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## LABOUR & E.S.I. DEPARTMENT

### NOTIFICATION

The 2nd March 2013

No. 2095—li/1(B)-22/2008-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th February 2013 in Industrial Dispute Case No. 7 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Ortel Communications Ltd., Cuttack and its workman Shri Debendra Kumar Sahoo was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 7 OF 2008

Dated the 7th February 2013

*Present :*

S.A.K.Z. Ahamed, O.S.J.S. (Jr. Branch),  
Presiding Officer,  
Labour Court, Bhubaneswar.

*Between :*

The Manager (H.R.) .. First Party—Management  
M/s Ortel Communications Ltd.,  
Cuttack Branch, Bharatia Towers,  
Badambadi, Dist. Cuttack—756 009

*And*

Shri Debendra Kumar Sahoo, .. Second Party—Workman  
S/o Late Banamali Sahoo,  
Plot No. 198, Police Colony,  
P.O. Tulasipur,  
P.S. Bidanasi,  
Dist. Cuttack.

*Appearances :*

Shri Basanta Kumar Pati, Manager, HR . . . For the First Party—Management  
 Authorised Representative

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Shri Debendra Kumar Sahoo . . . For the 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. 5977—li/1(B)-22/2008-LE., dated the 26th May 2008.

“Whether the termination of service Shri Debendra Kumar Sahoo, Technician by way of refusal of employment with effect from the 2nd December 2004 by the management of M/s Ortel Communications Ltd., Cuttack Branch is legal and/or justified ? If not, what relief Shri Sahoo is entitled to?”

2. The case of the second party workman, in short, is that on 25-4-1995 he joined under the first party management as a Temporary Technician and subsequently with effect from the 1st December 1996 he was confirmed in the said post. It is averred in the claim statement that the workman worked as such continuously till 1-12-2004. It is alleged that owing to his making a representation to the management on 14-7-2004 the officials of the management did not allow him to sign the Attendance Register and marked him absent from duty with effect from the 1st November 2004 and ultimately terminated his service vide letter dated 27-11-2004 which was sent to him by Registered post. Since the workman has performed duty under the management till 1-12-2004., the action of the management in terminating his service retrospectively with effect from the 25th November 2004 (vide its letter dated 27-11-2004) is said to be a refusal of employment with effect from the 2nd December 2004 and the same amounts to retrenchment. It is stated that the action of the management being in contravention of the provisions of the Industrial Disputes Act, 1947 and further no disciplinary having been initiated or proved against him for any misconduct during his entire service period, he is entitled to the relief of reinstatement and back wages. It is further alleged that soon after his refusal of employment another person has been employed to perform the duty of Technician. It is further stated in the claim statement that excepting the Letter, dated 27-11-2004, wherein he was intimated about termination of his service no other communication was ever made to him asking him to show-cause for the alleged absentism.

3. Disputing the averments made in the claim statement the first party management has filed its written statement stating therein, *inter alia*, that the reference is not maintainable in as much as the Union which has espoused the cause of the workman has no locus standi to represent the workman. Admitting about the engagement of the workman under it from 1996 till 2004, it is stated in the written statement that the performance of the workman as a Technician was not at all

satisfactory for which he was given with a Grade D certificate which is nothing but a warning to be careful in future for further continuance in job. The specific stand of the management is that the workman have voluntarily abandoned his job in as much as with effect from the 1st November 2004 he remained absent from duty unauthorisedly and thereafter Letter No. 5313, dt. 15-11-2004 sent to him having been returned with the remark 'refused', his name was struck off from the roll of the management with effect from the 25th November 2004 in accordance with Clause No. 12(g) of the Company's Certified Standing Orders. Accordingly, it is stated by the management that it is not a case of refusal of employment but an action taken against the workman as per the Certified Standing Orders of the Company. With the aforementioned averments the management has prayed to answer the reference in the negative.

4. In terms of the reference the following issues have been settled :—

#### *ISSUES*

(i) "Whether the termination of service of Shri Debendra Kumar Sahoo, Technician by way of refusal of employment with effect from the 2nd December 2004 by the management of M/s Ortel Communications Ltd., Cuttack Branch is legal and/or justified ?"

