

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2659 CUTTACK, FRIDAY, DECEMBER 9, 2011 / MARGASIRA 18, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th November 2011

No. 10719—li/1(J)-21/1994(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th September 2011 in Industrial Dispute Case No. 182/1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Oberoi Palm Beach, Gopalpur-on-Sea Ganjam and its Workman Shri Subhandu Kumar Tripathy was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 182 OF 1994

Dated the 19th September 2011

Present :

S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of
Oberoi Palm Beach,
Gopalpur-on-Sea,
Dist. Ganjam.

.. First Party—Management

And

Its Workman
Shri Subhandu Kumar Tripathy,
Segiripeta Street, Gopalpur-
on-Sea, Gopalpur,
Dist. Ganjam.

.. Second Party—Workman

Appearances :

Shri R. Venugopal Rao

. . For the First Party— Management

Shri S. K. Tripathy

. . For the Second Party—Workman himself

AWARD

The Government of Odisha 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 Order No.14991—li/1(J)-21/1994-LE., dated the 22nd November 1994 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s Oberoi Palm Beach, Gopalpur-on-Sea, Ganjam in refusing employment to Shri S. K. Tripathy, Room Boy, with effect from 24-11-1993 is legal and/or justified ? If not, to what relief the workman Shri Tripathy is entitled ?”

3. The workman’s case, in brief, as set out in his statement of claim is that he was appointed by the management on 1-7-1986 as Room Service Boy vide appointment letter Dt. 21-6-1986. He was on leave from 10-11-1993 to 23-11-1993 and when he went to join in his duty on 24-11-1993, the Security Guards did not allow him to enter inside the hotel premises. Thereafter the workman sent an application on the same day i.e. on 24-11-1993 to the management by registered post with A.D. requesting to allow him to resume his duty. Thereafter on 6-12-1993 the management sent a Bank Cheque amounting to Rs. 867.66 to the workman towards his wages from the 1-11-1993 to 23-11-1993. Thereafter the management placed the workman under suspension on 6-12-1993 when the conciliation proceeding was going on. As the workman was the Secretary of their Union, the management out of grudge had illegally terminated his service by way of refusal of employment with effect from 24-11-1993. At the time of termination, the management has not complied the legal procedures of law. So in this background, the workman has prayed for reinstatement in service with back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. Accordingly to the management, the workman had committed forgery by enclosing a copy of his letter Dt. 24-11-1993 purported to be his joining report and there was no refusal of employment to the workman on 24-11-1993. When the workman avoided intentionally to resume his duty from 24-11-1993, his pay for the month of November, 1993 (1-11-1993 to 23-11-1993) was paid through Bank Cheque. When the workman did not join in his duty on 24-11-1993 or even subsequently till 6-12-1993, the management placed the workman under suspension and initiated a domestic inquiry. Therefore, the question of refusal of employment to the workman does not arise. The workman was dismissed from service after due enquiry conducted by the management. So in these averments, according to the management, the workman is not entitled to get any relief as prayed for and prayed for dismissal of the present case.

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

ISSUES

(i) "Whether the action of the first party management in refusing employment to the second party workman with effect from 24-11-1993 is legal and/or justified ?

(ii) To what relief, if any, the second party workman is entitled to ?"

6. In the order to substantiate his plea, the workman has examined himself as W.W.1 and proved certain documents under the cover of Exts.1 to 15. It is pertinent to mention here that the management had appeared and filed written statement but subsequently remained absent and did not take part in the hearing though sufficient opportunities were given to him.

FINDINGS

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

The workman his affidavit evidence has stated that he was appointed by the management as Room Service Boy with effect from 1-7-1986 under the cover of Ext.1. He was discharging his duties and responsibilities to the best of his ability and to the best satisfaction of the management. Thereafter his service was confirmed by the management. He applied for leave to the management for travelling outside from 10-11-1993 to 23-11-1993 and the said leave was duly sanctioned by the management and after availing leave when he went to resume his duty, the Security Guards of the management restrained him from entering the hotel of the management and prevented him from resuming his duty. Finding no other alternative, the workman submitted a letter by registered post with A.D. praying to allow him to resume his duty with copies to the labour authorities. After receipt of the registered letter by the management, the management on 27-11-1993 issued a letter enclosing the earlier letters Dt. 10-11-1993 and 15-11-1993 which show cause notice and charge-sheet. On 4-12-1993 the workman submitted his explanation to the above letters of the management denying all the allegations made against him and prayed to allow him to resume his duty, but he was not allowed to resume his duty. Thereafter he raised an industrial disputes before the labour authority and when the conciliation proceeding was going on, the workman was placed under suspension. The management also did not allow the workman to enter inside the hotel premises of the management during the suspension period. The workman has stated in his affidavit evidence that due to trade union activities, the management had bore grudge and terminated his service by way of refusal of employment. Since the management has not cross-examined the workman and also did not adduce any evidence, the evidence of the workman both oral and documentary have remained unchallenged.

8. On perusal of the above oral and documentary evidence it shows that the workman was working as Room Service Boy under the management and he applied for leave for travelling outstation from 10-11-1993 to 23-11-1993. But the management fully knowing well that the workman was on leave and travelling outstation, had issued letters for show cause and charge-sheet vide letters Dt. 10-11-1993 and 15-11-1993 which were returned unserved. On the other hand, the management has taken a stand in his written statement that the workman was placed under

suspension on 6-12-1993 and a valid enquiry has been conducted by the management against the workman. But to substantiate the same, the management has not filed a single paper to that effect. At the same time the workman has stated that though he was placed under suspension, but he was not allowed to enter inside the hotel premises of the management by the Security Guards. So it cannot be said that the management had conducted an enquiry fairly and properly. Above all, it is stated by the workman that no notice was served on him before he was terminated from service. Also notice pay and any retrenchment compensation was not paid to him before refusal employment by the management. Thus the management has contravened the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and precondition one.

9. So on careful consideration of all the materials available in the case record as discussed above and in view of the unchallenged testimony of the workman, I am of the view that the action of the management in refusing employment to the workman with effect from 24-11-1993 is neither legal nor justified. Therefore, the workman is entitled to be reinstated in service with full back wages.

10. Hence Ordered :

That the action of the management of M/s Oberoi Palm Beach, Gopalpur-on-Sea, Ganjam in refusing employment to Shri S.K. Tripathy, Room Boy, with effect from 24-11-1993 is illegal and unjustified. The workman Shri Tripathy is entitled to be reinstated in service with full back wages. The management is directed to implement this Award within a period of one month from the date of its publication, failing which, the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
19-9-2011
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
19-9-2011
Presiding Officer
Labour Court
Bhubaneswar

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