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**LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT**

NOTIFICATION

The 18th December 2013

No. 14209—IR(I.D.)-8/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th November 2013 in Industrial Dispute Case No. 7 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Shakti Sugar Ltd., Dhenkanal and its Workman Shri Ashok Kumar Nath was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 07 OF 2011

Dated the 7th November, 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. Shakti Sugar Ltd.,  
Dhenkanal.

And

Their Workman . . . Second Party—Workman  
Shri Ashok Kumar Nath,  
S/o. Late Gangadhar Nath,  
At Kalingapal, P.O. Kalinga,  
Via Rasol,  
Dist. Dhenkanal.

*Appearances :*

Shri B. P. Tripathy, Advocate	. . . For the First Party—Management
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Shri B. K. Panda, Advocate	. . . 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 & Employment Department of the Government of Odisha under Section 12 (5) of the Act vide its Letter No. 2300—ID-8/2011-LE., dated the 8th March 2011 with the following Schedule :—

"Whether the termination of services of Shri Ashok Kumar Nath, Cook-Helper with effect from the 26th February 2009 by the Management of M/s. Shakti Sugar Ltd., Haripur, Dhenkanal is legal and/or justified ? If not, what relief Shri Nath is entitled to ?"

2. The case of the second party workman is that he was working as a Cook-Helper in M/s. Shakti Sugar Ltd., Haripur, Dhenkanal with effect from the 24th February 2007 on probation for a period of one year. After completion of one year, the management did not confirm him in his job. On the other hand, on Dt. 27-9-2008, the management suspended him from his duty on the allegation of insubordination and groupism and issued a charge-sheet asking him to submit his explanation and thereafter conducted a domestic enquiry against him. Though he has participated in the enquiry on three different dates, he found that the Enquiry Officer has not conducted the enquiry fairly and properly and ultimately submitted his report a copy of which was served on him. On receipt of the enquiry report, he has also submitted his show cause challenging the enquiry conducted by the Enquiry Officer but the management terminated his service. Hence, he has filed this case for his reinstatement in service with full back wages.

3. The first party management in its written statement admitting the appointment of the second party workman as a Cook-Helper on probation for a period of one year has stated that the performance appraisal report, dated the 7th April 2008 in respect of the second party workman was found unsatisfactory. Hence, his probation was extended for one year more with effect from the 1st May 2008. During the aforesaid period of probation, there was allegation that the second party workman was involved in various nefarious activities detrimental to the interest and reputation of the first party management. The members of the Mess and In-charge, Dormitory lodged written complaints against him which are serious in nature. Considering the gravity of the allegation since it was felt expedient to keep him away from his duties, the second party workman was put under suspension with immediate effect pending enquiry into the allegations. Accordingly, he was issued with a charge-sheet vide letter, dated the 10th November 2008 with details of his misconduct. The first party management after considering the explanation furnished by the second party workman on the 27th November 2008 appointed an outside agency to conduct the enquiry who after adhering to the principles of natural justice submitted a report holding him guilty of the charges levelled against him. On receipt of the said report, the first party management served a show cause notice along with the contemplated action asking him to show cause as to why his probationary engagement shall not be terminated. However, after considering his explanation, the first party management

dispensed with the engagement of the second party workman on full and final settlement in consequence of which he received compensation. Therefore, the second party workman is not entitled to any relief sought for in the present proceeding.

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

#### ISSUES

- (i) "Whether the domestic enquiry conducted against the workman was fair and proper ?
- (ii) Whether termination of services of Shri Ashok Kumar Nath, Cook-Helper with effect from the 26th February 2009 by the management of M/s. Shakti Sugar Ltd., Haripur, Dhenkanal by way of dismissal from service is legal and/or justified ?
- (iii) If not, what relief Shri Nath is entitled to ?"

5. On preliminary hearing of Issue No. (i), i.e., whether the domestic enquiry conducted against the workman was fair and proper, this Tribunal vide its order, dated the 5th October 2012 held that the enquiry conducted against the second party workman was not fair and proper and accordingly the case is taken up for further hearing. In course of hearing, the second party workman further examined himself in addition to his earlier oral as well as documentary evidence. Similarly, the first party management examined three witnesses and further produced documents marked Exts. M to T.

#### FINDINGS

6. *Issue No. (ii)*—In this case there is no dispute about the appointment of the second party workman as a Cook-Helper and his continuance as a probationer on extended period at the time of his termination from service. The first party management to substantiate the allegation of misconduct of the second party workman examined three witnesses namely, two of its Senior Officers and one Boiler Attendant. Though all the three witnesses have been cross-examined at length, nothing has been elicited to discard their evidence in toto. The evidence of all the three witnesses clearly reflects about the misconduct and unsatisfactory performance of the second party workman. Though the second party workman denies the allegation of misconduct, his statement is prevaricating in respect of his nature of duties. Thus, on a broad analysis of the evidence adduced by both the parties, it would be sufficient to presume that the first party management has substantiated the allegation against the second party workman with pre-ponderance of probabilities.

7. Admittedly, the second party workman was under probation. The evidence adduced on behalf of the first party management in this Tribunal clearly shows that there was gross dissatisfaction about his performance. In the case of *Om Prakash Mann Vrs. Director of Education (BASIC) and others*, reported in AIR 2006 (S.C.) 3096, the Hon'ble Supreme Court has held that a probationer has got no right for continuance/regularisation in service. Of course the Hon'ble Apex Court has held that such termination shall not be with stigma but considering the facts and circumstances of the present case when consequent upon the allegation followed by a domestic enquiry, the second party workman has been terminated on a settlement with compensation received by him it cannot be said that such termination is illegal.

8. *Issue No. (iii)*—The stand of the first party management is that the second party workman was disengaged on full and final settlement and payment of compensation which he has received. Though the second party workman initially refuted the same, in course of his cross-examination

he avoided the same with a reply that he cannot say, if he had signed any document in token of receipt of all his dues after discharge on the 26th February 2009. The xerox copy of the cheque (Ext. U/1) and the copy of the Account Slip of the Bank (Ext. U) filed by the first party management show that the amount has been deposited in his account on the cheque issued by the first party management. The aforesaid fact is sufficient enough to come to a conclusion that there was settlement with the second party workman regarding his final discharge from service. Therefore, in no circumstances he is entitled to any relief sought for.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY  
07-11-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P. K. RAY  
07-11-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor  
B. PRADHAN  
Additional Secretary to Government