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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th January 2011

No. 700—li/1(B)-58/2002-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th November 2010 in Industrial Dispute Case No. 4 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the (1) Management of M/s Lalchand Resorts Pvt. Ltd., Bhubaneswar, (2) Management of M/s Prachi Resorts Pvt. Ltd., Bhubaneswar and their workman Shri Sadananda Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 4 OF 2003

The 27th November 2010

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

- (1) The Management of M/s Lalchand Resorts Pvt. Ltd., Bhubaneswar. . . First Party—Management
(2) The management of M/s Prachi Resorts Pvt. Ltd., Bhubaneswar

And

Their Workman . . . Second Party—Workman
Shri Sadananda Das

Appearances :

For the First Party—Management No. (1) . . .	Shri H. K. Rath, Advocate
For the First Party—Management No. (2) . . .	Shri S. T. Ullaha, Advocate
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For the Second Party—Workman . . .	Shri T. Lenka, Advocate

AWARD

The Government of Orissa in exercise of powers 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 have referred the matter in dispute to this Court vide their Order No. 15214—li/1 (B)-58/2002-LE., dated the 23rd December 2002 for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s The Marrion a unit of M/s Lalchand Resorts Pvt. Ltd., Bhubaneswar in refusing employment to Shri Sadananda Das with effect from the 10th November 2000 is legal and/or justified ? If not, to what relief Shri Das is entitled ?”

3. The case of the workman in brief is that he was working as House Keeping Supervisor under the management of Hotel Prachi as per order, dated the 14th February 1996 after duly selected in the interview. The management of Hotel Prachi was transferred and taken over by the management No. 1 and the Hotel Prachi was renamed in the style of Hotel Marrion wherein the workman has worked till the 9th November 2000 and discharged his duty as earlier doing under the management of Hotel Prachi. The workman was working under the Head of the Department Shri Jayant Narayan Singh Deo. The said Jayant Narayan Singh Deo was Supervising his work. Shri Deo was putting his signature in the daily internal attendant register meant for the employees of house keeping department only the letter “P” was showing the present of the employees and “A” for absent. The identity card and E.P.F. accounts has been issued in favour of the workman and was availing the benefits of E.S.I. on the 31st October 2000, the management No. 1 has published a notice in the Noticeboard declaring that after taking over the management of the Hotel Prachi all the service liabilities of the employees of Prachi establishment situated at 6, Janapath, Bhubaneswar was taken over by the management of Lalchand Resorts Pvt. Ltd. (Hotel Marrion). On the 10th November 2000 when the workman came to attend his duty and signed in the attendance register at 2-45 P.M. in ‘B’ Shift he was restrained by the guard who refused to allow the workman to enter into the Hotel of management No. 1. Thereafter the Personnel Officer of both the management disclosed that the management is not willing to allow the workman to work in the hotel of the management No. 1 without expressing any reasonable cause for denial of employment. So he lodged a complaint by speed post before the Labour Officer, Bhubaneswar on the 11th November 2000. Thereafter the management No. 2 in connivance with the management No. 1 issued two letters directing him to join in new place of posting at Prachi Resorts on the ground of his transfer from Prachi Resorts Pvt. Ltd. vide letter, dated the 3rd October 2000 which is a fabricated one and no such order was

communicated to him. A reply to that effect has been submitted by the workman. The relationship of employee and employer between the workman and the management No. 1 does not cease to exist and continuing as there was a refusal of employment and his service was not terminated as per law. After raising an industrial dispute before the competent authority and when the conciliation failed the matter was referred to the Government and this reference has been received from the Government and this I.D. Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages.

4. Initially the reference has been received from the Government against M/s Lalchand Resort Pvt. Ltd., Bhubaneswar subsequently vide Court's Order No. 41, dated the 27th July 2007 M/s Prachi Resorts Pvt. Ltd., Khandagiri, Bhubaneswar has been added as the management No. 2.

