

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 410 CUTTACK, WEDNESDAY, MARCH 13, 2013 / FALGUNA 22, 1934

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 26th February 2013

No. 1932—li-1 (B)-39/2005-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th November 2012 in I. D. Case No. 41 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Divisional Manager, M/s Odisha Forest Development Corporation Ltd., Bhubaneswar (C) Division, Bhubaneswar and its Workman Shri Pankaja Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 41 OF 2005

Dated the 7th November 2012

Present :

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

Between :

The Management of the Divisional
Manager, M/s Odisha Forest Development
Corporation Ltd., Bhubaneswar (C) Division,
Bhubaneswar.

.. First Party—Management

And

Its Workman,
Shri Pankaja Behera.

.. Second Party—Workman

Appearances :

Shri A. Swain, Law Officer	.. For the First Party—Management
<hr/>	
Shri P. K. Swain	.. For the Second Party—Workman

AWARD

The Government of Odisha in the Labour & Employment 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. 7222— li-1 (B)-39/2005-LE., dated the 24th August 2005 :—

“Whether the action of the Divisional Manager, Odisha Forest Corporation, Bhubaneswar (C) Division, Bhubaneswar in terminating the employment of Shri Pankaja Behera, Watcher of Tangi Plantation Subdivision with effect from the 1st August 2001 is legal and/or justified ? If not, to what relief Shri Behera is entitled ?”

2. The workman in his statement of claim has stated that he joined under the management on 1-11-1988 as Watcher and worked continuously and also completed 240 days of service in each year. But the management has arbitrarily with *mala fide* intention terminated him from service with effect from the 1st August 2001. According to the workman, he has completed about 13 years of service when he was terminated. The workman has further stated that the management issued a notice vide letter No. 2570, dated the 4th July 2001 for termination of his service with effect from the 31st July 2001 but he filed an objection to the said notice on 13-7-2001 so also filed a writ before the Hon’ble High Court of Orissa, Cuttack vide O.J.C. No. 9478/2001. As per the Order of the Hon’ble Court, the workman submitted his show cause reply on 2-8-2001. But the management in violation of the Orders of the Hon’ble Court terminated his service with effect from the 31st July 2001. While admitting about receipt of one month’s notice pay and a portion of the compensation, the workman has asserted that the same were not paid as per the provisions of Section 25-F of the Industrial Disputes Act, 1947. The workman has further contended that the management is an ‘industrial establishment’ as defined under Section 25-L of the Industrial Disputes Act, 1947 and at the time of termination of his service, the management has not followed the provisions of Section 25-N of the Industrial Disputes Act, 1947. The management has also not published the seniority list before the termination of the workman. According to him, juniors to the workman are still in employment and also he is not a surplus employee. The management has also violated the principles of ‘last come first go’ as per Section 25-G of the Industrial Disputes Act, 1947 while retrenching the workman from his service. So on these averments, the workman has prayed for his reinstatement in service with full back wages.

3. On the other hand, the management has filed the written statement admitting that the workman was engaged on daily wage basis as a labourer with effect from the 1st November 1988 and his such employment was not in consonance with the due procedure of recruitment. Due to surplus staff, the Board of Directors of the management decided to retrench all the daily wage employees engaged after 1-1-1990 in phasewise. After retrenchment of the daily wage workers, the aim of the management was not fulfilled. So the Board of Directors of the management in its meeting, dated the 26th June 2001 decided to retrench all the daily wage employees working under the management. So the management vide letter No. 2571, dated the 4th July 2001 issued show cause notice for proposed retrenchment of the workman on the 8th July 2001 and the workman has also submitted his written reply on 13-7-2001. On receipt of the show cause reply, the

management given a chance to the workman for personal hearing on 23-7-2001. Thereafter, the management paid notice pay and compensation amounting to Rs. 5,100 on 28-7-2001. Further according to the management, the establishment of the management is not an 'industrial establishment' as defined under Section 25-L of the Industrial Disputes Act, 1947 and therefore, the workman is not entitled to get the relief as per Section 25-N of the Industrial Disputes Act. Rather, the management is an 'industry' as defined in Section 2 (j) of the Industrial Disputes Act, 1947 and Section 25-F of the Industrial Disputes Act, 1947 is attracted while retrenching a workman from service and the management in this case has fully complied the above requirement while terminating the service of the present workman. On these backgrounds, the management has prayed to answer the reference in favour of the management.

4. In view of the above pleadings of both the parties, the following issues are settled :—

ISSUES

“(i) Whether the action of the Divisional Manager, Odisha Forest Corporation, Bhubaneswar (C) Division, Bhubaneswar in terminating the employment of Shri Pankaja Behera, Watcher of Tangi Plantation Subdivision with effect from the 1st August 2001 is legal and/or justified ?

(ii) If not, to what relief Shri Behera is entitled ?”

5. During trial, the workman has examined himself as W.W. 1 and proved the documents such as, copy of letter No. 2570, dated 4-7-2001, letter No. 3002, dated 28-7-2001, letter No. 3200, dated 7-8-2001, letter dated 13-7-2001 of the workman, Order of the Hon'ble High Court of Orissa, Cuttack passed in O.J.C. No. 9478/2001, retrenchment order of the workman, dated 2-8-2001 and the Office Order No. 162, dated 22-1-2008 under the cover of Exts. 1 to 7 respectively. On the other hand, the management has examined its Subdivisional Manager (I/c) as M. W. 1 and proved bunch of documents under the cover of Exts. A to N.

