

# The Odisha Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

No. 323 CUTTACK, TUESDAY, FEBRUARY 13, 2024/MAGHA 24, 1945

---

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 19th January 2024

**S.R.O. No. 80/2024**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 10th January 2024 passed in the ID Case No. 39 of 2022 [under Section 2-A(2)] by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between the Management of (1) Principal, M/s. Suddhananda Residential Polytechnic, At Nachhipur, P.O. Bhatapatana, Dist. Cuttack-751 115 (2) Chairman, M/s Samvit Sagar Trust, 3/ 143, V.V.V. Subramanian Salai, East Coast Road, Sudhanandapuram, Uthandi, Chennai-600 119 and Shri Nalinikanta Mohapatra, S/o Raghunath Nayak, At Kuruli, P.O. Tarito, P.S. Kishorenagar, Dist. Cuttack is hereby published as in the schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE NO. 39 of 2022 [u/s 2-A(2)]  
Dated the 10th January 2024

*Present :*

Shri Benudhar Patra, B.Sc. LL.M.  
Presiding Officer,  
Industrial Tribunal, Bhubaneswar.

*Between :*

- |                                           |                            |
|-------------------------------------------|----------------------------|
| The Management of                         | .. First Party—Managements |
| 1. Principal,                             |                            |
| M/s. Suddhananda Residential Polytechnic, |                            |
| At Nachhipur, P.O. Bhatapatana,           |                            |
| Dist. Cuttack-751 115.                    |                            |
| 2. Chairman,                              | .. Second Party—Workman    |
| M/s. Samvit Sagar Trust,                  |                            |
| 3/143, V.V.V. Subramanian Salai,          |                            |
| East Coast Road, Sudhanandapuram,         |                            |
| Uthandi, Chennai-600 119.                 |                            |
| And                                       |                            |
| Shri Nalinikanta Mohapatra,               |                            |
| S/o Raghunath Nayak,                      |                            |
| At Kuruli, P.O. Tarito                    |                            |
| P.S. Kishorenagar, Dist. Cuttack.         |                            |

*Appearances :*

|                                       |     |                                 |
|---------------------------------------|-----|---------------------------------|
| Shri Lalit Mohan Nanda, Advocate      | . . | For the First Party—Managements |
| Shri N.N. Mekap, Auth. Representative | . . | For the Second Party—Workman    |

## AWARD

The legality and justifiability of order of termination of the second party with effect from the 22nd February 2021 is under challenge in the present application under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act'). It is stated in the application that initially the second party raised his grievance before the District Labour Officer, Cuttack on the 27th December 2020 but as the matter could not be resolved by the labour machinery within the stipulated period of 45 days, he approached this Forum on the 25th July 2022 by filing the present application with a prayer for his reinstatement in service with full back wages and continuity of service.

2. The case of the second party, in short, is that on being duly selected he was appointed as a Junior Assistant by the first party vide Letter No. SRP/167/08, dated the 1st August 2008 and was getting his monthly wages through vouchers. It is stated that while working as such under the first party he was not being provided with the benefits of EPF and ESI and on his demanding such benefits the management bore grudge against him and ultimately refused employment with effect from the 22nd February 2021 and communicated relieve order thereof vide Letter No. SGI-232/21, dated the 7th October 2021. According to the second party, he having rendered services under the first party for a continuous period of more than 13 years his refusal of employment amounts to termination of his service and for non-compliance of the mandatory provisions of Section 25-F, 25-G and 25-H of the Act, the action of the management is not sustainable in the eye of law. In the aforesaid background, the second party has prayed for the relief of his reinstatement in service with full back wages and continuity of service.

3. On behalf of the first party managements, the Management No.1 entered contest and filed its written statement challenging maintainability of the application on the ground of misjoinder and non-joinder of necessary parties. It has been specifically averred in the written statement that the second party was in habit of remaining absent from his duty unauthorisedly for which notices were issued to him through messenger on the 18th January 2021 and the 2nd February 2021 to resume his duty but as the second party refused to receive the said notices ultimately he was removed from employment and intimated about such removal vide letter dated the 7th October 2021. It is stated that with a view to harass the first party intentionally the second party did not receive the earlier notices sent to him and only after receiving the letter dated the 7th October 2021 he raised the dispute before the labour machinery. It is stated that since the second party has received all his wages regularly he has never raised any dispute before any authority, much less before the first party and only after remaining absent from duty for a period of six months has come up with a false and fabricated story in order to tarnish the reputation of the Institution, which is imparting education to the students. The first party, in the premises, has prayed to reject the application of the second party.