5. The management No. 1 appeared and filed written statement denying the plea of the workman. According to him the Hotel Prachi was taken over by M/s Lalchand Resorts Pvt. Ltd., on and from the 30th October 2000 under a written licence executed by the parties. The workman had neither worked for the management No. 1 and discharged duties as he was earlier doing under the management of Hotel Prachi and maintained records. The workman has not prepared or dealt with any document/records/registers/periodicals/statements and the likes thereof at any point of time after the 30th October 2000. No one by name Jayant Narayan Singh Deo was working as House Keeping Manager under the management No. 1. The management No. 1 issued a notice on the 31st October 2000 under the signature of the then Managing Director that the establishment of Hotel Prachi has been taken over by the management No. 1 with effect from the 1st November 2000 and agreed to take up all the service liabilities of the workmen. All the workmen were requested to sign in the notice as a token of proof of employees of the management No. 1 but the present workman has not signed in the said notice though others were signed. The workman had never came to the hotel premises on the 10th November 2000 to attend his duty and to sign in the attendance register. There was no relationship of employer and employee between the management No. 1 and the workman at any point of time. Therefore the question of refusal of employment does not arise at all. The workman was transferred on the 3rd October 2000 to another unit of Prachi Resorts Ltd. at Khandagiri. Therefore he was not an employee of the management No. 1 after the execution of the deed of licence on the 30th October 2000. The workman has not borne in the pay roll and his name does not appear in the register of employees of the management No. 1. So in this background the management has prayed for answering the reference in negative.

6. The management No.2 appeared and filed written statement partly admitting and partly denying the plea of the workman. Neither the workman was working under the management No. 2 on the 10th November 2000 nor the management refused employment to him on the 10th November 2000. This management i.e. management No. 2 has been impleaded as a party unnecessarily as there is no mention of Prachi Resorts Ltd. in the reference. The workman did not come to work in this unit for which the question of refusal of employment does not arise. So in this background the reference is not maintainable against the management No. 2.

7. In view of the above pleadings of the parties, the following issues are settled :—

ISSUES

- (i) “Whether the action of the management of M/s The Marrion an unit of M/s Lalchand Resorts Pvt. Ltd., Bhubaneswar in refusing employment to Shri Sadananda Das with effect from the 10th November 2000 is legal and/or justified ?
- (ii) If not, to what relief Shri Das is entitled ?”

8. In order to substantiate this plea the workman has examined himself as W.W. 1 and proved the documents marked as Exts. 1 to 13. Similarly the management No. 1, has examined three witnesses altogether out of which M.W. 1 is Sales and Marketing Manager of Management No. 1, M.W. 2 is the Security incharge of the management No. 1 and M.W. 3 is the Security Guard under the Management No. 1. The management No. 1 has also proved the documents marked as Exts. A to D. The management No. 2 has not adduced any evidence on his behalf and has also not proved any document on his behalf.

FINDINGS

9. *Issue Nos. (i) and (ii)* — Both the issues are taken up together for discussion for convenience.

According to W.W. 1, the workman he joined as House Keeping Supervisor in the management of Hotel Prachi on the 14th February 1996 and on the 1st November 2000 the management of Hotel Prachi was taken over by the Hotel Marrion. The Managing Director of Lalchand Resorts Pvt. Ltd., had issued a notice on the 31st October 2000 agreeing therein to take up the service liabilities of all the workmen vide Ext. 4. After the management of Hotel was taken over by the Lalchand Resorts Pvt. Ltd., all the employees working in the earlier management namely Hotel Prachi continued to work in the new management. He was working in the Hotel Marrion continuously up to the 9th November 2000 and in support of it he has filed the xerox copy of the attendance register for the month of November, 2000 vide Ext. 8. On the 10th November 2000 the security personnels did not allow him to enter inside the hotel. So he sent a complaint to the District Labour Officer, Khurda, Bhubaneswar on the 11th November 2000 vide Ext. 9. The Hotel Prachi Resorts had sent a notice on him on the 16th November 2000 to join in the duty on or before the 20th November 2000 vide Ext. 10 and he submitted his reply on the 23rd October 2000 vide Ext. 11. Again the Hotel Prachi Resorts had sent another letter to him to join in the duty on or before the 2nd December 2000 vide Ext. 12 and he submitted his reply on the 5th December 2000 vide Ext. 13. Ext. 1 is the identity card, Ext. 2 series are the washing vouchers and laundry bills and Ext. 3 is the absentee statement. All the documents belong to the Hotel Prachi. Exts. 2 and 3 are the period from the 16th October 2000 to the 31st October 2000. Though the workman had taken the specific plea that he signed on the documents in the cross-examination this witness has deposed that he has filed the document to prove that he was working under Jayant Narayan Singh Deo, M.W. 1 and his signature is available