FINDINGS

6. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience. Before going to discuss the evidence of both the parties in detail, it is pertinent to mention here that the management has admitted the engagement of the workman under it with effect from the 1st November 1988 till his retrenchment on 31-7-2001. It is also an admitted fact that the workman has received the notice pay and retrenchment compensation amounting to Rs. 5,100 as required under Section 25-F of the Industrial Disputes Act, 1947. But, in the present case, the grievance of the workman is that while terminating his service, the management has turned deaf ear to some extent with the provisions of Section 25-N of the Industrial Disputes Act, 1947 but complied some portion of Section 25-F of the Industrial Disputes Act, 1947 and also completely violated the provisions of Section 25-G of the Industrial Disputes Act. On the other hand, the management has contended that the organisation of the management is not an 'industrial establishment' within the meaning of Section 25-L of the Industrial Disputes Act and consequently the provisions of Section 25-N of the Industrial Disputes Act are not at all attracted. The management has further contended that the establishment of the management is an 'industry' and duly complied with the provisions of Section 25-F of the Industrial Disputes Act so also the management has not violated the provisions of Section 25-G of the Industrial Disputes Act.

7. On the first point, though the workman has contended that the establishment of the management is an 'industrial establishment' and he is entitled to get the relief as per Section 25-N of the Industrial Disputes Act. To substantiate the above plea, the workman has not filed a single

piece of paper to show that the establishment of the management is an 'industrial establishment' as per Section 25-L of the Industrial Disputes Act and also he is entitled to get the relief as envisaged under Section 25-N of the Industrial Disputes Act. The workman has neither stated anything in his statement of claim as well as in his affidavit evidence nor proved any document in support of his stand. Therefore, the plea taken by the workman that the establishment of the management is an 'industrial establishment' and Section 25-N of the Industrial Disputes Act is applicable to him, without any documentary evidence, cannot be accepted.

8. Now, it is to be seen whether the management has duly complied the provisions of Section 25-F of the Industrial Disputes Act while terminating the services of the workman with effect from the 31st July 2001. Section 25-F of the Industrial Disputes Act defines the conditions precedent to retrenchment of workmen which reads as follows :

“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 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 Government by notification in the official Gazette).”

9. In the case at hand, the workman has admitted that he has received one month's pay at the time of termination. So the management has duly complied the provisions of Section 25-F (a) of the Industrial Disputes Act. Regarding Section 25-F (b) of the Industrial Disputes Act is concerned, the workman has stated that the management has not fully complied as mentioned in the above section. On perusal of the pleadings as well as the affidavit evidence of both the parties, it is an admitted fact that the workman was engaged under the management on 1-11-1988 and was terminated with effect from the 1st August 2001. So from the above admission of both the parties, it is crystal clear that the workman has completed 12 years 9 months of service at the time of termination of his service. So according to Section 25-F (b) of the Industrial Disputes Act, the workman is entitled to get compensation at the rate of 15 days, average pay for each completed years of continuous service or any part thereof in excess of six months. So from the above analysis, it is clear that the workman is entitled to get the compensation for 13 years and he is entitled to get the average pay for 6¹/₂ months, i.e. for 195 days, but in this case, the management has only paid the wages for 90 days to the workman which according to law is illegal and unjustified and also treated as non-compliance of the mandatory provisions of Section 25-F of the Industrial Disputes Act. Therefore the retrenchment of the workman from service without compliance of mandatory provisions of Section 25-F of the Industrial Disputes Act is illegal and unjustified.

10. The other grievance of the workman is that the management has violated the provisions of Section 25-G of the Industrial Disputes Act by not preparing any seniority list. During cross-examination, the M.W. 1 has also clearly admitted that no seniority list was prepared at the time of termination of the workman. So without any seniority list it cannot be conclusively said that the workman was the last person under the management. The management has also not filed a

single piece of paper to show that as per the Board of Directors meeting all the daily wage workers have been retrenched and no one was working under the management during the relevant period. The management has also not established that the principle of 'last come first go' as been duly followed. Therefore, it is also held that the management has violated the provisions of Section 25-G of the Industrial Disputes Act while terminating the service of the workman.

11. So in view of the discussions made above, I am of the considered view that the action of the management in terminating the services of the workman with effect from the 1st August 2001 is neither legal nor justified. Hence, the workman is entitled for reinstatement in service.

12. Regarding back wages, admittedly the workman had not worked for the management during the relevant period and also received Rs. 5,100 as retrenchment compensation. Moreover, law is well settled that :

“When the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified.”

So in view of the above settled position of law and also on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of granting back wages, a lump sum amount of Rs. 25,000 as compensation will meet the ends of justice in the instant case. Both the issues are answered accordingly.

13. Hence, Ordered :

That the action of the Divisional Manager, Odisha Forest Corporation, Bhubaneswar (C) Division, Bhubaneswar in terminating the employment of Shri Pankaja Behera, Watcher of Tangi Plantation Subdivision with effect from the 1st August 2001 is illegal and unjustified. The workman Shri Behera is entitled to be reinstated in service with a lump sum amount of Rs. 25,000 as compensation in lieu of back wages. The management is directed to implement this Award within a period of two months from the date of its publication failing, the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
7-11-2012
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
7-11-2012
Presiding Officer
Labour Court
Bhubaneswar

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