4. The second party has filed a rejoinder to the written statement mostly reiterating the stand taken in his claim statement and further stating that he was never served with any notice either on the 18th January 2021 or the 2nd February 2021 and the same are created documents for the purpose of denying his legitimate claim and moreover in absence of any enquiry into the alleged unauthorised absence, the action of the first party is not tenable. It is also in the rejoinder

that due to non-payment of wages to the staff for years together, the College is fully defunct now and therefore, instead of reinstatement and back wages the second party has prayed for compensation to the tune of Rs. 25 lakhs.

5. On the basis of the pleadings of the parties, the following issues have been framed:-

#### ISSUES

- (i) whether the case is maintainable ?
- (ii) Whether the action of the management of MIs. Suddhananda Residential Polytechnic, At. Nachhipur, P.O. Bhatapatana, Dist. Cuttack in terminating the services of Shri Nalinikanta Mohapatra, Ex-Junior Assistant with effect from the 22nd February 2021 is legal and/or justified ?
- (iii) If not, what relief the workman Shri Mohapatra is entitled to ?

6. In order to substantiate their respective stand, while the second party examined himself as WW1 and proved documents which have been marked as Ext.1 to Ext. 12, the first party examined two witnesses on its behalf as MW1 and MW2 and relied on documents which have been marked as Ext. A to Ext. H.

#### FINDINGS

7. *Issue No.(i)*—There is no dispute over the fact that the first party organisation is an 'industry' and the second party is a 'workman' within the meaning of the Act. That apart, as it reveals from Ext.4, the second party initially raised his grievance before the District Labour Officer, Cuttack by way of a written complaint which was duly acknowledged by the office of DLO, Cuttack on the 27th December 2021 and despite all effort when the labour machinery could not resolve his grievance, he approached this Forum by filing the present application under Section 2-A(2) of the Act on the 20th February 2023 i.e. much after the stipulated period and within the prescribed period of three years of his alleged termination of service. The application of the second party being in consonance with the provisions of the Act, the same is held to be maintainable in this forum. Besides, the appointment letter of the second party, Ext. 1 reveals that the same was issued in the hands of the then Secretary of the Suddhananda Residential Polytechnic and as such the claim put forth by the second party against the contesting first party herein cannot be held to be bad in law due to non-joinder of necessary party, as pleaded by the management in its written statement.

The Issue No.(i) is therefore, answered in favour of the second party.

8. *Issue Nos. (ii) and (iii)*—For the sake of brevity, convenience and to avoid repetition, both the issues are taken-up for consideration simultaneously.

In the present litigation, there is no dispute over the fact that the second party on being duly selected to hold the post of Junior Assistant was directed to work under the first party No.1 and accordingly he discharged his assigned duties from his date of joining i.e. the 1st August 2008 till the 21st February 2021 and was removed from employment with effect from the 22nd February 2021 vide relieve order communicated to him through mail on the 7th October 2021. While the second party asserts that he was refused employment by the first party with effect from the 22nd February 2021 which amounts to termination of his service, the first party takes the stand that the second party was in the habit of leaving the College premises frequently for which he has been given warning time and again and despite issuance of notice when he did not turn up it was presumed that he has no mind to work and therefore, on the 7th October 2021 he was informed to

have been removed from employment. It is also alleged against the second party that he remained absent from his duty unauthorisedly for more than six months which compelled the management to oust him from job for the committed lapses. According to the first party, the second party having received all his duty pay has filed the present application making an illegal and unlawful demand which is beyond jurisdiction of this Tribunal to adjudicate in any manner.

