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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 29th September 2014

No. 7811—IR-(ID)-132/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th August, 2014 in Industrial Dispute Case No. 04/2013 of the Presiding Officer, Labour Court, Jeypore, Dist Koraput to whom the industrial dispute between the Management of M/s BILT, Unit Sewa, Gaganpur, Jeypore, At/P.O. Jeypore, Dist. Koraput and their workman Shri Banamali Panigrahi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER

LABOUR COURT, JEYPORE, KORAPUT.

INDUSTRIAL DISPUTE CASE No. 4 OF 2013

Dated the 27th August, 2014

*Present :*

Shri Debasis Rout, O.S.J.S., (Jr. Branch)  
Presiding Officer, Labour Court,  
Jeypore, Koraput

*Between :*

The General Manager, . . . First Party—Management  
M/s BILT, Unit Sewa, Gaganpur,  
Jeypore, At/P.O. Jeypore,  
Dist. Koraput

*Vrs*

Its workman,  
Shri Banamali Panigrahi,  
S/o Narasingh Panigrahi  
K.B.S.D. Road, Jeypore, At/P.O. Jeypore,  
Dist. Koraput . . . Second Party—Workman

Under Sections 10 & 12 of the Industrial Disputes Act, 1947.

*Appearances :*

Shri K. N. Samantaray, Advocate, Jeypore . .	For the First Party—Management
Shri B. Padhy, Advocate, Jeypore . .	For the Second Party—Workman
Date of Argument . .	20-8-2014
Date of Award . .	27-8-2014

## AWARD

The matter arises out of a reference made by the State Government in their Labour & Employment Department, Odisha, Bhubaneswar under Section 12 (5), read with Section 10(1) of the Industrial Disputes Act, 1947 Vide Memo No. 2139 (5)/LESI., dated the 2nd March 2013 for the adjudication of the following dispute :—

## SCHEDULE

"Whether the action of the management of BILT Unit, Sewa, Gaganpur, Jeypore, Dist. Koraput in terminating the services of Shri Banamali Panigrahi with effect from the 7th September 2009 is legal and/or justified ? If not, what relief Shri Panigrahi is entitled to?"

2. The case of the second party workman as per claim petition filed by him is that, the workman had his I. T. I. Training in the trade of Motor Mechanic from I. T. I., Ambaguda in the year 1998-2000 and after passing out he had his apprenticeship course of one year at Odisha Hydro Power Corporation, Balimela during period from the 25th September 2002 to 24th September 2003. In the year 2006 he came to know about the requirement of I. T. I. candidate having experience in Motor Mechanic in M/s BILT, accordingly he approached the first party management and after considering his candidature first party engaged him in their Mill and offered him the Job of apprenticeship with effect from the 10th August 2006 on stipend of Rs. 1800 instead of regular engagemnt. and assured that he would be regularised after the apprenticeship of one year. While the term of one year apprenticeship was over on the 9th August 2007, the first party extended the terms of service of the workman second party further up to 6th September 2009. The first party during the extention of period offered stipend of Rs. 2000 to the workman and he was obliged to accept the payment but under protest. The first party managemnt after the last extension of service from the 7th June 2009 to 6th September 2009, did not either extended service of the workman or observed him in the regular establishment but disengaged him without any notice or notice pay and compensation. The first party had violated the provisions of I. D. Act, 1947. As on the 6th September 2009 the workman had continuous service of nearly of 3 (three) years. Thereafter first party is liable to all the losses suffered by the workman second party including the reinstatement in service. Hence this case.

3. The first party management BILT filed written statement counter denying the averment of the claim petition and has stated that, on the request of the second party workman and on recommendation of Local MLA Vide their Letter dated the 5th August 2006, the workman was allowed for training of one year as apprenticeship with effect from the 10th August 2006 with stipend of Rs. 1800 per month vide Official letter dated the 8th August 2006 with conditions. On request of the

