

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 313 CUTTACK, THURSDAY, FEBRUARY 13, 2014 / MAGHA 24, 1935

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 31st January 2014

No. 760—IR-(ID)-129/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th December 2013 in I. D. Case No. 10 of 2013 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Kusum Powermet (P) Ltd., Keonjhar and its workman Shri Gourahari Patra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 10 OF 2013

Dated the 11th December 2013

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of .. First Party—Management
M/s Kusum Powermet Pvt. Ltd.,
At Badahala, P.O. Keonjhar,
Dist. Keonjhar.

And

Their workman .. Second Party—Workman
Shri Gourahari Patra,
S/o Butu Patra,
At/P.O. Chipinda,
Dist. Keonjhar.

Appearances :

None .. For the First Party—Management

Self .. For the Second Party—Workman

AWARD

This award arises out of a reference made by the Government of Odisha, Labour & E.S.I. Department, under the power 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 (14 of 1947) (for short the "Act") vide Order under Memo. No. 2086 (6), dated the 2nd March 2013. The dispute involved under the schedule of reference is as follows :—

“Whether the termination of services of Shri Gourahari Patra with effect from the 15th February 2009 by the management of M/s Kusum Powermet (P) Ltd., At Kutugaon, P.O. Chipinda, Dist. Keonjhar by way of refusal of employment is legal and/or justified ? If not, what relief Shri Patra is entitled to ?”

2. It is the case of the second party workman that the first party employed him in their industry in the year 2000 and he continued in service till 15-2-2009 on which day he was illegally terminated from service. According to the second party, the first party has not served one month notice nor paid one month salary in lieu of such notice and has not paid retrenchment compensation. It is the specific case of the second party that on 14-2-2009, one FIR was filed alleging criminal activities against the second party and from that date he is not being allowed to work in industry.

3. The second party raised the dispute before the Conciliation Offices-*cum*-Assistant Labour Officer, Champua, who found that though the workman attended the proceeding, the management took adjournment but never attended before the Conciliation Officer. Under such circumstances, ALO submitted a report under Section 12 (4) of the I. D. Act on which basis the present reference has been made.

4. The first party management did not turn up in response to the registered notice sent from this Court and therefore, it was set *ex parte* vide Order, Dt. 22-10-2013.

5. During the *ex parte* hearing the workman examined himself as sole witness. He filed the xerox copies of Identity Card and EPF deduction slip which were marked Exts. 1 and 2 respectively.

6. The unchallenged oral evidence of the workman reveals that he was employed by the first party in their Industry in the year 2000. As per Ext. 1, the second party was working as Supervisor in Civil Department of the first party Industry. The Ext. 2 reveals that the second party being an employee under the first party made contribution under EPF Scheme in the year 2001-2002. The evidence of the workman further reveals that he was in continuous service under the first party till 14-2-2009.

7. It is admitted by the workman, on the said date some local village people entered into first party's establishment and created disturbances but FIR was lodged against him alleging some false criminal charges. The workman has neither filed the copy of the FIR and Chargesheet nor he has deposed anything regarding the result of the allegation levelled against him. However, it is crystal clear that with effect from the 15th February 2009 he was not allowed to perform any duty under the first party. Mere filing of a criminal case is no ground to refuse a workman from employment. Since the first party did not turn up in response to the notice nor he has sent any written statement

or document in support of his case, I have no hesitation to hold that the second party was illegally terminated from service by way of refusal of employment.

8. As regards the entitlement of relief to the second party, I am of the view that since the refusal of employment to the second party by the first party was illegal, he is entitled to reinstatement in service particularly when there is no evidence as to departmental proceeding being taken up against him.

9. The second party has claimed for back wages from 15-2-2009 till the date of order. As a matter of fact, the second party has not filed any document to show that after his termination from service, he ever intended to continue in service by sending a letter of request to the management. On his own saying, a criminal case was registered against him on the allegation of disturbances in the Industry premises. The workman is not fair in submitting the details about the criminal charge levelled against him. He has not deposed that he has been discharged or acquitted from the offence under which the FIR was registered. On such circumstances, it cannot be ruled out that after registration of the case, he himself did not make any genuine attempt to resume duty. In such circumstances, I am of the considered opinion that he second party should not be allowed back wages.

Hence the following award.

AWARD

The reference is answered *ex parte* without cost. The termination of services of Shri Gourahari Patra (workman) with effect from the 15th February 2009 by the first party management by way of refusal of employment in their establishment is held to be illegal and unjustified. The second party workman is entitled to reinstatement in service without back wages.

Dictated and corrected by me.

SRIKANTA MISHRA
11-12-2013
Presiding Officer
Labour Court
Sambalpur.

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11-12-2013
Presiding Officer
Labour Court
Sambalpur.

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