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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st February 2009

No. 1796-1i/1-(B)-103/2006(Pt.)/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 30th January, 2009 in I.D. Case No. 144 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s. Hotel Hans Coco Palms, Puri and its workman Shri Milan Das was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 144 OF 2008

Dated the 30th January 2009.

Present:

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

Between:

The Manager,
M/s. Hotel Hans Coco Palms,
Swarga Dwar, Goudabada Sahi,
Puri.

... First-Party — Management.

And

Shri Milan Das,
Goudabada Sahi Colony,
At/P.O./Dist: Puri.

... Second-Party — Workman.

Appearances :

S. T. Ullah,
Authorised Representative.

...For First-Party — Management

Shri Milan Das

...For Second Party— Workman himself.

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 8462-li/1(B)-103/96/LE., dated the 19th July 1997 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138-li/21-32/2007/LE., dated the 4th April 2008.

“Whether the termination of services of Shri Milan Das, House Keeper, w.e.f. 27th May 1993 by the Management of M/s. Hotel Hans Coco Palms, Puri is legal and/or justified ? If not, to what relief he is entitled ?”.

2. To put shortly, the case of the workman is that he was appointed as a Receptionist on 22nd April 1983 by the Management of SUN-N-BEACH Hotel Private Limited, which was taken over by the Management of Hans Coco Palm, Puri in the year 1993. It is stated that on 26th May 1993 the workman received a transfer order from the Manager of SUN-N-BEACH Hotel Pvt. Ltd. Directing him to join at Hotel HANS PLAZA, New Delhi, which was a separate group of Hotel Management. On receiving such order, the workman represented to the Management but it yielded no result and he was informed to carry-out the orders without delay. Admitting about the stipulation embodied under clause-6 of his appointment order regarding the transfer, it is alleged that Hotel Hans Plaza, New Delhi is not a sister-concern of Hotel SUN-N-BEACH Pvt. Ltd. (Hans Coco Palm) and both the Hotel groups are separate from each other in so far as their Management, control and ownership are concerned. It is the specific stand of the workman

that as because on 20th May 1993 he alongwith some other workers went to meet the Manager to discuss and sort-out the problems in the matter of less payment of minimum wages and non-implementation of the Statutory benefits, the Management issued the aforesaid transfer order and thereafter w.e.f. 27th May 1993 refused him employment in the guise of transfer. According to the workman, such refusal of employment is contrary to the provisions of law, in as much as, it amounts to termination of his service and thus falls within the ambit of 'retrenchment'. There having non-compliance of the provisions of Section 25-F of the Industrial Disputes Act it is pleaded that such action is illegal and so also unjustified. The workman in the circumstance, has prayed for his reinstatement in service with full back wages.

3. The First-Party Management i.e., M/s. Hans Coco Palms, Puri entered contest and filed its written statement pleading therein *inter alia* that the dispute is not maintainable and further that M/s. Hans Coco Palms Pvt. Ltd. Has no separate entity in the eyes of law and it is owned by SUN-N-BEACH Hotels Pvt. Ltd. and further the said Hotel has been given on licence basis to Hotel Hans Pvt. Ltd. since August, 1992 by M/s. SUN-N-BEACH Hotels Pvt. Ltd.. It is stated in the written statement that during the term of licence the employees are to be governed by the Management of Hotel Hans Pvt. Ltd. with the relationship of Master and servant between the two. Specifically it is pleaded by the Management that for all purposes so far as the employees of M/s. SUN-N-BEACH Pvt. Ltd. are concerned, they are to be treated as employees of Hotel Hans Plaza and therefore, there is no illegality in effecting transfer of services of the workman to one of its unit at Delhi in the interest of the Hotel management. The action of the Management being bonafide one, it is pleaded, the same does not amount to refusal of employment, as alleged. It is further pleaded that since the workman continued to resort to disobedience and insubordination, his services were terminated vide letter dated the 13th December, 1993 and he was paid all his legal dues. In the aforesaid premises, therefore, the Management has prayed to reject the claim of the workman.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

Issues

1. Whether the termination of services of Shri Milan Das, House Keeper w.e.f. 27th May 1993 by the Management of M/s. Hotel Hans Coco Palms, Puri is legal and/or justified ?
2. If not, to what relief he is entitled ?

5. Both parties in order to substantiate their respective stand have adduced oral as well as documentary evidence. The workman examined himself and proved seven documents which have been marked as Exts.1 to 7. The Management on the other hand examined two witnesses and proved four documents which have been marked as Exts. A,B,C and D.

6. The crux of the point involved for determination in the present dispute is whether the transfer order, Ext.2 issued on 26th May 1993 in favour of the workman is illegal as well as unjustified, as alleged by the workman or the same is bonafide one, as asserted by the Management.

7. In this connection the contentions of the workman are that – Hotel Hans Plaza, New Delhi is altogether a separate unit and it has no nexus with the Hans Coco Palm, Puri in so far as its Management and administrative functions are concerned; the Director of the Hotel being the Appointing/Disciplinary Authority, the Manager of the Hotel has got no authority to issue transfer order in respect of him; no departmental enquiry was conducted against the workman if at all it was presumed by the Management that he (workman) had disobeyed the lawful direction of the Authority; and lastly it was contended that for the lapses indicated above, the Management is guilty of adopting unfair labour practice in its establishment and consequently the refusal of employment made to him w.e.f 27th May 1993 in the guise of transfer of his service to Hans Plaza, New Delhi is contrary to the provisions of law.