in Ext. 2. As his signature is available in Ext. 2 it shows that he had worked for the management as deposed. But neither the signature of Jayant Narayan Singh Deo nor his signature was duly proved and marked as exhibits. So in absence of it, it cannot be said that in both the documents the workman had signed. The management has also denied to such allegation by putting a suggestion in this regard to W.W. 1. Perused all the documents filed by both the parties. On the other hand, the M.W. 1 deposes that he joined as Purchase Manager and was never worked as Manager, House Keeping and ever signed on any laundry bill or leave application of the workman. He never worked in house keeping department and he never supervised the work of any workman working in the house keeping department. In the cross-examination this witness deposed that he knows the workman. While M.W. 1 was working under the management No. 2, the workman was also working there. He was working under the management No. 2 since 1997. No individual notice vide Ext. 4 was given to each workman M.W.2, the Security incharge of the management No. 1 deposes that nobody in the name of Sadananda Das (workman) was working in the Lalchand Resorts Pvt. Ltd. On the 10th November 2000 he was on duty at back gate of the hotel and nobody in the name of the workman approached him to enter in the said hotel. In the cross-examination he admitted that prior to it he was working under Hotel Prachi but he cannot say if the present workman was also working in the said Hotel Prachi. M.W. 3 the Security Guard of management No. 1 deposes that he was working as Security Guard from the 1st November 2000 and as per his knowledge nobody in the name of Sadananda Das was working in the Lalchand Resorts Pvt. Ltd. On the 10th November 2000 he was in the duty at the back gate of the hotel through which all the employees were entering to the hotel and on that date nobody in the name of Sadananda Das had approached him to enter the hotel. So the question of refusal of employment of the workman does not arise. In the cross-examination this witness has also admitted that he was also working under the management No. 2 earlier and after taking over by the management No. 1 he is continuing there.

10. In view of the above evidence of both the parties, it has been argued by the workman that after taking over the establishment of management No. 2 by the management No. 1 he had worked there from the 1st November 2000 to the 9th November 2000 and on the 10th November 2000 he was refused employment without any reason. On the other hand, it has been argued by the management No. 1 that the Hotel Prachi Resorts Ltd. situated at 6 Janpath, Bhubaneswar were taken over by M/s Lalchand Resorts Pvt. Ltd. with effect from the 1st November 2000 and it has been agreed to take up all the service liabilities of the workmen working there and they will be employees of M/s Lalchand Resorts Pvt. Ltd. with effect from the 1st November 2000. But when all the workmen joined in the management No. 1, the present workman did not join. So there is no relationship of employer and employee between the management and the present workman. So the question of refusal of employment of the present workman does not arise at all. The management No. 2 has not adduced any evidence as mentioned earlier though filed a written statement and is silent in this regard. In support of the claim of the management No. 1, he filed the xerox copy of the pay roll register for the month of November 2000, xerox copy of the attendance register for the month of November 2000. He has also filed the originals of both the documents for perusal of this Court and also perused both the documents in originals and xerox copies marked as Exts. A and B.

Ext. C. is the xerox copy of Provident Fund in Form 6-A of November 2000 to March 2001 and Ext. D is the xerox copy of E.S.I. return of contribution in Form 'C' up to March 2001. In all these documents the name of the present workman do not find place. So basing on these documents the management No. 1 has argued that the present wokman had never worked under him. It has been argued by the management No. 2 that the said management is no way involved in the present case but unnecessarily he has made a party though in the reference nothing has been mentioned against him. But the workman has taken the plea that the management No. 2 has issued two letters vide Exts. 10 and 12 directing him to join in the establishment of Hotel Prachi on the ground that his service was transferred to such management vide order, dated the 3rd October 2000. The workman has submitted his reply to both the letters vide Exts. 11 and 13 as mentioned earlier. In Ext. 13 it has been mentioned by the workman that :

“This case is already brought to the knowledge of Labour Officer and also a case is filed in the S.D.J.M. Court. So without any one of these above Hon’ble Official’s prior permission I cannot join in your organisation.”