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

5. To substantiate their respective stand, the workman has examined himself as W.W. No.1 and relied on documents which have been marked as Exts.1 to 8. Similarly, the management has examined its Manager, HR as M.W. No.1 and relied on four documents which have been marked as Exts.A to D. Documents from both the sides have been marked without any objection.

#### FINDINGS

6. *Issue No. (i)*—In the present proceeding the oral evidence adduced by both the parties needs to detail discussion as the same is found to be the exact reproduction of the assertions made in the claim statement and written statement filed by the workman and the management, respectively.

7. It is not in dispute that the workman had rendered service under the management for more than eight years as a technician. While the workman asserts that he had worked till 1-12-2004, the management takes the plea that with effect from the 1st November 2004 the workman remained absent from duty for which notice in the form of a letter dt. 15-11-2004 (Ext.D) was issued to him relieving him from Company's job with effect from 25th November 2004. To disprove the assertion that the workman had performed his duty till 1-12-2004 the management has not brought in evidence the Attendance Register maintained by it which could have thrown light on the matter. Further, attempt seems to have been made by the management to establish the fact that Ext.D was served

on the addressee. Had the management established such service of notice (Ext.D) on the workman, his plea that he had performed his duty till 1-12-2004 could have been disbelieved. Hence, on the available materials it is difficult to conclude that the letter Ext.D was served on the workman and consequently the plea of voluntary abandonment of service advanced by the management is not tenable.

8. Further, the action of the management cannot be considered to be one coming within Clause 12(g) of the Certified Standing Orders or Clause 12 of the order of appointment, Ext.1 because in Ext.D there is clear mention that the acts of the workman are misconducts as per Clause 22(a) (ii) of the the Standing Orders which relates to absence without permission, Clause 30 of the Standing Orders which relates to refusal on the part of an employee to receive communications from the management and Clause 56 of the Standing Orders which relates to the activities of an employee affecting discipline and administration of the office. So, it is a clear-cut case of termination of service of the workman as a result of certain misconduct. All other alternative pleas in connection with the removal of the workman from service seem to be advanced by the management to frustrate the claim of the workman.

9. In a case of the present nature where an employee is found to have committed misconducts the management ought to have proceeded to draw a disciplinary proceeding against him, got the same enquired by appointing an Enquiry Officer and only thereafter imposed upon him the appropriate punishment and from the stage of initiation of such proceeding till its conclusion the management must adhere to the principles of natural justice in as much as all reasonable opportunities should be extended to the employee to defend the imputations levelled against him. But, in the case in hand no charge sheet was drawn-up against the workman for the alleged misconducts asking him to show-cause against, it nor any enquiry was conducted for any dereliction found in performance of his duty. M.W. No.1 has stated about this in Para. 4 of his cross-examination. Rather, it is found from Exts.4 and 5 that the management has appreciated the performance of the workman by issuing letters once in march 2003 and secondly in January 2004. On the background narrated above, the plea taken by the workman that as a result of redressal of his grievance before the higher authority of the management vide Ext.8 he was removed from employment seems to be believable. Even if it is presumed that the workman had committed the misconducts but since the management, for reasons best known to it, has not proceeded against him departmentally in accordance with the provisions of its Certified Standing Orders, Ext.B its action cannot be held to be either legal or justified.

Issue No.1 is, therefore, answered in favour of the second party workman.

10. *Issue No (ii)*—In view of the finding of Issue No.1, the workman is entitled to some reliefs. It is found from the pleadings of the parties that after termination of service of the workman a new person is employed in his place. But, for that matter the relief of reinstatement can not be denied to

the workman for his illegal removal from service. Accordingly, the management is directed to reinstate the workman in service. However, upon reinstatement the management is at liberty to start a departmental proceeding against the workman for the misconducts reflected in Ext.D by adhering to the principles of natural justice and the stipulations contained in its Certified Standing Orders marked Ext.B. As regards back wages, the workman is presently aged about 40 years and being a Technical person it cannot be presumed that he was unemployed after his termination. Therefore, while declining to grant back wages, a compensation of Rs. 20,000(Rupees twenty thousand only) is awarded in favour of the workman.

*Issue No. (ii)* is answered accordingly, and consequently the reference is disposed of.

Dictated and corrected by me.

S. A. K.Z. AHAMED  
7-2-2013  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED  
7-2-2013  
Presiding Officer  
Labour Court, Bhubaneswar

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