workman, the first party again issued another letter dated the 28th August 2007 the period of training for apprenticeship for 3 (three) months with effect from 28th August 2007 till 27th November 2007 with condition. Further on request of application of the workman the first party again issue another letter dated the 6th December 2007 for apprentice training for 3 months with effect from 7th December 2007 till 6th March 2008 with condition as as per letter dated the 10th March 2008. The second party continued his apprentice training for three months, i.e. up to 6th June 2008 and the first party management extended the apprentice training of the workman for another period of three (3) months, i.e. up to 6th September 2008 with stipend of Rs. 2000 per month and thereafter extended the said apprentice training period up to 6th December 2008. As per order dated 16th December 2008 the apprentice training period of the second party workman was extended for another three months, i.e. up to 6th March 2009 and again as per order dated 25th March 2009, the apprentice training of the workman was extended up to 6th June 2009, with terms of the conditions and finally as per Order dated 4th July 2009 the second party workman allowed for further apprentice training up to 6th September 2009. The second party received all the orders with proper acknowledgement after admitting all conditions of such Orders, and he never comes under the definition of the workman U/ s 2(s) of the I. D. Act. The first party further stated that, all the orders are issued to the second party workman on a contract for apprentice training for a stipulated period on payment of stipend but he never appointed against any job of the BILT. So his claim regarding termination of service is not justified and compliance of Section. 25-F of the I. D. Act does not required as the second party workman is not a workman. Therefore the Hon'ble Court be pleased to consider the above submission and dismissed the present case.

On the aforesaid pleadings of the parties, the following issues are framed for determination :—

#### ISSUES

(i) "Whether the action of the Management of BILT Unit, Sewa, Gaganpur, Jeypore, Dist. Koraput in terminating the services of Shri Banamali Panigrahi with effect from the 7th September 2009 is legal and/or justified ?

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

5. In order to prove its case second party workman examined himself as W. W. No.1 and has relied on 13 documents marked as Exts. 1 to 13. On the other hand, the first party management declined to adduce any oral or documentary evidence in support of his case.

#### FINDINGS

6. *Issue No. I & II:*—Both the issues are taken up together for sake of convenience.

In this sworn deposition the workman reiterated the averments of his claim petition and stated *inter alia* that, he is an Ex. I. T. I. Training in the Trade of Motor Mechanic from I. T. I., Ambaguda passed out in 1998-2000 batch and he had his apprenticeship course of one year at Odisha Hydro Power Corporation, Balimela from the 25th September 2002 to 24th September 2003. In support of

his contention, he produced Provisional National apprenticeship Certificate dated the 26th February 2003, Ext.(1), marksheet Ext.(2) and certificate dated the 25th September 2003 of O. H. P. C. Ltd., Balimela marked as Ext. 3. He further stated that, first party offered the Job for a period of one year, i.e. with effect from the 10th August 2006 and thereafter extensions were given for three months in his spell and second party workman continued in the Job up to 6th September 2009 and the first party also paid stipend of Rs. 1800 per month during the period from the 10th August 2006 to 9th August 2007 and 10th August 2007 to 27th November 2007 and stipend of Rs. 2000 p.m. from 7th December 2008 to till 6th September 2009. In support of his contention the workman certificate dated the 7th December 2009 issued by BILT. The workman also produced the letters issued by the first party management in favour of the workman to impact training with condition on different dates marked as Ext. 5 to 13. He further stated that, he was not a training or under course of apprenticeship training and he is entitled to get the normal salary as applicable to the employees of the first party management. He further stated that he was a workman as defined in Sec. 2(s) of I. D. Act, and retrenchment of the workman on the 6th September 2009 after total period of service over 3 years without complying provision U/s 25-F of the I. D. Act, 1947 and he was served continuously without interruption from the 10th August 2006 to 6th September 2009 which is exceeding 240 days and the first party violated the principles of law. In his cross examination he has admitted that, the company has not issued any appointment letter in his favour. From the evidence adduced by the workman it appears that, workman is an ex.I. T. I. Training in the trade of Motor Mechanic from I. T. I., Ambaguda and he had his apprentice course of one year at O. H. P. C., Balimela. He was offered job of apprentice for one year with effect from the 10th August 2006 by the first party and after one year the first party extended the period of engagement 3 (three) months in each spell up to 6th September 2009, and after completion of the said period his work came to an end. But the workman claim that he was a workman under the first party management.

