27th July 2006 of the management addressed to the workman is marked Ext. 5.

In support of its plea, Shri Ugreshen Patra, Secretary of Aska Co-operative Sugar Industries Ltd., Aska (Management) has been examined as M.W. No. 1. Documents marked Exts. A to J have been proved from management side. The xerox copy of order vide Memo. No. 8456(47), dated the 23rd June 1986 of the management by which the workman was appointed for the crushing season 1985-1986 is marked Ext. A. The xerox copy of termination order of the workman, dated the 7th May 1987 is marked Ext. B. The xerox copy of order vide Memo. No. 2604(52), dated the 30th October 1987 of the management by which the workman was appointed for the crushing season 1987-1988 is marked Ext. C. The xerox copy of order vide Memo. No. 405(51), dated the 21st July 1988 of the management by which the workman was terminated after end of crushing season of 1987-

1988 is marked Ext. D. The xerox copy of order vide Memo. No. 2865(52), dated the 17th December 1988 of the management by which the workman was appointed for the crushing season 1988-1989 is marked Ext. E. The copy of order vide Memo. No. 4605(77), dated the 31st March 1989 of the management by which the workman was terminated from service after end of crushing season of 1988-1989 is marked Ext. F. The copy of order vide Memo. No. 4884, dated the 2nd January 1990 of the management by which the workman was appointed with effect from the 31st December 1989 for the crushing season 1989-1990 is marked Ext. G. The xerox copy of order vide Memo. No. 386(75), dated the 25th April 1990 of the management by which the workman was terminated with effect from the 19th April 1990 after closure of the crushing season of 1989-1990 is marked Ext. H. The xerox copy of L. No. 6680, dated the 10th February 2010 of the management addressed to the A.L.O., Aska, Ganjam showing engagement particulars of the workman is marked Ext. J.

6. *Issue No. (i)*—The W.W. No. 1 (workman) has deposed that after due selection he was appointed by the verbal order of the then M.D. of the management as a N.M.R. Mazdoor with effect from the 1st April 1978 but the management has strongly disputed it. The workman has not proved by any cogent or documentary evidence that, he joined in service under the management with effect from the 1st April 1978. Therefore this evidence of W.W. No. 1 invokes no confidence and it cannot be accepted.

According to W.W. No. 1, he was promoted to the regular Mazdoor post with effect from the 1st March 1986 vide Office Memo. No. 8456(47), dated the 23rd June 1986 (Ext. 1) of the then M.D. Ext. A proved from management side and Ext. 1 are same. It reveals that the appointment was on temporary basis for the crushing season. According to W.W. No. 1, on the basis of Ext. 1, he continued in service up to Dt. 14-12-1990 but the appointment was only for crushing season of 1985-1986 and in the cross-examination the witness admitted that, each year he was working from the month of Aswina to coming Baisakha, i.e., from 8 months and he has worked up to March 1990 as a seasonal worker. So the evidence of W.W. No. 1 that he continuously served under the management from Dt. 1-3-1986 to Dt. 14-12-1990 has been belied by his own admission.

Though, W.W. No. 1 has stated that, except Ext. 1 no further appointment order or retrenchment order was served on him but the M.W. No. 1 has stated that Exts. B to H which were reappointment orders and retrenchment orders of the workman were served on him. Those documents are official documents having letter Nos. and signatures of the Managing Director of the management. So those can be relied upon. Ext. C reveals that the workman was appointed from Dt. 1-11-1987 for the crushing season 1987-1988 and he has been terminated from service after that crushing season with effect from the 22nd July 1988. So as per Exts. C and D, the workman has continuously served for 264 days under the management in the crushing season of 1987-1988. Also the management has admitted this fact vide Ext. J. Therefore the workman was entitled to get protection under Section 25-F of the I. D. Act and the plea of the management that the workman has not completed 240 days work within 12 preceding calendar months of his termination has been negated by Exts. C, D and J which have been relied on by them. Thus the management was bound to comply the mandatory provision of Section 25-F of the I. D. Act.

The M.W. No. 1 has deposed that, after remaining in jail custody in the G.R. Case No. 193/1990 of the J.M.F.C., Aska, the workman has not reported to duty for which he is not entitled to get any relief in this case. Though the W.W. No. 1 has deposed that he was all along approaching the management side to allow him to continue in his job but admittedly he could not produce any documentary evidence to justify this fact. Also, the workman has not proved by any cogent evidence that he was continuously approaching the authorities for his job and he has not committed any delay in the matter. However the workman has relied on the decision reported in "2011(I) O.L.R. (SC) 591, Kuldeep Singh—Appellant(s) *Versus* G.M. Instrument Design Development and Facilities

Centre and Another—Respondent(s)". In the aforesaid decision, the Hon'ble Courts have very elaborately analysed and distinguished the decisions reported in :—

- (1) Sapan Kumar Pandit Vrs. U.P. State Electricity Board and Others, (2001) 6 S.C.C. 222.
- (2) M/s Western India Match Co. Ltd. Vrs. the Western India Match Co. Workers Union and Others, (1970) 1 S.C.C. 225—A.I.R. 1970 S.C. 1205.
- (3) Nedungadi Bank Ltd. Vrs. K. P. Madhavankutty and Others, (2000) 2 S.C.C. 455.
- (4) Haryana State Co-op. Land Development Bank Vrs. Neelam, (2005) 5 S.C.C. 91.
- (5) S.M. Nilajkar and Others Vrs. Telecom District Manager, Karnakata, (2003) 4 S.C.C. 27.

