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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 9th May 2013

No. 4548—li-1 (BH)-13/2004 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th December 2011 in I. D. Case No. 37 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Balasore Solvents (P) Ltd., Balasore and its Workman Shri Sarat Kumar Behera was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 37 OF 2005

Dated the 8th December 2011

#### *Present :*

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

#### *Between :*

The Management of M/s Balasore  
Solvents (P) Ltd., Balasore. .. First Party—Management

And

Its Workman  
Shri Sarat Kumar Behera .. Second Party—Workman

#### *Appearances :*

Shri G. Upadhyaya, Office Executive .. For the First Party—Management

Shri S. K. Behera .. For the Second Party—Workman himself

## AWARD

The Government of Odisha in exercise of powers conferred 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 matter in dispute to this Court vide Order No. 7157— li-1 (BH)-13/2004-LE., dated the 23rd August 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Sarat Kumar Behera, with effect from the 12th June 2003 by the Management of M/s Balasore Solvents (P) Ltd., Banaparia, Balasore is legal and/or justified ? If not, to what relief is Shri Behera entitled ?”

3. The case of the workman, in brief, as set out in his statement of claim is that he was working as Supervisor under the previous management from 28-6-1998 and also the present management as per the interview was conducted. As per his previous appointment, E.P.F. and E.S.I. benefits were given to him. During the course of his employment when he demanded bonus and monthly leave at the time of Durga Puja, the management on 12-6-2003 refused his employment and ultimately creating a false story by saying that the management in spite of postal notice and notice published in daily Odia newspaper ‘Sambad’ relating to his transfer to Kolkata and as because he did not join in his new station, the management on 11-8-2003 took action against him. His arrear wages was also not paid. So he raised an industrial dispute and when the conciliation was failed, the matter was referred to the Government and the present reference is received from the Government for adjudication. The workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement denying the allegations of the workman. The management has stated that the present proceeding is not maintainable and the workman has no cause of action to bring this proceeding. The management admitted the service of the workman and stated that the workman remained absent from 29-5-2003 indefinite period without any information and permission from the management. During the course of unauthorised absence of the workman, the management declared lay-off in the factory with effect from the 12th June 2003. Prior to lay-off, the management informed the workman to join in his duty at their registered office, Kolkata with effect from the 15th June 2003. On account of urgency, and the order was communicated to the workman by registered post with A.D. in his (workman) residential address, which was returned back unserved with an endorsement ‘Addressee absent’. Finding no other alternative, the management published his transfer order in Odia daily newspaper ‘Sambad’ on 10-3-2003. In spite of notices by post and daily newspaper relating to transfer and joining of the workman, he neither joined nor submitted any explanation to that effect. Presuming voluntarily refusal of his service the management struck off the name of the workman from the muster roll without any further communication with effect from the 11th August 2003. So the case of the workman is imaginary one for which the management has prayed for to answer the reference in negative.

5. In view of the above pleadings of the parties, the following issues have been settled :

## ISSUES

- “(i) Whether the termination of services of Shri Sarat Kumar Behera with effect from the 12th June 2003 by the management of M/s Balasore Solvents (P) Ltd., Banaparia, Balasore is legal and/or justified ?
- (ii) If not, to what relief is Shri Behera entitled ?”

6. In order to substantiate their pleas, the management has examined one witness namely Shri Gopinath Upadhyaya, Office Executive of the management as M.W. 1 and proved the documents under the cover of Exts. A to G. On the other hand, the workman remained absent in spite of several adjournments given to him. Neither any witness examined nor any documents filed on his behalf.

### FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

M.W. 1 in his affidavit evidence has stated that on account of shortage of materials, the management has proposed to declare lay-off in the factory with effect from 6 A.M. of 12th June 2003 and accordingly notice has been displayed in the management office and admitted the service of the workman under the management. He has stated that as because of lay-off, the workman was transferred to Kolkata and notice was sent to the workman under the cover of Exts. 1, B, C, D and E for joining his new assignment. He has further stated that the workman in spite of said notice remained absent and ultimately final notice was sent to him under the cover of Ext. F and thereafter his name was struck off from the muster roll of the Company.

8. The above being the evidence of the management, on the other hand, the workman has not led any evidence in support of his claim. Even if assuming that the workman has not adduced any evidence in support of his case, but at the same time this Court cannot sit blindly to pass an order in favour of the management. It is an admitted fact that the present workman was working under the management since long and the management in his evidence has categorically stated that the workman has temporarily absented from 23-5-2003 and during his absence the management declared lay-off in the factory with effect from the 12th June 2003. Even if assuming that the workman was absent from his service since 23-5-2003, but the management has not taken any steps on resuming his (workman) duty prior to 12-6-2003 and no explanation was called for from the workman for his unauthorised absence till 12-6-2003 except the notices under the cover of Exts. A to G stating on account of lay-off the workman was directed to resume his duty at Kolkata. There is no other evidence nor the management has assigned any reason under what circumstances he declared lay-off with effect from the 12th June 2003. Lay-off means :

“An employee is paid to have been laid-off on any day if the employer fails, refuses or is unable to provide him employment on that day within two hours of presenting himself for work at the normal appointed time on account of shortage of coal, power or raw materials or accumulation of stocks or breakdown of machinery or natural calamity or for any such other reason. Further requirement is that the workman must have his name borne in the muster rolls of the establishment and he must not have been retrenched. In case of lay-off the contract between the employer and the employee does not cease. The contract is just suspended and the employee has got the right to resume his services and to get full wages as soon as the temporary stoppage comes to an end. The definition of “lay-off” as given under s. 2(kkk) does not specify any time limit. Thus lay-off of even less than two hours is possible. Failure, refusal or inability of an employer to provide employment must be for the reasons mentioned s. 2 (kkk) of the Act. Thus the unemployment resulting from “lay-off” must be for the reason which is independent or any action or inaction on the part of the workmen themselves.”

Moreover, admittedly, no compensation was paid to the workman during the lay-off nor any proceeding was initiated for his unauthorised absence. So in view of the above facts and circumstances of the present case, I am of the opinion that the workman is entitled to be reinstated in service with 50% back wages. Hence both the issues are answered accordingly.

9. Hence, it is Ordered :

That the termination of services of Shri Sarat Kumar Behera, with effect from the 12th June 2003 by the management of M/s Balasore Solvents (P) Ltd., Banaparia, Balasore is neither legal nor justified. The workman Shri Behera is entitled to be reinstated in service with 50% back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
8-12-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

S. A. K. Z. AHAMED  
8-12-2011  
Presiding Officer  
Labour Court  
Bhubaneswar

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