7. Learned counsel appearing for the second party workman submitted that, the workman was an Ex. I. T. I. Training and has completed apprentice in O.H.P.C., Balimela and he was doing regular job as a workman and there was infact no training programme of the Management. He further submitted that, a person once trained in I. T. I. need not go for training again but is required to take up apprenticeship that which would give him the scope for regular employment. He further submitted that during the entire period of engagement of second party, i.e. from the 10th August 2006 to 9th June 2009 there is no adverse reporting from the Department where the second party was attached. He further submitted that the second party workman as defined in Section.2(s) of the I. D. Act., and the retrenchment of the second party workman on the 6th September 2009 without complying the mandatory provisions of Section 25-F of the Act is not only illegal but also unjustified. He relied on decision in case of Rajasthan State Road Transport Corporation Vrs. Jagdish Vyas and others, LLJ 1995, page 387 and M/s Larsen & Toubro Limited represented by its Dy. General Manager (H. R.) Sundargarh Vrs. State of Odisha and others, 2011 (Supp. II) DLR, page 525.

8. The learned counsel appearing for the first party management submitted that, the second party workman engaged as an apprenticeship training on his request from the 10th August 2006 to 6th September 2009 with intervals on stipend basis with a contract of conditions., so the second party can not be treated as a workman. In support of his contention, he relied on decision, i.e.

Kamal Kumar Vrs. Presiding Officer, Labour Court and others, 1998, Vol.II-LLJ-877, M/s Tannery & Footwear Corporation of India Ltd., Vrs. Labour Court, Kanpur II & others 1994-Vol.II-LLJ-1186 and Bhaskaran Vrs. Kerala State Electricity Board, 1986-Vol. 2, LLJ, page 346.

On the contentions urged, the question arises for consideration is as to whether the second party workman is the workman as per provision under Section 2(s) of the I. D. Act.

9. Be that, as it may, the evidence tender by the second party workman indicate that, he is an Ex. I. T. I. Training in the trade of Motor Mechanic and he had his Apprenticeship Course of one year at O. H. P. C. Balimela he also produce Provisional National Apprenticeship Certificate issued by the State Council for Technical Education & Vocational Training, Odisha, dated the 26th February 2003 (Ext.1), Mark Sheet (Ext.2) and Apprenticeship Training Certificate issued by the O. H. P. C. Ltd, Balimela in support of his contention. Thus, the second party workman had his Apprenticeship Course of one year at O. H. P. C. Ltd., Balimela from the 25th September 2002 to 24th September 2003. The evidence of the second party further discloses that, he personally approached the management in August 2006, and the first party offer a job for period of one year with effect from the 10th August 2006 and thereafter extension were giving for three months in each spell, and he continued job up to 6th September 2009. The second party workman also produced and marked the letters issued by the first party on different dates to impact training with conditions as Exts.5 to 13. The second party stated that, he has prayed for employee him in the industry and not for impacting training as an apprenticeship., and he has made no such application for apprenticeship training as he had already done the course at O. H. P. C. Ltd, Balimela, and he was a workman as defined in Section 2(s) of the I. D. Act, 1947. In the present case, the second party workman has claimed that, he rendered service continuously without any interruption from the 10th August 2006 to 6th September 2009 and as such the first is liable to compensate for all the losses suffered by the second party workman in reinstating him as a Motor Mechanical proper grade with full back wages. Basing on the letters (Ext. 5 to 13) issued by the first party in his favour, it would reveal from a letter (Ext. 5) that, the management issued this letter dated the 8th August 2006 to the second party for training with effect from the 10th August 2006 to 9th August 2007 with stipend of Rs. 1800 with terms and conditions. The Ext. 6 discloses that the management issued letter dated the 28th August 2007 to the second party workman and allowed him to undergo apprenticeship as Additional Apprentice on terms and conditions for the period of three (3) months. It reveal from Ext. 7 that first party issued a letter dated the 6th December 2007 to the second party workman to undergo apprenticeship for a period of 3 (three) months with stipend with terms and conditions. As per Exts., 8 to 13 the first party extended Additional Apprenticeship period from time to time up to 6th September 2009 with stipend basis with terms and conditions. From the above discussion, it is clear that the workman was engaged as an Apprenticeship Course under the first party on stipend basis on his request from the 10th August 2006 till 6th September 2009 on the basis of extention with condition, and the workman was accepted the terms and conditions of the first party as per Exts. 5 to 13 and was joined the Apprenticeship Course under the first party management. From the terms and conditions it is clear that, the second party workman was an Apprenticeship Training for stipulated period and the training will not entitled to the second party workman to claim any job in the Mill in future and training will come to an end automatically on the closure of working hours. Therefore the purpose of engagement of the second party was only to offer him Apprenticeship Course.

