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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 29th October 2014

No. 8627—IR(ID)-154/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th September 2014 in Industrial Dispute Case No. 51/2012 of the Presiding Officer, Labour Court, Bhubaneswar wherein the industrial dispute between the management of Odisha State Co-operative Marketing Federation Ltd. (MARKFED), Bhubaneswar and its workman Shri Subrat Kumar Swain was filed by the above workman under Section 2-A (2) of I.D. Act, 1947 for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 51 OF 2012 [u/s 2-A(2)]

Dated the 20th September 2014

*Present:*

Shri S. K. Sahoo, O.S.J.S. (Jui nor Branch),  
Presiding Officer, Labour Court,  
Bhubaneswar.

*Between :*

The management of . . . First Party—Management  
Odisha State Co-operative  
Marketing Federation Limited  
(MARKFED),  
Bhubaneswar.

*And*

Its workman . . . Second Party—Workman  
Shri Subrat Kumar Swain,  
S/o Late Bhramabara Swain,  
At/P.O. Patapur, Via. Kakatpur,  
Dist. Puri.

*Appearances :*

Shri P. K. Patnaik, Auth. Rept.	. . .	For the First Party—Management
<hr/>		
Shri S. K. Swain	. . .	For the Second Party—Workman himself

## AWARD

This case has been initiated on receipt of an application from one Subrat Kumar Swain under Section 2-A(2) of the I.D. Act, 1947.

2. The case of the second party workman who is the applicant in this case is that he was working as a Helper under the first party management in the year 1996. Taking into consideration his ability to drive all types of vehicles he was entrusted to perform the work of a driver since his date of joining. While working as such he was illegally retrenched by the first party management with effect from the 31st January 2002 although his juniors were retained in service. He was working under the management continuously till his retrenchment. On 11-3-1996 initially he was appointed as a temporary driver on consolidated pay. Subsequently he was regularised in his service on 1-9-1997. Since his joining, he was availing all the benefits of a regular employee from time to time till retrenchment. Although he was regularised in service of a Helper he was entrusted with the duties of a driver. All of a sudden he was informed by his colleagues that he was retrenched from his service though no such notice or notice pay was paid to him. The second party had challenged the illegal action of the first party before the Hon'ble High Court in O.J.C. No. 1475 of 2002. While disposing the said O.J.C. the Hon'ble High Court directed the second party to raise the dispute under Section 68 of Odisha Co-op. Societies Act, 1962. Accordingly the second party raised a dispute before the Registrar, Co-op. Societies under Section 68 of O.C.S. Act vide Dispute case No. 383 of 2007. The learned Registrar of Co-op. Society pleased to hold that the dispute is well within the period of limitation and it is also maintainable before him under Section 68 O.C.S. Act. Being aggrieved by such order the first party management preferred a writ petition bearing W.P. (C) No. 19314 of 2008 before the Hon'ble High Court of Orissa. In the said litigation the Hon'ble High Court of Orissa was pleased to give liberty to the second party to raise the dispute under the Industrial Dispute Act. The second party workman thereafter filed a complaint before the D.L.O., Khurda but no step was taken by him for conciliation. The first party management has not served the retrenchment notice on the second party nor paid compensation or notice pay to the second party. Hence he has preferred the present petition for setting aside the retrenchment order passed by the first party and claiming his reinstatement in service with all back wages.

3. On the other hand, it is the case of the first party management that the second party was appointed as a leave reserve driver vide office order No. 853, Dt. 14-5-1996 on a consolidated pay of Rs. 1,200 for a period of 3 months on 11-3-1996. Such engagement was extended in spells of 89 days with breaks on the prayer of the second party and as per the decision of the Management Committee vide Order No.3749, Dt. 16-9-1997 the service of the second party was regularised in the post of helper in the scale of pay of Rs. 750—940. The second party joined in his duty as a Helper on 16-9-1997 in obedience to such order. In his place one Brundaban Mohapatra was

