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## LABOUR & E. S. I. DEPARTMENT

### NOTIFICATION

The 28th February 2014

No. 1927—li/1(B)-244/1993-(pt)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th September 2013 in Industrial Dispute Case No. 74 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Kapoor Motor Engineering Pvt. Ltd., Ranihat, Cuttack and its workman Shri Bansidhar Sahoo was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 74 OF 2008

Dated the 4th September 2013

#### *Present :*

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

#### *Between :*

The Management of .. First Party—Management  
M/s Kapoor Motor Engineering Pvt. Ltd.,  
Ranihat, Cuttack.

And

Its workman .. Second Party—Workman  
Shri Bansidhar Sahoo,,  
At Lochapada,  
P.O. Berhampur,  
Dist. Ganjam.

#### *Appearances :*

None .. For the First Party—Management

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Shri U.S. Tripathy, Advocate .. For the Second Party—Workman

## AWARD

This case has been instituted under Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & ESI Department of the Government of Odisha under Section 12 (5) of the Act vide its Letter No. 8668—li/1(B)-244/1993-LE., dated the 18th July 1995 with the following schedule :—

“Whether the termination of services of Shri Bansidhar Sahoo, Welder by the management of M/s Kapoor Motor Engineering (P) Ltd., Ranihat, Cuttack with effect from the 15th June 1992 is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?”

2. This claim of the second party workman is that he initially joined as a Welder in Rabindra Auto Engineering, Berhampur unit/branch of the first party management in the year 1984 and was discharging his duty efficiently. In the year 1990 the first party management transferred the second party workman to their Kapoor Motor Engineering Pvt. Ltd. at Ranihat, Cuttack. The first party management at the time of transfer assured the second party workman for higher wages and house rent besides the facilities enjoyed by him at Berhampur but failed to comply the same. In spite of the said default of the first party management the second party workman continued his duties up to 1992 and enjoyed the facilities of ESI and EPF. In December 1992 he suffered from dysentery with effect from the 9th June 1992 and went on leave and remained under the treatment of Insurance Medical Officer in ESI Dispensary, Cuttack from the 11th June 1992 to 13th June 1992. After recovery on 14th June 1992 which was a Sunday the second party workman when went to join his duties on the 15th June 1992 the first party management did not allow him and informed that his service has been terminated but no written notice or notice pay and compensation for the period of his service were given to him. Even no charge sheet has been framed against him nor any enquiry has been conducted against him. It is also stated that the first party management also did not pay him any higher wages or house rent or overtime dues during his tenure of service in Cuttack. Due to the said termination the second party workman is deprived of his employment and leading financially a miserable life. On such complaint filed before the Assistant Labour Officer, Cuttack ultimately this case has been instituted on a reference.

3. The first party management in its written statement admitting the engagement of the second party workman in Rabindra Auto Engineering works of Kapoor Engineering in the year 1984 and his transfer to Kapoor Engineering in Cuttack has stated that the performance of the second party workman was not satisfactory nor he was assured of any higher wages and house rent at the time of his transfer. He did not report for work with effect from the 9th June 1992 to 13th June 1992 and 14th June 1992 which was a Sunday and reported for work on 15th June 1992 without any explanation or medical certificate. Since there was pressure of work some other working hands were employed in his place due to his long absence. But the management has admitted that no charge sheet was framed against the second party as he was employed temporarily and his service was not longer required in the interest of the establishment. hence it claims for rejection of the claim of the workman.

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

#### ISSUES

- (i) “Whether the termination of services of Shri Bansidhar Sahoo, Welder by the Management of M/s Kapoor Motor Engineering (P) Ltd., Ranihat, Cuttack with effect from the 15th June 1992 is legal and/or justified ?
- (ii) If not, what relief Shri Sahoo is entitled to ?

5. In support of the case while the claimant has filed his evidence in chief in terms of affidavit, the first party management has not turned up and set *ex parte*.

#### FINDINGS

6. *Issue Nos. (i) & (ii)*—There is no dispute in the case that the second party workman remained absent from the 9th June 1992 to 13th June 1992, 14th June 1992 was a Sunday and he went to join his duty on 15th June 1992. While the claim of the second party workman is that he was under treatment of Insurance Medical Officer, ESI Dispensary, Cuttack and went to join his duty along with the medical certificate, that of the first party management is that he was absent without any intimation and did not furnish any medical certificate in support of his illness. Though the first party management refutes the allegation that the second party workman was not allowed to join his duties the statement of the first party management that the services of the second party workman was no longer required amounts to refusal of employment and hence covered under the definition of ‘retrenchment’. Fact remains that no enquiry has been conducted against the second party nor the principles of natural justice was followed while terminating his service which is contrary to the norms prescribed under the Industrial Disputes Act, 1947.

Section 25-F of the Industrial Disputes Act, 1947 prescribed as follows :

“25-F. Conditions precedent to retrenchment of workmen—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay [for every completed year of continuous service] or any part thereof excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government “[or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]”

In the case in hand neither the second party workman has been served with any prior notice or in lieu thereof he has been paid one month’s wages and compensation equivalent to 15 days average pay for every completed years of continuous service or any part thereof in excess of six

months. In the aforesaid background the termination of service of the second party workman is bad in law. Since another person has already been employed in his place and the first party management is firm on its stand that the services of the second party workman is no more required, no useful purpose would be served by asking the first party management to reinstate him in his former post as that would only lead to embarrassment both the parties and further complication and litigations. In the circumstances, it would be just and proper to award compensation of 50% of his back wages since 15th June 1992 i.e. the date when he was not allowed to join his duty till date. The back wages be paid to the workman within a period of two months from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY  
4-9-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P. K. RAY  
4-9-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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