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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 30th October 2013

No. 12547—IR-(ID)-98/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th September 2013 in I. D. Case No. 9 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Principal, Traffic Training Institute, Laxmi Sagar, Bhubaneswar and its workman Shri Sarat Chandra Sethi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 9 OF 2013

Dated the 24th September 2013

*Present :*

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

*Between :*

The Management of  
The Principal,  
Traffic Training Institute, Laxmi Sagar,  
Bhubaneswar.

.. First Party—Management

And

Its workman,  
Shri Sarat Chandra Sethi,  
At/P.O. Balipur, Via. Satasankha,  
Dist. Puri.

.. Second Party—Workman

*Appearances :*

None	.. For the First Party
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Shri S. C. Sethi	.. For the Second Party—Workman himself

## 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 & ESI Department of the Government of Odisha under Section 12(5) of the Act vide its letter No. 698— IR (ID) 98/2012/LESI, dated 28th January 2013 on the following schedule :—

“Whether the action of the management of M/s Traffic Training Institute, Bhubaneswar in terminating the services of Shri Sarat Ch. Sethi, Temporary Dhobi with effect from 8th April 2009 is legal and/or justified ? If not, what relief Shri Sethi is entitled to ?”

2. The plea of the second party workman is that he was engaged as Washerman by the first party management with effect from the 7th March 2003 and thereafter was issued formal engagement order as “Temporary Dhobi” vide the first party management office order under memo. No. 76, dated the 7th June 2003 with wages of Rs. 4,500 per month which was subsequently enhanced to Rs. 6,000 per month from April 2004. While discharging his duties all of a sudden on Dt. 8-4-2009 the then Principal of the first party management did not allow the second party workman to work and though requested several times for his reinstatement, the first party management lent a deaf ear to it.

It is stated that the second party workman discharging his duty continuously and un-interruptedly for a period of more than six years, but he was retrenched from service without any notice, notice pay and retrenchment compensation as prescribed under Section 25-F of the Industrial Disputes Act, 1947 with an fulminated motive to engage his own man in violation of the Section 25-H of the Industrial Disputes Act, 1947. Hence he raised this dispute which ultimately refers to this Tribunal for adjudication.

3. The first party management in its written statement refusing the claim of the second party workman to have been neither engaged temporarily nor regular basis has stated that he might have worked under the direct contract of trainees but has not been engaged by the institution.

4. In the aforesaid premises following issues are framed :—

## ISSUES

- (i) “Whether the action of the management of M/s Traffic Training Institute, Bhubaneswar in terminating the services of Shri Sarat Chandra Sethi, Temporary Dhobi with effect from the 8th April 2009 is legal and/or justified ?
- (ii) If not, what relief Shri Sethi is entitled to ?”

5. In support of their claim the second party workman has examined himself and filed xerox copies of documents which were marked as Exts. 1 & 2 respectively. But the first party management did not contest the case and set *ex parte*.

#### FINDINGS

6. *Issue Nos. (i) & (ii)*—In the absence of any cross-examination the statement of the second party workman remains unchallenged to the effect that he was engaged with effect from the 7th March 2003 and formally issued order as “Temporary Dhobi” with effect from the 7th June 2003 with remuneration of Rs. 4,500 per month and then enhanced to Rs. 6,000 with effect from the April 2004 and finally he was not allowed to work with effect from the 8th April 2009 which amounts to termination of service. In order to substantiate his engagement as “Temporary Dhobi” the second party workman filed copy of office order Dt. 7-6-2003 of the first party management vide Ext. 1.

7. The second party workman claims protection under Sections 25-F and 25-H of the Industrial Disputes Act, 1947 which are as follows :—

“25-F. Conditions precedent to retrenchment of workmen :—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay [for every completed year of continuous service] or any part thereof in excess of six months ; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Governemnt by notification in the Official Gazette].”

“25-H. Re-employment of retrenched workmen—Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons.”

The materials on record clearly show that the second party workman had worked more than 240 days under the first party management which comes under the purview of the Industrial Disputes as per decision of Hon’ble Supreme Court in Bangalore Water Supply Case reported in AIR-1978 SC-548 and as per the provisions Section 25-F of the Act, the second party workman is entitled to one month prior notice, notice pay and compensation which are not complied in this case.

Further, according to the provision of Section 25-H, the second party workman has got his right to re-employment when the first party management proposes to employ some other person for the same purpose. In the case in hand the unchallenged statement of the claimant is that the first party management engaged one Shyama Sundar Sethi in his place in violation of

Section 25-H of the Industrial Disputes Act. In the aforesaid circumstances since disallowing the second party workman to discharge his work which amounts to termination is bad in law. He has got right to opportunity in subsequent re-employment against the said post. When Shyama Sunder Sethi was appointed as such it is obligation to the first party management to give opportunity to the second party workman while considering employment against the said post. Therefore, the first party management is directed to reinstate the second party workman in the post which he was holding at the time of his termination with remuneration which shall not be less than the amount Rs. 6,000 per month which he was drawing at the time of termination of his service.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY  
24-9-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P. K. RAY  
24-9-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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