9. The second party in his evidence has stated categorically that from the date of his appointment i.e. the 1st August 2008 till the 21st February 2021 he had discharged continuous duty under the first party and in support thereof he has proved the copy of his appointment order (Ext.1) which reveals that he was appointed in the post of Junior Assistant to serve the organisation of the first party No.1; the copy of experience certificate granted in his favour by the Chairman of Suddhananda Group of Institutions, Bhubaneswar (Ext.3) which discloses that he was working as a Junior Assistant under the management for the period from the 1st August 2008 till the 22nd February 2021. Besides, attention of the Tribunal is drawn to the cross-examination of MW1 where he stated that the second party was employed under the first party management from the 1st August 2008 till the 21st February 2021 and was covered under the EPF Scheme and admitted regarding issuance of Ext. 3 (the experience certificate) in favour of the second party by the Chairman of the first party establishment. Attention is also drawn to the cross-examination of MW2 who stated that the second party was under the employment of the first party till the 22nd February 2021 and further admitted that Ext.3 was issued in favour of the second party to the effect that he was working as a Junior Assistant with effect from the 1st August 2008 to the 22nd February 2021.

In view of the evidence, as discussed above, there is no doubt over the fact that the second party was under the employment of the first party for the period from the 1st August 2008 till the 22nd February 2021.

10. As regard the stand of voluntary abandonment of job by the second party, learned counsel for the management referring to the evidence of both the witnesses examined on behalf of the management contended that it is not a case of termination of service, but voluntary abandonment of job giving no scope to the second party to claim relief in the present proceeding. On perusal of the evidence of the management's witnesses it is found that both of them have deposed regarding the frequent unauthorised absence of the second party from duty and stated that he was not terminated from service, rather he himself has voluntarily left the College and did not turn up to duty despite notice. In the context Exts. A & B are proved by the management to be the notices sent to the second party. A scrutiny of Exts. A and B would reveal that the same were sent through special messenger Shri Deepak Kumar Parida, who endorsed on the notices to the effect that when he offered the notices to the second party he refused to receive the same. When the second party has categorically stated in his evidence that no such notice was ever issued to him by the management, it was incumbent on the first party to examine Shri Parida, the special messenger who could have thrown light on the documents, Exts. A and B and non-examination of the said witness casts a doubt over the same. Further, no explanation is offered by the first party as to why it did not send the notices to the second party through Registered Post in the event of their refusal by the second party through special messenger. In view of the discussions, therefore, it is hard to believe that the second party had any intention to quit the job, as alleged by the management.

11. Another stand is taken by the management that for his lapses the second party was warned several times and ultimately when he did not change his attitude, he was removed from employment. In the context, the evidence of the management's witnesses is noteworthy. In Para.12 of his cross-examination MW1 has stated that no charge was framed nor enquiry was conducted

against the second party. He also feigned his knowledge as to if any letter of recall was ever issued to the second party to resume duty. Similar is the evidence of MW2. In Para. 9 of his cross-examination MW2 has stated that no explanation was called for from the second party for his alleged unauthorised absence from duty. He could not say as to if the second party was ever charge-sheeted and found guilty for negligence or misconduct in any domestic enquiry. The above being the evidence on record, the removal of the second party also cannot be said to be a punishment as a result of any proved misconduct.

11. Now it is to be seen as to whether the second party is able to prove that he was entitled to the protection of the Section 25-F of the Act and non-compliance thereof renders the action of the first party as illegal and unjustified. Before analysing the evidence available on this point, I think it appropriate to refer to the judgement of the Hon'ble Apex Court in the case of *State Bank of India v. Shri N. Sundara Money* reported in AIR 1976 SC 1111, wherein their Lordships have held thus:—

“ .....Whatever the reason, every termination spells retrenchment. So the sole question is has the employee's service been terminated ? Verbal apparel apart, the substance is decisive. A termination takes place where a term expires either by the active step of the master of the running out of the stipulated term. To protect the weak against the strong this policy of comprehensive definition has been effectuated. Termination embraces not merely the act of termination by the employer, but the fact of termination howsoever produced. May be, the present may be a hard case, but we can visualise abuses by employers, by suitable verbal devices, circumventing the armour of s.25F and s.2(oo). Without speculating on possibilities, we may agree that 'retrenchment' is no longer terra incognita but area covered by an expansive definition. It means 'to end, conclude, cease'.

