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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 30th October 2013

No. 12552—IR (ID)-53/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th September 2013 in Industrial Dispute Case No. 46 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Balasore-Bhadrak District Co-operative Milk Producers Union Ltd. and their Workman Pragyan Paramita Panda was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 46 OF 2011

Dated the 26th September 2013

*Present :*

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

*Between :*

The Management of  
The General Manager,  
M/s Balasore-Bhadrak District  
Co-operative Milk Producers Union Ltd.,  
At Khalidaspur, P.O. Haripur,  
Dist. Balasore.

.. First Party—Management

And

Its Workman  
Pragyan Paramita Panda,  
D/o Umakanta Panda (Adv.),  
Tahasil Road,  
Tarini Temple Front, Bhadrak,  
At/P.O./Dist. Bhadrak.

.. Second Party—Workman

*Appearances :*

For the First Party—Management	.. Shri R. Rath, Authorised Rept.
For the Second Party—Workman herself	.. P. P. Panda

## 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. 7599—ID-53/2011-L.E., dated the 19th August 2011 with the following Schedule:—

“Whether the termination of services of Pragyan Paramita Panda, workman, Extension Worker, with effect from the 21st January 2009 by the employer, Balasore-Bhadrak District Co-op. Milk Producers Union Ltd. in short BBAMUL., At Khalidaspur, P.O. Haripur, Dist. Balasore is legal and/or justified ? If not, what relief She is entitled to ?”

2. The case of the second party workman is that she was appointed as Women Extension Worker on contractual basis for a period of one year with effect from 9th January 2006 to 8th January 2007 vide order No. BBAMUL-APPT-06-35, dated the 16th January 2006 after completion of Omfed Training at Jagannathpur near Phulnakhara of district Khurda and subsequently extended from 9-1-2007 to 8-1-2008 and discharging her duties sincerely and honestly to the satisfaction of her higher authority. After completion of two years of service the management further extended her engagement with effect from 9th January 2008 to 8th July 2008 vide BBAMUL-APPT-08-46, dated the 16th January 2008 and then from 1-5-2008 to 31-4-2009 and prior to her termination the workman was directed to supervise extra work at Jaleswar vide office Order No. 29/2009, dated the 10th January 2009. Before completion of her term the management illegally and unlawfully without giving any opportunity to the workman, disengaged her vide order of the General Manager, BBAMUL, Establishment 09/47, dated the 21st January 2009, but a Junior workman namely Ambika Behera continuing in her service as such and another woman workman Itishree Sahoo who was also disengaged along with the workman has been reinstated in her service whereas in spite of persuasion of the present workman, her case has not been considered for reinstatement, being aggrieved by such action the second party workman approached the labour machinery on whose reference this case has been instituted for adjudication.

3. The first party management in his written statement admitting the engagement of the second party workman as Women Extension Worker on contractual basis initially for a period of one year from 9-1-2006 to 8-1-2007 on consolidated pay of Rs. 3,500 per month which was subsequently extended from 9-1-2007 to 8-1-2008, 9-1-2008 to 8-7-2008 and lastly up to 30-4-2009 has stated that while at the time of initial engagement the second party workman has undertaken that the said appointment was purely on temporarily and contract basis and can be terminated at any time without any notice and assigning any reason, in the subsequent extension there was stipulation that the same is terminable one month prior notice from either side. Besides on 15-3-2007 she was intimated about her unsatisfactory performance and asked to explain why her service shall not be terminated after one month. However, on the prayer made by the second party workman her contractual engagement was extended for a period from 1-5-2008 to 30-4-2009 with a consolidated salary of Rs. 4,000 per month. Since the performance of the second party workman was poor

throughout of her posting at different places during the aforesaid period and was found unsatisfactory, the General Manager, BBAMUL vide his letter, dt. 21-1-2009 intimated that her contractual engagement discontinued with effect from the 21st April 2009 as per the terms of her undertaking at the time of engagement on contractual basis and stipulation in subsequent extension letters. At the time of her termination, she was paid Rs. 4,000 in lieu of one month notice pay, Rs.3,600 towards salary for the month of November 2008, Rs. 2,710 towards her salary of 21 days for the month of January 2009, Rs. 2,250 towards house rent for three months including the notice period which comes to Rs. 12,560 and after deduction of 12% of Provident Fund which comes to Rs. 1,237, she was paid Rs. 11,323. It is further stated that due to unsatisfactory performance, it is not possible to accept her again into the service. The performance of Ambika Behera who was allowed to continue in service is quite satisfactory. Hence she was not retrenched. The performance of Itishree Sahoo, who was retrenched along with the second party workman, is comparatively better and hence, was again taken into the service. Therefore the claim of the second party workman is not entertainable.