In the aforesaid decision, i.e., "2011 (I) O.L.R. (S.C.) 591", at Para. 15, the Hon'ble Courts have held that :—

Based on the interpretation of the three Judge Bench, it was concluded :—

"15. There are cases in which lapse of time had caused fading or even eclipse of the dispute. If nobody had kept the dispute alive during the long interval, it is reasonably possible to conclude in a particular case that the dispute ceased to exist after sometime. But when the dispute remained alive though not galvanised by the workmen or the Union on account of other justified reasons it does not cause the dispute to wane into total eclipse. In the case, when the Government has chosen to refer the dispute for adjudication under Section 4-K of the U.P. Act, the High Court should not have quashed the reference merely on the ground of delay. Of course, the long delay for making the adjudication could be considered by the adjudicating authorities while moulding the reliefs. That is a different matter altogether. The High Court has obviously gone wrong in hexing down the order of reference made by the Government for adjudication. Let the adjudicatory process reach its legal culmination".

In the decision reported in "2010 (Supp. II)—O.L.R.—736, Divisional Manager, O.F.D.C. Ltd.—Petitioner Vrs. Shri Godabarish Badajena and Another, Opp. Parties", it has been held at Para. 9 that :—

"Relief under the Act cannot be denied to the workman solely on the ground of delay as Limitation Act is not applicable and in case delay is established, the Labour Court or Tribunal can mould the relief with regard to back wages, etc. In the case of Ajaib Singha, the S.C. has categorically held that the provision under Article 137 of the Schedule to Limitation Act, 1963 is not applicable to the proceeding under the I. D. Act and the relief under the said Act cannot be denied to the workman merely on the ground of delay. The plea of delay, if raised by the employer is required to be proved, as a matter of fact, by showing real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally question on the ground of delay alone, even in a case whether delay is seen to be existing, the Tribunal, Labour Court or Board dealing with the case can appropriatedly mould the relief by declining to grant wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal".

In the case at hand, the management has not proved as to what real prejudice was caused to it due to filing of the case by the workman in late. Further, this industrial dispute case is alive as per direction of the Hon'ble High Court vide order, dated the 27th November 2009 passed in W.P.(C) No. 15891/2009 (Ext. 4). Also, the management has not proved that the delay in raising the dispute by the workman has been so culpable as to disentitle him any relief. So the present case cannot be treated as a stale one and not maintainable.

The management has taken another plea that, after arrest by police, the workman has not

reported to duty and he *sue motu* abandoned from duty. In this aforesaid decision, i.e., "2010 (Supp. II) O.L.R. 736", it has been held at Para. 6 that :—

"The onus lies on the management to substantiate the plea of abandonment by adducing cogent evidence. Retrenchment of an employee without following the mandatory provisions under Section 25-F of the I. D. Act is not only unsustainable but also illegal. No evidence has also been adduced from the side of the management to indicate that, any notice directing the O.P. No. 1 to join in his duty or to show cause for unauthorised absent was issued".

Thus the plea of the management that the workman abandoned from duty and did not present him at the work place cannot be accepted.

From the foregoing discussions it is found that the workman has completed more than 240 days of continuous service within 12 calendar months preceding to termination for which he has acquired a right to be protected under Section 25-F of the I. D. Act. Further it is found that, though there is delay in raising the industrial disputes but it is not so culpable as to disentitle the workman to any relief and only on the ground of delay in raising the dispute, the relief cannot be denied to the workman. The plea of abandonment taken by the management cannot be accepted. Hence the termination of the workman from service by the management by way of refusal from employment with effect from the 14th December 1990 is not legal or justified.

Perused all the decisions and the exhibits filed by both the parties but those do not improve or derogate the workman's case.

*Issue No. (ii)*—In view of the discussions made above in issue No. (i), the workman is entitled to be reinstated in his post. Since the workman has caused long delay in raising the dispute, he is not entitled to get any back wages or service benefits. Hence Ordered :

#### ORDER

The reference is answered on contest in favour of the workman and against the management but in the circumstances without costs. The management is directed to reinstate the workman in his former post within three (3) months of getting the copy of notification made by the Government but without back wages.

Dictated and corrected by me.

D. C. MISHRA  
19-8-2013  
Presiding Officer  
Labour Court  
Jeypore

D. C. MISHRA  
19-8-2013  
Presiding Officer  
Labour Court  
Jeypore

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