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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 4th January 2014

No. 107—IR-(ID)-45/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd December 2013 in I. D. Case No. 1 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Sarpanch, Kantabad Gram Panchayat, P.S. Begunia, Dist. Khurda and their Workman Shri Sarat Barik was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 1 OF 2011

Dated the 3rd December 2013

*Present :*

Shri P. K. Ray, O.S.J.S. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Managements of .. First Party—Management  
1. Sarpanch,  
Kantabad Gram Panchayat,  
P.S. Begunia, Dist. Khurda.  
2. District Panchayat Officer,  
Khurda.

And

Its Workman, .. Second Party—Workman  
Shri Sarat Barik,  
S/o Balabhadra Barik,  
At Basudevpur, P.O. Malipadar,  
Via Begunia, Dist. Khurda.

*Appearances :*

Shri Amar Sahoo, Advocate	.. For the First Party—No. 1
None	.. For the First Party—No. 2
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Shri Trilochan Lenka, Advocate	.. For the Second Party—Workman

## AWARD

This case has been instituted under Section 10 (l) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & Employment Department of the Government of Odisha under Section 12 (5) of the Act vide its Letter No. 430—ID-45/2010-LE., dated the 12th January 2011 on the following Schedule :—

“Whether the termination of services of Shri Sarat Barik, Peon by the Kantabad Gram Panchayat, Dist. Khurda is legal and/or justified ? If not, what relief Shri Barik is entitled to ?”

2. The case of the second party workman is that he joined as a Peon under the first party management No. 1 since 15-2-1993 but his service has been terminated with effect from the 1st July 2006 vide its meeting, Dt. 29-6-2006 without compliance of the provisions of Section 25-F of the Industrial Disputes Act or following the principles of natural justice though he had served for more than 240 working days continuously in twelve calendar months. Hence, he raised the dispute on the basis of which this reference has been made for adjudication.

3. The first party management No. 1 in his written statement challenging the maintainability of the case has stated that the functions of the Gram Panchayat are governed by the Odisha Gram Panchayat Act, 1964 and Rules, 1968. The Gram Panchayat is not coming under the purview of ‘industry’ as defined under Section 2 (j) of the Industrial Disputes Act, 1947. Hence, the present proceeding is not maintainable. Further, it is stated that under Section 219 of the Odisha Gram Panchayat Rules, 1968, the Sarpanch is the competent authority to appoint any Peon or other staff subject to the Resolution passed in the Gram Panchayat General Meeting and approval of the District Panchayat Officer, first party management No. 2, so also they can be terminated by the Sarpanch under Rule 218 of the Odisha Gram Panchayat Rules, 1968. The salary and other allowances of the staff of the Gram Panchayat is determined and paid from its income. Due to lack of sufficient income of the first party management, the service of the second party workman was terminated who was engaged for a day or two in a month prior to the scheduled date of the Gram Panchayat meeting or Grama Sabha for which he was paid Rs. 200 per month. Hence, he is not entitled to any relief sought for.

4. In the aforesaid premises, the issues framed are as follows :—

## ISSUES

- (i) “Whether the termination of services of Sarat Barik, Peon by the Sarpanch, Kantabad Gram Panchayat, Dist. Khurda is legal and/or justified ?
- (ii) If not, what relief Shri Barik is entitled to ?
- (iii) Whether the first party management No. 1 is an ‘industry’ or not ?”

5. In order to substantiate their respective stand, the second party workman has examined himself and filed documents marked Exts. 1 to 5. On the other hand, while the first party management No. 1 examined two witnesses and filed documents marked Exts. A to D/3, the first party management No. 2 did not participate in the proceeding for which it was set *ex parte* vide order, dated the 26th July 2013.

6. *Issue No. (iii)*—On behalf of the first party management No. 1, it is stated that it is not an “industry”. On the other hand, the second party workman in support of his stand that the first party management No. 1 is an “industry” and he is a “workman” referred to a decision in Gram Panchayat, Katil *Versus* Presiding Officer, First Labour Court, Nagpur reported in 1990 (60) FLR 11(Bombay). In the aforesaid case, the High Court of Bombay referring to the principles decided by the Apex Court in the case of Bangalore Water Supply and Sewerage Board *Versus* A. Rajappa and others (1978-I-LLJ-349) has held that the Gram Panchayat is an “industry”.

Irrespective of the nature of engagement, since the second party workman was engaged from 15-2-1993 to 31-6-2006 considering the nature of work, the second party is held to be a “workman”.

7. *Issue No. (i)*—Admittedly, the service of the second party workman has been terminated with effect from the 31st June 2006 from the post of Peon in which he had joined on 15-2-1993. The Gram Panchayat Rule 218 under which the first party management No. 1 claims to have absolute right to terminate the service of the second party workman envisages abolition of existing post along with other provision such as creation and determination of salary. It does not prescribe absolute right to terminate the service of an employee irrespective of stipulation in any other law. Since the appointment of an employees includes termination, it requires to follow up proper procedure but in the case in had the principles of natural justice has not been followed while terminating the services of the second party workman. As per the principles decided by the Hon’ble Supreme Court in Bangalore Water Supply & Sewerage Board’s case (supra), the Gram Panchayat being an “industry” and from the nature of work, the second party is a “workman” who has rendered 240 days of continuous service in a calendar year for the last fifteen years, his termination requires compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947. There is no whisper on the part of the first party management No. 1 that it has complied with the aforesaid provisions while terminating the services of the second party workman. Therefore, the impugned termination is bad in law.

Further, from the admission of M.W. No. 1 in course of his cross-examination it reveals that the nature of work which was being discharged by the second party workman subsequent to his termination has been entrusted to the Watchman. This shows that the post has not been abolished. Moreover, the amount of remuneration is so meager, it can not be said that due to want of funds, his service required termination. Therefore, in no circumstance the termination of service of the second party workman can be held to be legal. Thus, the action of the management is not justified.

8. *Issue No. (ii)*—In view of the aforesaid finding since the termination of service of the second party workman is bad in law and the post in question has not been abolished and further the evidence led by first party management No. 1 on paucity of funds not being sufficient, considering its financial position and the meager amount of salary paid to the second party workman, in the interest of justice, it would be proper to reinstate him in service. Accordingly, the first party management No. 1 is directed to reinstate him in service forthwith. In absence of evidence that during the period of his unemployment, the second party workman has not been gainfully employed elsewhere, he is not entitled to any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY  
3-12-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P. K. RAY  
3-12-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor  
N. BEHERA  
Under-Secretary to Government