The workman relied upon the Ext. 8 in support of his claim that he was working under the management No. 1. Ext. 8 is the xerox copy of document wherein it has been mentioned on the top of it that attendance for month of November 2000. There are names of five persons under the heading of ‘Supervisor’ wherein the name of the present workman found place at Sl. No. 4. There are also names of eight persons in the heading ‘Room Boy’. In the top the date 1 to 28 has been mentioned horizontally and against the name of the present workman ‘P’ has been mentioned against the dates 1,2,3,4,6,7,8 and off has been mentioned against the date 5. There is no signature of any authority to come to the conclusion that it is a copy of the attendance register. Merely mentioning it cannot be said that it is an attendance register. On the other hand, the workman has taken plea that he has worked up to the 9th November 2000 under the management No. 1. But if Ext. 8 is the attendance register as per plea of the workman then what happened against the date ‘9’. The month of November is continuing 30 days but after date 28 nothing has been mentioned on Ext. 8. The workman has also not clarified the ambiguity either in the evidence or in argument. In the pleading in Para. 5 it has been mentioned by the workman that :

“On the day i.e. the 10th November 2000 when I came to attend my duty and signed in the attendance register at 2-45 P.M. for the ‘B’ shift duty I was restrained by the guard who refused to allow me to enter into the Hotel.”

If the plea of the workman is correct, in Ext. 8 it must have his signature on the 10th November 2000 must have been available, but it is wanting. This fact has also been confirmed from Ext. 9 wherein the complaint petition filed by the workman to the Labour Officer, Bhubaneswar wherein the workman has mentioned that on the 10th November 2000 after signing in the attendance register at 2-45 P.M. as usual he resumed his duty for the day. But at 3-15 P.M. he was called by the Personnel Officer, Jayant Narayan Singh Deo of the previous management and also the new management and told him not to work in the Hotel Marrion. So the plea of the workman regarding signing in the attendance register is contrary to Ext. 8. Moreover from the cross-examination of

M.W. 1 it shows that one Panchu Nayak and Naba Kishore Nayak were working under the management No. 2 and at present they are also working under the management No. 2 but Ext. 8 does not disclose their names. The workman is also silent how he got Ext. 8. He has also not taken any step to obtain it from the management. So the authenticity and genuineness of the document is doubtful. On the other hand Ext. A and B do not disclose the name of the present workman which is according to the plea of the management No. 1. On the other hand, the written statement filed by the management No. 2 discloses that the workman did not come to work to the unit i.e. Prachi Resorts Ltd., so the question of refusal of employment does not arise. So from it, it clearly shows that prior to take over of the establishment of Hotel Prachi by the management No. 1 the workman has already been transferred to the management No. 2. The word 'workman' has been defined in Section 2 (s) of the Industrial Disputes Act. But in the instant case the employer and employee relationship has been denied by the management No. 1 and he has also proved the same basing on the documents available. On the other hand, the workman has totally failed to establish that he was an employee of the management No. 1 at any point of time. So the question of refusal of employment of the workman does not arise. So on careful consideration of all the materials available in the case record as discussed above I am inclined to hold that the refusal of employment the workman by the management No. 1 with effect from the 10th November 2000 does not arise at all and hence the reference is not maintainable and the workman is not entitled to get any relief.

11. Hence Ordered :

That as there was no relationship of employer and employee between the management No. 1 and the workman, the question of refusal of employment to Shri Sadananda Das by the management of M/s The Marrion an unit of M/s Lalchand Resorts Pvt. Ltd., Bhubaneswar does not arise at all and hence the reference is not maintainable and the workman is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
27-11-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
27-11-2010
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
P. K. PANDA
Under-Secretary to Government