In view of the observations of the Hon'ble Apex Court in *N.Sundara Money's case (supra)*, the termination of service of the second party attracts the provisions of Section 25-F of the Act which reads as under:—

25F. 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 in 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, the period of employment of the second party under the first party as claimed in his application is found to have been admitted by the first party in its written statement as well as in evidence, but an argument is advanced on its behalf that the second party having not

discharged continuous service under the first party for more than 240 days prior to the date of his termination, he is not entitled to the protection of Section 25-F of the Act. In this connection, the management put emphasis on the Attendance sheets marked Ext.F, particularly on the statement attached therewith and contended that preceding to the date of termination i.e. the 22nd February 2021 the second party having not continuously discharged his duty for more than 240 days, he is not entitled to any relief in the present proceeding. On perusal of the statement attached to Ext.F, it is found that there was sudden COVID-19 outbreak from March, 2020 onwards and prior to that in the year 2019 the second party had worked under the management for more than 240 days. Taking into consideration the long length of employment of the second party under the first party and especially the fact that prior to COVID-19 outbreak he had continuously discharged his duty under his employer, he was entitled to onemonth's notice or in lieu thereof one month's wages and retrenchment compensation at the time of his termination of service. It being the admitted position that the conditions precedent to retrenchment were not adhered to by the first party while terminating the service of the second party knowing fully well that he had rendered service under it for a period of more than 13 years and there having no document substantiating alleged lapses against the second party much less any follow up action on such count, as pleaded by the management in its written statement as well as in evidence, his termination of service with effect from the 21st February 2021 by the first party amounts to retrenchment and for non-compliance of the statutory provisions, its action cannot be held to be either legal or justified.

12. In view of the discussions held in the preceding paragraphs, now it is to be determined as to what relief the second party is entitled owing to the action of the first party being declared as illegal and unjustified. In the context, it is profitable to refer to a recent judgment of our own Hon'ble High Court in the case of Management of Ramadevi Chhatrinivas (Ladies Hostel No.II) vs. Shri Tankadhar Digal, reported in 2022 LLR 1093, wherein their Lordships of the Hon 'ble Court while modifying the Award of the Labour Court, Bhubaneswar in the matter of granting relief to the second party have observed as follows:-

"14. In the circumstances, given the above developments and the age of the workman, at this stage, the Court is of the view that the ends of justice will be served if in lieu of reinstatement the workman is awarded a substantial additional compensation. In that view of the matter, while modifying the impugned award of the Labour Court and setting aside that portion of the impugned award which directs reinstatement of the Opposite Party, this Court directs that the Petitioner-Management will pay the Opposite Party Rs. 2,00,000 (two lakhs) in all i.e. in addition to the Rs. 40,000 awarded by the Labour Court a further sum of Rs.1,60,000 (one lakh sixty thousand) as compensation for the illegal termination of his services.

xx      xx      xx      xx."

In the case in hand, as it reveals from the rejoinder to the written statement filed by the second party, the College of the first party is now fully defunct and due to non-payment of regular salary no other staff is also working there. True it is, the second party has rendered service, under the first party for more than a decade and now he is aged about 56 years leaving a little scope for him to search for another employment. Keeping the aforesaid aspect in mind, this Tribunal is of the considered view that the relief of reinstatement and back wages is not the proper relief to be

awarded in favour of the second party, and instead a monetary compensation of Rs.1,50,000 (Rupees one lakh fifty thousand) only in lieu of reinstatement and back wages would be appropriate to compensate him for his suffering. Accordingly, the first party management is directed to pay the second party Rs.1,50,000 (Rupees one lakh fifty thousand) only within a period of two months of the date of publication of the Award in the Official Gazette, or else the awarded amount would carry a simple interest of 6% per annum till it is actually paid to the second party.

The 2-A(2) Application is disposed of accordingly.

Dictated and corrected by me.

BENUDHAR PATRA

10-01-2024

Presiding Officer

Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA

10-01-2024

Presiding Officer

Industrial Tribunal, Bhubaneswar

[ No. 1056—LESI-IR-ID-0011/2024-LESI. ]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government