engaged as a leave reserve driver and the second party was directed to hand over the charge of Jeep No. OR-O-2G-7571 vide Memo Dt. 17-8-1998. The pay of the second party was revised with effect from the 1st January 1996 and financial benefit was given to him from 1-4-1999 in the post Helper and pay was fixed at Rs. 2,550 vide Office Order No. 4852/Estt., Dt. 10-9-1999. One increment was also sanctioned to him on 1-4-2000 vide Memo No. 5755, Dt. 12-11-2001. Due to the financial assistance of Italian Government and the State Government some vehicles were provided to the first party and the pay of the running staffs of those vehicles was being borne by the State Government. Due to stoppage of financial assistance and taking into consideration the business and workload of the first party establishment, the Managing Committee in its meeting Dt. 26-8-2000 decided to retrench the surplus employees. Accordingly, as per policy decision, seniority list of driver and helpers working in the Federation were prepared separately and the surplus employees were retrenched. Out of seven number of Helpers the workman was found to be the juniormost in his category on the basis of initial engagement as well as the date of regularisation. On 30-1-2002 a notice was issued to the workman for his retrenchment from service with effect from the 31st January 2002. A cheque bearing No. 020185, Dt. 29-1-2002 amounting to Rs. 19,846 to be drawn on Bank of India, Bhubaneswar was enclosed with the notice of retrenchment issued to the second party. The cheque amount was towards retrenchment compensation, notice pay and salary for the month of January 2002 of the second party. One Bharat Sahoo, Peon of the first party management offered the notice Dt. 30-1-2002 and the cheque to the second party on 31-1-2002 but the second party refused to receive the same after going through the retrenchment notice. He assured to Bharat to receive the same in the office at 2-00 P.M. Bharat has reported the matter to the first party on 31-1-2002. Subsequently a letter bearing No. 7854, Dt. 1-2-2002 was sent to the second party asking him to receive the notice along with the cheque from the office but he did not turn-up. After the second party came to know about the notice of retrenchment he submitted a representation to the Chairman of the first party organisation along with other workers which was received on 22-3-2002. It is asserted in the written statement that the first party management has not received any notice from D.L.O., Khurda for conciliation. The second party is gainfully employed after his retrenchment. The first party management has complied with the provisions Section 25-F of the I.D. Act, 1947 for retrenchment of the second party. The second party is not entitled to any relief.

#### ISSUES

4. In view of the aforesaid pleadings of the parties, the following issues are framed :—

"(i) Whether the termination of services of Shri Subrat Kumar Swain, Ex-Helper with effect from the 31st January 2002 by the management is legal and/or justified ?

(ii) If not, what relief Shri Swain is entiteled to ?"

5. The second party workman is examined as W.W.1. and Exts. 1 to 7 are marked on his behalf. Ext. 1 is the photo copy of Memo No. 854, Dt. 14-5-1996, Ext.2 is the photo copy of Memo No. 5546, Dt. 4-12-1997, Ext.3 is the photo copy of Memo No. 3750, Dt. 16-9-1997, Ext.4 is the

photo copy of Order No. 2184, Dt. 26-6-1999, Ext.5 is the photo copy of Memo No. 5755, Dt. 2-11-2001, Ext.6 is the photo copy of Order passed in dispute case No. 383 of 2007, Ext.7 is the complaint petition filed by the second party before the D.L.O., Khurda. One Prakash Kumar Pattnaik, the Manager, Legal of the first party management is examined as M.W.1 and Exts. A to J are marked on behalf of the first party. Ext.A is the office order No. 853, Dt. 14-5-1996 of the Managing Director, Ext B is the joining report of the second party Dt. 16-9-1997, Ext. C is the draft approval Dt. 16-9-1997, Ext. D is the draft approval Dt. 4-12-1997, Ext. E is the office copy of the order communicated to the second party vide Memo No. 3928, Dt. 17-8-1998, Ext.F is the order of M.D. Dt. 12-11-2001, Ext. G is the termination letter, Ext.H is the report submitted by the Peon Bharat Sahoo and Ext. J is the application submitted to the Chairman by the second party and his co-workers.

#### FINDINGS

6. *Issue No. (i)*—The second party workman is examined as W.W.1. In his affidavit evidence of Paragraph 3 he deposed that initially he was appointed as a temporary Driver on 11-3-1996 and subsequently his appointment was extended from time to time and on 1-9-1997 his service was regularised in the post of Helper. He further deposed that without any notice he was retrenched from his service by the first party. He proved the order of his appointment Dt. 14-5-1996 which is marked Ext.1 On perusal of Ext.1 it transpires that he was engaged as leave reserve driver attached to the Chairman with effect from the 11th March 1996. From Ext.3 the office order communicated to the second party vide Memo. No. 3750, Dt. 16-9-1997 it is clear that the service of second party workman N.M.R. employee is regularised in the post of Helper in view of the decision of P.M.C. meeting Dt. 28-8-1997. The first party management admitted that the second party was a workman under the first party management. M.W.1 at paragraph 2 of his affidavit evidence deposed that the second party was initially engaged for a period of 3 months and attached to the Chairman as a leave reserve Driver with effect from the 11th March 1996 and his service was extended from time to time with one day break till 15-9-1997. It is also clear from his evidence that the service of the second party was regularised in the post of Helper by office order No. 4749, Dt. 16-9-1997 in the scale of pay of Rs. 750-12-870-EB-14-940 and he joined as Helper in regular service on 16-9-1997. At paragraph 7 of his affidavit evidence W.W.1 also deposed that the pay of the second party was revised and he was allowed to draw his annual increment in the revised pay vide office order No. 5754, Dt. 12-11-2001. On perusal of the evidence of M.W.1 it appears that in a meeting of the management Dt. 26-8-2002 it was resolved to retrench the surplus employees working in Indo-Italian Project who have no work at all. It is specifically argued by the second party workman that at the time of his retrenchment he was not serving under Indo-Italian Project. He drew my attention to the evidence of M.W.1. At paragraph 18 he has admitted that he has no knowledge if the second party workman was working in Indo-Italian Project any point of time. On perusal of paragraph 4 of the written statement filed by the first party it transpires that by the financial assistance of both Italian Government and the State Government certain vehicles were provided to the first party and the pay of running staff of those vehicles were borne by the State Government. It is also clearly mentioned in the said paragraph that such financial assistance was stopped and apart from that

