

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2091 CUTTACK, SATURDAY, OCTOBER 26, 2013/KARTIKA 4, 1935

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 1st October 2013

No. 11841—IR(ID)-60/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th September 2013 in Industrial Dispute Case No. 47 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s COS Board Industries Ltd., Phase - III, New Industrial Estate, Jagatpur and their workman Shri Padmanav Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 47 OF 2011

Dated the 6th September 2013

Present :

Shri P. K. Ray, o.s.J.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal, Bhubaneswar.

Between :

The Management of . . . First Party—Management
M/s COS Board Industries Ltd., Phase - III,
New Industrial Estate, Jagatpur, Cuttack.

And

Its Workmen Shri Padmanav Sahoo . . . Second Party—Workman
S/o Late Paramananda Sahoo,
At Chahapada, P.O. Gopinathpur,
P.S. Jagatpur, Cuttack.

Appearances :

None	..	For the First Party—Management
Shri Padmanav Sahoo	..	For the Second Party—Workman

AWARD

This case has been instituted under Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & E.S.I. Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 7797—ID-60/2011-LE., dated the 25th August 2011 with the following schedule :—

“Whether the action of the management of M/s COS Board Industries Limited, Phase - III, New Industrial Estate, Jagatpur, Cuttack in terminating the services of Shri Padmanav Sahoo, Mould Man with effect from the 28th September 2008 under the guise of suspension is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?”.

2. The claim of the second party workman is that he joined as a Cutter man under the first party management on the 10th January 1989, and subsequently promoted to the post of Packer and thereafter Mouldman in the year 1995 on a salary of Rs. 2715 per month having ESI card. On the 28th September 2008 the first party management suspended him without any reason which he had received through through post on the 6th October 2008 and appointed one Sushanta Kumar Pradhan as enquiry officer to enquire on the charge dated the 27th march 2009. Till date the enquiry has not been completed nor he has been paid subsistence allowance. hence on his complaint this reference has been made for adjudication.

3. The first party management did not contest the case and hence set exparte.

4. The second party workman in order to substantiate his case examined himself and filed documents marked Exts. 1 to 9.

5. In this case the issues are as follows :—

ISSUES

“1. Whether the action of the management of M/s COS Board Industries Limited, Phase - III, New Industrial Estate, Jagatpur, Cuttack in terminating the services of Shri Padmanav Sahoo, Mould Man with effect from the 28th September 2008 under the guise of suspension is legal and/or justified ?

2. To what relief Shri Sahoo is entitled to ?”

6. *Issue No. 1*—The unchallenged oral and documentary evidence adduced on behalf of the second party workman substantiate that while working as Mouldman the workman has been put under suspension with effect from the 28th September 2008. The pleading and evidence of the second party workman further reveal that though one domestic enquiry was initiated against him neither the same has been completed as yet nor he has been paid subsistence allowance. Item 9 of the schedule to Industrial Employment (Standing Order) Act, 1946 relates to suspension or dismissal for misconduct and acts of omission which constitute misconduct. The relevant certified standing orders relating to the establishment concerned will therefore govern the matter. The amendment dated the 17th May 1982 inserting section 10-A provide as follows :—

“[10-A. Payment of subsistence allowance :—(1) Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance—

(a) at the rate of fifty per cent of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension ; and

(b) at the rate of seventy five percent of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman.”

In the case of Capt. M. Paul Anthony Vrs. Bharat Gold Mines Ltd. and another, reported in 1999 (82) FLR 627, their Lordships of the Supreme Court have held that non-payment of subsistence allowance is an inhuman act which has an unpropitious life on an employee. When an employee is placed under suspension he has been demobilised and the salary is also paid to him at a reduced rate under the nick name of subsistence allowance so that the employee may sustain himself. The act of non-payment of subsistence allowance can be likened to show-poisoning as the employee if not permitted to sustain himself on account of non-payment of subsistence allowance would gradually starve himself to death.

7. In the case in hand the two major problems which weigh against the first party management are that though the second party workman was put under suspension since September 2008 he has not been paid subsistence allowance nor the departmental enquiry has been completed against him till date for which the statement of the second party workman that his service has been terminated under the guise of suspension is not misnomer. The settled principle is that the departmental enquiry without paying subsistence allowance to the workman during the period of his suspension vitiates the enquiry. Therefore, the order of suspension dated the 28th September 2008 is bad in law and is liable to be set aside.

8. *Issue No. 2*—The second party workman has been put under suspension for a pretty long period i. e. approaching five years. The domestic enquiry conducted against him has not been completed during the said period. The aforesaid facts lead to a presumption of harassment in nature. In the aforesaid circumstances, it would be just and proper to reinstate the second party workman in his former position with a direction to pay 50% of back wages from the date of suspension till his reinstatement in the former post.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY

06-09-2013

Presiding Officer

Industrial Tribunal, Bhubaneswar

P. K. RAY

06-09-2013

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government