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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 20th February 2013

No. 1632—li-I-(B)-180/1995-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th December 2012 in I. D. Case No. 176 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Tata Refractories Ltd., Belpahar and their workman Shri Govinda Chandra Sahu was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 176 OF 1996

Dated the 29th December 2012

*Present :*

S. A. K. Z. Ahamed,  
Presiding Officer, Labour Court,  
Bhubaneswar.

*Between :*

The Managing Director,  
M/s Tata Refractories Ltd.,  
Belpahar, Dist. Jharsuguda-768 218.

.. First Party—Management

And

Shri Govinda Chandra Sahu,  
S/o Shri Utchab Sahu,  
Ratnakar Home, Sarada Devi Road,  
Puri.

.. Second Party—Workman

*Appearances :*

Shri Prafulla Chandra Mohanty, .. For the First Party—Management  
 Authorised Representative.

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Shri Govinda Chandra Sahu .. Second Party workman himself

## AWARD

The Government of Odisha in the Labour & E.S.I. Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 17597—li-I-(B)-180/1995-LE., dated the 13th December 1996.

“Whether termination of Service of Shri Govinda Chandra Sahu, Caretaker, TRL Holiday Home situated at Puri of M/s Tata Refractories Ltd., Belpahar, Jharsuguda, with effect from the 1st March 1994 by the Management by way of refusal of employment is legal and/or justified ? If not, what relief Shri Sahu is entitled to ?”

2. Shorn of unnecessary details, the case of the workman is that on 30-10-1981 he joined as a Caretaker in the first party’s Holiday Home at Puri. The workman claims that although no appointment order was given to him in writing but he was assured that after few months of his service necessary appointment orders would be issued by the first party. Initially he was being paid Rs. 350 per month which was subsequently enhanced to Rs. 400 with effect from the November 1982, Rs. 650 with effect from the June 1990 and Rs. 850 with effect from the August 1992. It is pleaded that as the wages paid to the workman was less than the minimum wages, he made several representations to the Authorities but no action was taken on his grievance. It is alleged that after receiving his representation the management did not give any reply but suddenly it shifted the Holiday Home from Chandan Hazari Road to V.I.P. Road, Puri, with effect from the 1st February 1994, where the same is still functioning. It is further alleged that soon after shifting of the Holiday Home to V.I.P. Road, Puri though he proceeded there to discharge his duty but he was not allotted any duty for which he waited for some days and thereafter on 15-3-1994 he made a representation to the General Manager of the first party praying to allow him to perform duty in the Holiday Home at V.I.P. Road, Puri but no action was taken on his representation and ultimately the first party stopped payment of his salary with effect from the March 1994. Claiming it to be a refusal of employment by the first party, the workman redressed his grievance before the Labour Authorities and ultimately after failure of conciliation the present reference has been made by the Government. In view of his rendering twelve years continuous service under the first party’s Holiday Home at Puri, the workman has claimed his refusal of employment to be an illegal/retrenchment from service and accordingly prayed for his reinstatement with back wages.

3. The first party management entered contest and filed its written statement stating therein, *inter alia*, that the reference is not maintainable, inasmuch as, there having no employer-employee relationship the second party is not a ‘workman’. The specific stand of the management is that in the year 1981 the first party hired a house from one S.K. Sen situated at Chandan Hazari Road, Puri for the purpose of occasional occupation of its employees and workmen and on the request of the House Owner Mr. S.K. Sen, the workman was engaged on part-time basis to take care of the guests and the building. The first party has denied the continuous service rendered by the workman but admitted to have paid Rs. 850 per month to the workman for his rendering part-time service.

It is pleaded that after shifting of the Holiday Home from Chandan Hazari Road to V.I.P. Road, Puri, it has entered into an agreement with the House Owner who shall look after the comforts of the guests besides other care taking and gardening work, etc. It is stated that even though there is no work for the workman in the New Holiday Home, yet the first party advised him to continue with his part-time duty but he remained absent and did not prefer to work in the Holiday Home. It is further pleaded that although the workman did not listen to the advise but as a gesture of goodwill and on humanitarian ground the first party sent a Demand Draft for a sum of Rs. 20,728.00 to the workman which he refused to accept. In the aforesaid background the first party has prayed to answer the reference in the negative.