Per contra, it was submitted on behalf of the Management that in view of an agreement between the Hotel SUN-N-BEACH Pvt. Ltd. and M/s. Hotel Hans Pvt. Ltd., the Hans Coco Palm, Puri became a unit of Hotel Hans Pvt. Ltd. and therefore, there is no illegality in effecting transfer of the workman to Hotel Hans Plaza, New Delhi, which is not a separate entity as alleged.

8. The workman in his evidence has deposed that the Hotel to which he was transferred i.e., M/s. Hans Plaza, New Delhi is a separate unit and it has no nexus with the Hans Coco Palm, Puri. He also referred to his representations Exts. 3 and 4 in which he had also mentioned the same thing and sought for the Authority's intervention. The Management on the other hand through its Witnesses M.W. Nos. 1 and 2 although tried to prove that there subsisted a licence agreement, Ext. A between SUN-N-BEACH Hotel Pvt. Ltd. and Hotel Hans Pvt. Ltd. and on the basis of such agreement it had transferred the workman to Hans Plaza, New Delhi, but in absence of any evidence that the said agreement was executed with the knowledge of the employees of Hotel Hans Coco Palm, Puri or prior notice thereof was given to the employees that on and from 1st August 1992 both the Hotels i.e., M/s. Hans Coco Palm, Puri and M/s. Hans Plaza, New Delhi would be treated as one unit, it is difficult to hold that M/s. Hans Plaza, New Delhi is in any way connected with M/s. Hans Coco Palm, Puri. In view of the specific stand of the workman that both the Hotels are independent with regard to their Management and administrative functions, the Management ought to have produced its balance sheet/Annual Report and other papers which could have disclosed that for all purposes both the Hotel-Managements are being treated as one and there can be transfer of employees from Hotel Hans Plaza, New Delhi and *vice-versa*. The notice Ext.D filed by the Management is of no help in this regard. In this context, the authoritative pronouncement of the Hon'ble Apex Court in the case between P. K. Polwar Bidi Factory Vrs. Onkar Laxman, reported in AIR 1970 SC 823 may be seen wherein their Lordships have held that "a contract of service being incapable of transfer unilaterally, such a transfer of service from one employer to another can only be effected by a tripartite agreement between the employer, the employee and the Third Party, the effect of which would be to terminate the original contract of service by mutual consent and to make a new contract between the employee and the Third Party." For the aforesaid shortcoming, therefore, it is held that Hotel Hans Plaza, New Delhi is an independent unit having no nexus with the Hans Coco Palm, Puri. Therefore, even if there is a stipulation regarding transfer mentioned in the appointment letter of the workman marked Ext.1, the same is not applicable to be referred to in the case of the workman for the sole reason that Hans Plaza, New Delhi is not a sister-concern of Hotel Hans Coco Palm, Puri.

Added to the above, Ext.2 shows that the transfer order of the workman was signed and issued by the Manager of Hotel SUN-N-BEACH Pvt. Ltd., Puri. No evidence is

forthcoming that the said Manager was authorized/delegated with the powers to pass transfer orders in respect of an employee. Even if it is a vital aspect the Management neither adduced any oral or documentary proof and remained content leading this Tribunal to draw an inference that the Management with an intent to get rid of the workman effected the so-called transfer as per Ext.2. In this connection, the verdict of the Hon'ble Supreme Court in the case of Dr. Ramesh Chandra Tyagi Vrs. Union of India, reported in 1994 (68) FLR 688 (S.C.) may be referred to where is their Lordships have held that transfer order passed by an authority not competent to do so is contrary to rules and no nest in the eye of law.

9. Another aspect of the case is that on receiving the transfer order, Ext.2 the workman did not report at his transferred place and made representations and attempted for raising a dispute regarding his transfer. The Management in the context appears to have not taken up any disciplinary action against the workman, in as much as, neither it issued any show-cause nor contemplated any domestic enquiry for the alleged disobedience of orders. This is yet another shortcoming which casts a shadow on the bonafideness of the action of the employer in transferring the workman from Puri to New Delhi.

So, viewing from any angle, the action of the Management in effecting transfer of service of the workman cannot be held to be a bonafide one as claimed by the Management.

10. Now adverting to the claim of the workman that he was refused employment w.e.f. 27th May 1993, it is the consistent case of the Management that he was not refused employment rather his services were transferred from Hans Coco Palm, Puri to Hans Plaza, New Delhi. But in view of finding that the transfer of service of the workman cannot be held to be bonafide one, the refusal of employment to the workman w.e.f. 27th May 1993 in the guise of the aforesaid transfer appears to be probable one and consequently the same amounts to termination of service of the workman. There being no dispute that the workman had rendered service under the Management for more than ten years, it was incumbent for the Management to comply with the provisions of Section 25-F of the Industrial Disputes Act and non-compliance of the same renders its action in refusing employment to the workman w.e.f. 27th May 1993 to be illegal and unjustified.

11. In the result, therefore, the workman is held entitled to reinstatement in service forthwith with a direction to the Management to pay a lump sum amount of Rs. 10,000/- to the workman in lieu of back wages. The direction, as above, be carried out within a period of one month from the date of publication of the Award in the Official Gazette.

Dictated and corrected by me.

P. C. Mishra, O.S.J.S. (Sr. Branch)

30-01-2009

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

P. C. Mishra, O.S.J.S. (Sr. Branch)

30-01-2009

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

K. C. BASKE

Under-Secretary to Government