the business and the work load in the first party management substantially depleted which required retrenchment of surplus manpower. At paragraph 9 of his evidence M.W. 1 also deposed that in view of the decision taken by the management in the Managing Committee meeting on Dt. 3-2-2001 and the opinion of learned Advocate a common gradation list of the Drivers and Helpers were prepared taking into consideration the date of their joining and regularisation of their service. So, from the evidence on record it is clear that not only the workers engaged under the Indo-Italian Project but also other employees of the first party management were included in common gradation list prepared by the first party management. It is also clear from the evidence on record that due to substantial decrease of business and work load of the first party it was decided to retrench the surplus workers and the closure of Indo-Italian Project was not the sole consideration for retrenchment. It is further clear from the evidence that the retrenchment of employees basing on the common gradation list prepared by the first party management was taken into consideration for retrenchment and the employees of Indo-Italian Project were not considered for retrenchment alone. The evidence of M.W.1 is reliable and trustworthy. Nothing has been elicited through his lips during cross examination to disbelieve his evidence.

7. In his claim statement the second party has mentioned that while workers junior to him were retained in service, he was retrenched. In his evidence W.W.1, the second party workman also deposed that the employees junior to him were retained in service but he was retrenched illegally. It is the specific case of the first party that a common gradation list was prepared and the employees who were juniors in the gradation list were retrenched. No doubt, the first party has not produced the common gradation list in the Court. The second party has also not called for the said gradation list. Neither in his claim statement nor in his evidence he disclosed the names of the junior employees who were retained in service. The onus is on the second party to prove that junior employees were retained in service. In his evidence he has not whispered about the name of the junior employees who have been retained in service. His bald and uncorroborated evidence that some employees junior to him were retained in service by the first party is not reliable and trustworthy. From Ext.B it is clear that the second party joined as a Helper on 16-9-1997. Ext.3 also shows that he was to be treated as Helper on his date of joining. One Jitendra Patnaik was regularised as Helper on 1-9-1997. Whereas the second party joined in his service as a regular Helper on 16-9-1997. W.W.1 is also silent regarding the initial date of joining of Jitendra Pattnaik. Hence Jitendra Pattnaik is senior to him as appears from the evidence on record.

At paragraph 10 of his affidavit evidence M.W.1 deposed that the second party was the junior most in the Helper category for which he was retrenched after issue of retrenchment notice and a cheque for Rs. 19,846 towards his retrenchment benefit. It further transpires from his evidence that one Bharat Sahoo, Peon of the first party was sent to serve the retrenchment notice on the second party but intentionally the second party refused to receive the same and subsequently a letter bearing No. 7854, Dt. 1-2-2002 was sent to the second party directing him to receive the cheque and retrenchment notice from the office but he did not turn up. M.W.1 proved the document which are marked Exts.A to J. Ext.C is the draft for approval Dt. 16-9-1997 which shows that the second party who was serving as N.M.R was regularised in the post of Helper. Ext.B shows that

on 16-9-1997 the second party joined his duty as a Helper on 16-9-1997. From the materials on record it is clear that the second party workman was regularised as Helper only on 16-9-1997 and prior to that he was engaged in driving the vehicles but his service is regularised as Helper and he accepted the same by submitting his joining report Ext. B.

8. On perusal of Ext.H and after going through the evidence of M.W.1 it is clear that Bharat Sahoo, Peon of the first party management had been to the second party workman on 31-1-2002 to serve the retrenchment notice but after going through the same the second party refused to receive the same. Ext.J is the application filed by the second party workman and his co-workers before the Chairman of the first party with a request to consider their retrenchment Dt. 31-1-2002. From the evidence of M.W.1 and the documents proved by him it is clear that the first party management had issued the retrenchment notice along with a cheque towards his legal dues through a Peon namely Bharat Sahoo, but the second party refused to receive the same. The first party management has complied with the provisions of Section 25-F of I.D. Act, 1947 while terminating the service of the second party workman. The second party failed to prove that workers junior to him are retained in service by the first party. As the termination of the second party workman by the first party management is in consonance with the provisions of I.D. Act, 1947, his retrenchment is held to be legal and justified.

6. *Issue No. (ii)*—In view of my finding on issue No. (i) the second party workman is not entitled to any relief. However, the record reveals that despite endeavour of the management the workman has not received the retrenchment benefit. The retrenchment having been found to be legal, he is at best entitled to the retrenchment benefit. The management is therefore, directed to pay the retrenchment benefit, if not paid, as per Ext.G within a period of one month of the date of publication of this Award in the official Gazette, or else the amount of compensation would carry a simple interest of 8% per annum.

Dictated and corrected by me.

S. K. SAHOO  
20-9-2014  
Presiding Officer  
Labour Court  
Bhubaneswar

S. K. SAHOO  
20-9-2014  
Presiding Officer  
Labour Court  
Bhubaneswar

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