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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th December 2008

No.13048—li/1(B) 161/92/LE.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th December 2008 in I.D. Case No.43/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of M/s East & West Restaurant Complex, 76-Buddhanagar, Bhubaneswar and its Workman Shri A. K. Rao, represented by the General Secretary, Rajdhani Hotel Karmachari Sangha, Bhubaneswar was referred for adjudication is hereby published as in the schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.43 OF 2008

Dated the 5th December 2008.

Present :

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

Between:

The Proprietor,
M/s East & West Restaurant Complex,
76-Budhanagar, Bhubaneswar.

... First Party—Management

And

Shri A. K. Rao,
represented by the General Secretary ,
Rajdhani Hotel Karmachari Sangha,
32- Ashok Nagar, Bhubaneswar.

... Second Party— Workman

Appearances :

None ... For the First Party—Management

Sri A. K. Rao ... Second Party —Workman himself

A W A R D

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. 17277— li /1 (B) -161/92—LE., dated the 29th December 1993 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 management of M/s East & West Restaurant Complex, Bhubaneswar complied with the satisfactory requirement of Section 25 of the I.D. Act before terminating the services of Shri A. K. Rao, Cook with effect from the 7th April 1991 If not , what relief he is entitled to?”

2. The case of the workman in short is that he was working as a Cook under the management since the 10th March 1987 on a monthly salary of Rs. 1,200. It is pleaded that while working so the workman apprehended some sort of danger and physical assault by some local anti-socials, who were the regular customers of the management for which he remained absent from his duty on the 7th April 1991 and informed the same to the management with a request to allow him five days leave but the management without considering his request informed him that his service was no longer required. According to the workman, the aforesaid action of the management amounts to retrenchment of his service and for non-compliance of the provisions of the Industrial Disputes Act by the management, such retrenchment is illegal and unjustified and consequently he is entitled to reinstatement in service with full back wages.

3. The management filed its written statement admitting about continuance of the workman in their organisation since 1987 but for his remaining absence from duty he was called upon to report to duty vide notice dated the 15th April 1991. The management pleaded that since the workman did not respond to the said notice and resumed his duty and remained absent thereafter voluntarily, the question of complying with the provisions of the Industrial Disputes Act does not arise. In the premises therefore, the management has prayed to answer the reference in the negative.

4. In view of the aforesaid pleadings of the parties, the only issue which requires determination in the present dispute is as to whether the management has complied with the requirements of Section 25-F of the I.D. Act before terminating the services of the workman w.e.f. the 7th April 1991 and if not, what relief he is entitled to.

5. In the hearing of the dispute, the management did not participate nor took any step and accordingly it was set *exitaparte* vide Order No.30, Dt. the 3rd August 2001. The workman examined himself in the *exitaparte* hearing and did not chose to adduce any documentary evidence.

6. In his evidence on oath the workman has deposed that since the date of joining with the management i.e., from 1987 he was working continuously till 1991 and as the management asked him to submit resignation and in that matter threatened him to assault, he left the service and did not go to work thereafter.

7. In view of the unchallenged evidence of the workman that he had rendered continuous

service under the management for the period from 1987 to 1991, it was obligatory on the part of the management to comply with the provisions of Section 25-F of the Industrial Disputes Act while refusing him employment any further with effect from the year 1991. Violation of the aforesaid provision by the management renders its action to be illegal and unjustified one. Accordingly, the workman is held entitled to reinstatement in service and to get a compensation amount of Rs.5,000/- (Rupees five thousand only) from the management.

The reference is answered accordingly.

Dictated & corrected by me.

P.C. MISHRA
5-12-2008
Presiding Officer
Industrial Tribunal

P.C. MISHRA
5-12-2008.
Presiding Officer
Industrial Tribunal,

By order of the Governor

K.C. BASKE

Under -Secretary to Government