10. The first party contended that the plea of the workman U/s 2(s) of the I. D. Act, 1947, put forth by the second party should fail in view of the inconsistent stands taken by the second party. It is pointed out that the second party specifically contended that, he had continued service of nearly three years from the 10th August 2006 to 6th September 2009. Even though he was engaged as Apprenticeship for the said period. According to first party, the second party was not a workman as per the Apprenticeship Act 1961 and he was engaged on contract basis. So the section 25-F does not attract. In *Kamal Kumar Vrs. Presiding Officer, Labour Court and others*, (Supra). The Hon'ble Court held that, "the petitioner was a mere training for a particular period and for a distinct purpose and the respondent was not bound to employ him in their works after the period of training is over." In the case *Bhaskaran Vrs. Kerala State Electricity Board* (Supra) the Hon'ble Court held that, if a contract of apprenticeship is entered into and training is undergone in pursuance of such a contract. Hence the provision of Section 18 of the Apprentice Act comes into operation and therefore the concerned persons can not be regarded as workers and the provisions of Section 25-F of the I. D. Act are not attracted. On the other hand, it is contended by the first party, he was continued to employee under the first party for three years and the first party terminated him without reasonable ground, and placing reliance on *Ratio* decided in *Rajasthan State Road Transport Corporation Vrs. Jagdish Vyas and Others*, (Supra) the Hon'ble Court held that, A person appointed as apprentice for one year was allowed to continue in employment for 3 years and 4 months without any specific order extending the apprenticeship or otherwise. Such employee has to be considered as workman against a vacant post services of such workman can not be terminated without complying with the provision of Section 25-F of the I. D. Act. In the present case, the first party extended the apprenticeship of the second party with regular intervals till the 6th September 2009. Therefore, *ratio* decided in *R. S. R. T. C.* case is not applicable to the facts of the present case.

11. As has been stated earlier that the second party was engaged as an Apprentice Training under the first party, basing on his application for a stipulated period from the 10th August 2006 to 6th September 2009 with intervals on stipend basis with terms and conditions and the second party was disengaged after completion of the training period as per terms and conditions noted in the letters issued by the first party in favour of the second party. As already stated basing on the application of the second party, the first party was extended the period of Apprenticeship Training from time to time, and the first party after the accepting the terms and conditions, was joined his training programme under the Management. Hence petitioner had knowledge that the letter issued by the first party to impart training but it was not the appointment order. Accordingly he used to join this training for the said period and did not agitate the matter for regular employment before the first party, and remained silent since the date of disengagement from training till the filing of the application before the Conciliation Officer-cum-A.L.C., Jeypore. On the other hand, he was engaged without following the procedure for selection rather he was engaged as Apprenticeship Training for a particular period with stipend basis. Therefore the second party workman was an apprentice under the first party management. In the present case the second party has claimed for his back wages in addition to reinstatement in his service. But the first party engaged the second party on apprenticeship basis and impart training to him. Therefore second party workman was not workman

under th first party management as there was no master and servant relationship between them. Therefore it is not necessary to comply the provisions of Section 25-F of the I. D. Act, 1947 by the first party. From the facts and circumstances of the case it appears that, the second party was not appointed against the permanent post nor he was a regular employee in the establishment of the first party. Rather, he was engaged as an Apprenticeship Training under the management for stipulated period on stipend basis. Hence ordered.

ORDER

The reference is thus answered on contest against the second party workman without costs and accordingly, the action of the management of BILT Unit, Sewa, Gaganpur, Jeypore, Dist. Koraput, in terminating the service of Shri Banamali Panigrahi with effect from the 7th September 2009 is legal and justified.

Dictated and corrected by me.

DEBASIS ROUT  
27-8-2014  
Presiding Officer,  
Labour Court,  
Jeypore

DEBASIS ROUT  
27-8-2014  
Presiding Officer,  
Labour Court,  
Jeypore

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By order of the Governor  
M. NAYAK  
Under-Secretary to Government