4. In the aforesaid premises issues are framed as follows :

#### ISSUES

- (i) Whether the reference is maintainable ?
- (ii) Whether the engagement of the second party comes within the ambit of Section 2 (oo) (bb) of the I.D. Act ?
- (iii) Whether the action of the management in terminating the service of the workman with effect from the 21st January 2009 is legal and justified ?
- (iv) Whether there is violation of the provisions of Section 25-G of the I.D. Act and, if so, is it justified ?
- (v) What relief ?

5. In support of her case while the second party workman examined herself and filed documents marked Exts. 1 to 8. On behalf of the first party management one witness has been examined and documents filed marked Exts. A, B, C, D, E, F, G, H, J, K, L, M, N, P, Q respectively.

#### FINDINGS

6. *Issue Nos. (ii) & (iii)*—In this case there is no dispute on engagement of the second party workman on contractual basis which was extended from time to time, and her termination from 21-1-2009 before completion of her last terms on 30-4-2009. At the time of her termination she was paid Rs. 4,000 in lieu of one month notice pay, Rs. 3,600 towards salary for the month of November 2008, Rs. 2,710 towards salary of 21 days of the month of January 2009 and Rs. 2,250 towards H.R.A. for three months which comes to Rs. 12,560 and after deduction of 12% Provident Fund of Rs. 1,237, she was paid Rs. 11,323.

7. The second party workman claims violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947. On the otherhand the stand of the first party management is that since the second party workman was worked on contractual basis with a stipulation that her engagement

can be terminated with one month notice from either side and as per the said stipulation the termination of service of the second party workman is not retrenchment and it comes within the ambit of Section 2 (oo)(bb) of the Industrial Disputes Act. Section 2(oo) (bb) of the Industrial Disputes Act envisages as follows :

2(oo)"retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary action, but does not include—

(a) xxx xxx xxx

(b) xxx xxx xxx

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein ;

As per the undertaking of the second party workman under Annexure-D and stipulation in the extension of the contractual engagement vide Exts.L and P, such engagement is terminable with one month notice from either side, it comes under the ambit of Section 2(00) (bb) of the Industrial Disputes Act. Therefore such termination of the second party workman is not retrenchment and thus she is not entitled to the benefit envisages under Section 25-F of the Industrial Disputes Act. In the case is hand the second party workman has been paid one month notice pay as she was not given one month period as stipulated in the contractual engagement extension letter vide Exts. L & P. In the aforesaid background there is nothing on record to draw any conclusion that the termination of the second party workman is contrary to the law. Since, the second party workman has been given prior notice about her poor performance vide Ext.H and in spite of her assurance to improve she fails. It can be said that the aforesaid action of the first party management in terminating the services of the second party workman vide Ext.S is unjustified.

8. *Issue No. (iv)*—On behalf of the second party workman it is stated that one of her junior Miss Ambika Behera though has been retained she being the senior her engagement has been terminated. So also one Itishree Sahoo who was junior to the second party workman and terminated along with her, was again given engagement whereas the second party workman has been deprived of the same which amounts to violation of Section 25-G of the Industrial Disputes Act. Section 25-G of the Industrial Disputes Act which prescribes procedure of the retrenchment prescribes as follows :

"25-G. Procedure for retrenchment—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

The first party management explained that the performance of Ambika Behera who is junior to the second party workman is satisfactory. Similarly the performance of Itishree Sahoo who was also junior to the second party workman and terminated along with her, on further verification of her performance being found better than other co-terminieies was given subsequent engagement. Since,

the reason given by the first party management relating the engagement of Ambika Behera and Itishree Sahoo was reasonable and it comes within the purview of exception of the Section 25-G, I do not find any violation of the said provision.

9. *Issue Nos. (i) & (v)*—In the case in hand since the termination of the second party workman comes within the ambit of Section-2(oo) (bb) of the Industrial Disputes Act, the first party management has given sufficient reasons for engagement of two of her juniors while disengaging the second party workman and she has been given one month notice pay neither the case is maintainable nor she is entitled to any relief claimed for.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY  
26-9-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P. K. RAY  
26-9-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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