4. On the basis of the pleadings of the parties, the following issues have been settled :—

#### ISSUES

- “(i) Whether Shri G. C. Sahu, is a ‘workman’ under the management of Tata Refractories Ltd. ?
- “(ii) Whether the termination of services of Shri G. C. Sahu, Caretaker, TRL Holiday Home at Puri, with effect from the 1st March 1994 by way of refusal of employment is legal and/or justified ?
- “(iii) If not, what relief Shri Sahu is entitled to ?”

5. To substantiate their respective stand, both parties have adduced oral as well as documentary evidence. The workman examined himself as W.W. No. 1 and proved documents which have been marked Exts. A to H. The management, on the other hand, has examined its Assistant General Manager & Chief Resident Executive as M.W. No. 1 and proved documents which have been marked Exts. 1 and 2.

#### FINDINGS

6. *Issue No. (i)*—The first party management has laid much emphasis on this issue by bringing evidence through M.W. No. 1 that the workman was working under Mr. S. K. Sen, whose house was hired by the first party for Holiday Home purpose. He has stated that on the request of S. K. Sen the workman was engaged on part-time basis to take care of the guests and the building. Even if the management has taken such a stand but curiously enough it has not examined Shri Sen who could have thrown light on this aspect. Although the workman has failed to exhibit any document in this regard, but the documents filed along with the statement of claim i.e. the copy of the Letter No. 2232-Pr/RMB-A, dated the 20th September 1991 and copy of Letter No. 48-TRL-SLO/1991, dated the 30th December 1991 readwith Ext.2, the copy of Letter No. 2713-PD, dated the 30th December 1994 are all suggestive of the fact that the workman was working under the first party and not under the House Owner Mr. S. K. Sen. In the letter, dated the 20th September 1991 the workman was informed about the repair and maintenance work of the Holiday Home at Puri to be undertaken by one Shi B. K. Dey, Contractor. In the other letter, dated the 30th December 1991 the workman was instructed not to allow anybody unauthorisedly to use the premises or else to face action. The first party has also not proved any lease agreement from which it could have been gathered that the Caretaker of the Holiday Home would be provided by the House Owner and he would be paid his remuneration through the House Owner. In the circumstances, therefore, the second party is held to be a ‘workman’ working under the first party being engaged in its Holiday Home at Puri.

Issue No. (i) is thus answered in favour of the workman

7. *Issue No. (ii)*—The fact that the workman was engaged in the Holiday Home at Puri, with effect from the 29th December 1981 and workmen there till the end of January 1994 is not disputed and so also the wages paid to the workman during the period. Only the first party has disputed the workman's continuous service under the Holiday Home, Puri and takes the stand that he was engaged as a part-timer. Such a stand taken by the first party is not tenable because there was no other employee except the workman to take care of the Holiday Home at Puri and his engagement as Caretaker of the Holiday Home to look at the comfort of the guests and so also to take proper care of the Building at no stretch of imagination can be said to be a part-time work. Although it is pleaded by the management that besides the part-time job the workman was doing some other work but in absence of any documentary evidence in support of the same it cannot be presumed that the workman besides his engagement as Caretaker of the Holiday Home, Puri was doing some other work being employed gainfully somewhere else. Hence, considering the materials available on record, it is held that the workman had rendered continuous service for about twelve years under the first party. Admittedly, the first party has not complied with the provisions of Section 25-F of the Act while doing away with the services of the workman. Its action is, therefore, neither legal nor justified.

Issue No. (ii) is, therefore, also answered in favour of the workman

8. *Issue No. (iii)*—In view of the findings on Issue No. (ii), the workman is entitled to some relief. In this context, it is neither averred nor proved that the Holiday Home of the first party at Puri is not functioning. The workman's averment in Para. 9 of his claim statement that the Holiday Home of the first party is still functioning is not disputed. In such view of the matter, the relief of reinstatement and award of 50% back wages in favour of the workman, in my considered view, would be just and proper. Hence, it is held that the action of the management being neither legal nor justified, the workman is entitled to reinstatement in service with 50% back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
29-12-2012  
Presiding Officer  
Labour Court  
Bhubaneswar

S. A. K. Z. AHAMED  
29-12-2012  
Presiding Officer  
Labour Court  
Bhubaneswar

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