

# The Odisha Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

---

No. 386 CUTTACK, FRIDAY, MARCH 8, 2013/FALGUNA 17, 1934

---

---

## LABOUR & E.S.I. DEPARTMENT

### NOTIFICATION

The 21st February 2013

No. 1714—IR (ID)-101/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st December 2012 in Industrial Dispute Case No. 18 of 2011 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Bata India Ltd. (Shop), At Sector-5, Rourkela and their workman Shri Abhaya Kumar Dash, Sales Assistant represented through the General Secretary, Sundargarh District Industrial Shramik Sabha, Rourkela was referred to for adjudication is hereby published as in the Schedule below :—

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 18 OF 2011

The 21st December 2012

#### *Present :*

Shri Srikanta Mishra, LL.M.,  
Presiding Officer,  
Labour Court, Sambalpur.

#### *Between :*

The Management of  
Bata India Ltd. (Shop),  
At Sector-5, Rourkela,  
Dist. Sundargarh. . . . . First Party—Management

And

Their workman  
Shri Abhaya Kumar Dash,  
Sales Assistant represented  
through the General Secretary,  
Sundargarh District Industrial  
Shramik Sabha, Rourkela,  
Sorani Complex, Bisra Road,  
Rourkela-769 001. . . . . Second Party—Workman

*Appearances :*

For the First Party—Management	..	None
For the Second Party—Workman	..	Self

## A W A R D

This award arises out of a reference under Section 10 (1) (c) of the Industrial Disputes Act, 1947 made by the Governemnt of Odisha, Labour & Employment Department vide their Notification No. 11131—IR (ID)-101/2011-LE., dated the 9th December, 2011 for adjudication. The Schedule of reference is as follows :—

“Whether the termination of services of Shri Abhaya Kumar Dash, Sales Assistant with effect from the 15th May 2010 by the management of Bata India Ltd., Post Box No. 893, Kolkata-13 is legal/or justified ? If not, what relief Shri Dash is entitled to?”.

3. The case of the second party workman as per his statement of claim is that he was appointed as Shop Assistant in M/s Bata Shoe Store, Shop No. 31, VIP Market Complex, Sector-5, Rourkela by the first party management and continued in his job from 24-1-1986 to 17-3-1993 when the first party terminated his service. He filed a complaint before the Divisional Labour Office at Rourkela and the matter was referred to this Court by the Government on the basis of which, I.D. Case No. 46/1995 was registered. As per Award Dt. 24-9-1998 and a letter issued by first party on Dt. 15-3-2005 the second party again joined under the first party management as Temporary Hand Shop Assistant with effect from 25th March 2005. The second party alleges that after rejoining in service he discharged his duties regularly but on 15-5-2010 the management closed the aforesaid shop without any prior notice or intimation to him. Such act amounts to termination of service and the workman filed a complaint before the Divisional Labour Office at Rourkela and after conciliation process the dispute was referred to this Court for adjudication. According to the workman, he has rendered continuous service to the first party from 24-1-1986 to 15-5-2010 and his termination being illegal, he is entitled to reinstatement in service in any branch of the first party management and also entitled to full back wages and differential unpaid wages as detailed in the claim statement.

3. The first party did not turn up in response to the notice and therefore it was set *ex parte* vide Order, Dt. 1-10-2012.

4. During the *ex parte* hearing, the workman examined himself and an ex employee of the first party management. He also relied upon several documents which were marked Ext 1 to Ext.15.

5. The unchallenged oral and documentary evidence adduced by the workman established the fact that he initially worked as Shop Assistant in M/s Bata Shoe Store, Shop No. 31 at VIP Market, Sector-5, Rourkela in the district of Sundargarh being appointed by the first party management. He worked during the period from 24-1-1986 to 17-3-1993 and was illegally terminated by the first party management. On the complaint of the workman, I.D. Case No. 46/1995 was registered and on 14-9-1998 this Court passed an Award in his favour directing the management to

reinstate him in service. After the Award was passed, the management filed a writ petition before the Hon'ble High Court of Orissa but subsequently issued a letter to the workman on 15-3-2005 advising him to report joining to the Shop Manager of Bata Shoe Store of Sector-5 at Rourkela and work as Temporary Hands Assistant. The copy of the said letter has been marked as Ext.1. Under this document, the management undertook to pay daily wages as per the existing minimum wages on "No work no pay basis". The workman accepted the terms of appointment and submitted his joining report on 25-3-2005 a copy of which has been marked as Ext.2. Therefore it is crystal clear that the second party was reappointed in the services under the first party with effect from the 25th March 2005. The workman has filed two pay sheets of Temporary Hands which were marked as Exts.4 and 5 which disclose that he was being paid daily wages for the days he worked in the Shoe Shop at Rourkela managed by the first party. The workman has filed the copies of the counter foil of money receipts marked Exts.6 and 7 which indicate that he prepared bills and receipts towards sale of goods in the shop during the year 1987 and 2007. The workman has filed copies of several documents including ESI Corporation Identity Cards (Exts.9 and 10), ESI Corporation retrun of contributions marked Ext.11 and Ext. 12 and an EPF confirmation of accounts submitted by Bata India Limited in his favour marked Ext.13. These documents indicate that the second party is a regular employee under the first party management from the year 1986 though he accepted the terms of reappointment under the management with effect from the 15th March 2005. In such circumstance, before the management decided to close its shop at Sector-5, Rourkela, it should have intimated the fact to the workman. The closure of shop without notice or intimation to the workman accounts to illegal termination of service, particularly when the management has no allegation of misconduct against the workman. It is therefore held that the termination of service of Shri Abhaya Kumar Dash, Sales Assistant with effect from the 15th May 2010 by the management of Bata India Limited, Post Box No. 893, Kolkata-13 is illegal and unjustified.

6. As regards the relief claimed by the workman I find, in the body of the statement of claim he has mentioned that he is entitled to wages of a semi-skilled employee but he has been paid the wage of an unskilled employee and as such the management should be directed to pay him differential wages. The job assigned to the workman was merely selling shoes, issuing cash memos to the customers, collecting cash from them and briefing of cash accounts which do not require any special skill. Besides the workman himself has accepted the terms of the reappointment, i.e. to be paid daily wages as a Temporary Shop Assistant and he accepted the daily wages as an unskilled workman without raising any complaint whatsoever during the period from 25-3-2005 to 15-5-2010. Under such circumstance he is not entitled to the differential wage as claimed by him.

7. Since the workman was rendering regular service for continuous period from the year 1986 to the management, and his service was terminated illegally, he is ordinarily entitled to reinstatement and payment of back wages. However in this particular case, the establishment where the workman was rendering service was closed and it is not a case where the place of business has been shifted to some other place. Due to closure of the shop the workman cannot claim reinstatement under the first party particularly when he was appointed as a Temporary Shop Assistant. There

was no material to indicate that the first party made any fresh appointment as against the termination of the service the second party. In such peculiar circumstance I am of the considered opinion that an Award of compensation to the tune of Rs. 1,00,000 would be sufficient to meet the ends of justice.

Hence the following Award

AWARD

The reference is answered *ex parte* in favour of the second party workman. The first party management is directed to pay compensation of Rs. 1,00,000 (Rupees one lakh) to the second party workman within a period of one month from the date of publication of the Award.

Dictated and corrected by me.

SRIKANTA MISHRA  
21-12-2012  
Presiding Officer  
Labour Court, Sambalpur

SRIKANTA MISHRA  
21-12-2012  
Presiding Officer  
Labour Court, Sambalpur

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