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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd April 2011

No. 3492-ii/1(B)-81/2007-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th February 2011 in I. D. Case No. 32 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Mayfair Lagoon, an unit of Mayfair Hotel & Resorts Ltd., Bhubaneswar and their Workman Shri Rabindra Kumar Bhoi, Ex-Security Personnel was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 32 OF 2008

The 28th February 2011

Present :

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

Between :

The Management of M/s. Mayfair Lagoon, . . . First-party-Management
an unit of Mayfair Hotel & Resorts Ltd.,
Bhubaneswar.

And

Their Workman Shri Rabindra Kumar Bhoi, . . . Second-party-Workman
Ex-Security Personnel

Appearances :

Shri S. K. Mohapatro, Sr. Manager, P.&A. . . For the First-party-Management

Shri R. K. Bhoi . . . Second-party-Workman himself

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 have referred the matter in dispute to this Court vide Order No. 5942–li/1 (B) 81/2007–LE., dated the 26th May 2008 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :–

“Whether the termination of services of Shri Rabindra Kumar Bhoi, Ex-Security Personnel with effect from the 21st September 2005 on the ground of voluntary abandonment of employment by the management M/s. Mayfair Lagoon, an unit of Mayfair Hotel & Resorts Ltd., Bhubaneswar is legal and/or justified? If not, what relief Shri Bhoi is entitled to?”

3. The case of the workman in brief is that he joined under the management as Security Guard on 1-10-2000 and was discharging his duty as such to the best satisfaction of the authorities. He was also a member of Provident Fund and E.S.I. while in service. While on duty, the management assigned the duty to the workman to guard the hotel premises and the duty hours exceeded 12 hours per day. When he raised objection for such violation of labour law, the management became vindictive on him. On 21-9-2005 when the workman went to perform his duty, the Security Officer restrained him to enter the office premises and canteen premises and restrained him to perform the duty and he was not allowed to sign in the attendance register. However he was not allowed to perform his duty. The management in colorful exercise of power and by unfair labour practice forced the workman to submit his resignation and to surrender the Uniform, Identify Card to which the workman did not agree. The last pay of the workman was Rs. 2,400 per month. He approached the management on several occasions for his reinstatement in service but the management did not respond to it. From the date of joining till the date of illegal termination by way of refusal of employment, the workman had rendered continuous and uninterrupted service for more than 5 years under the management and had completed more than 240 days of service preceding the date of his illegal termination by way of refusal of employment. So the workman has raised an industrial dispute before the labour authority and when the conciliation failed, the matter was informed 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 reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the workman was not selected in any established recruitment process of the management but he was picked up from local market as a casual worker depending upon need of management. However he was kept under job of a Security Guard and Security Guard duties stood allotted to him depending upon the need of the management at different places in the premises of Mayfair Lagoon which was comprised of seven acres of land. On 20-9-2005 the workman was assigned duty at a particular site inside the hotel premises which the workman refused to discharge during his engagement and he did not report to his duties from 21-9-2005. He has neither submitted any leave application nor came to join to his duty in spite of registered letters 30-9-2005 and 4-10-2005 sent to him in village and local address. So the service of the workman was taken as abandonment of service and it was treated as termination simpliciter. The workman was given sufficient opportunity to report to duty but the workman never wanted to resume and discharge his duty of Security Guard and never attended duty from 21-9-2005. So in this back ground the management has prayed to answer the reference in negative.

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

ISSUES

- (i) Whether the termination of services of Shri Rabindra Kumar Bhoi, Ex-Security Personnel with effect from 21-9-2005 on the ground of voluntary abandonment of employment by the management M/s. Mayfair Lagoon, an unit of Mayfair Hotel & Resorts Ltd., Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief Shri Bhoi is entitled to ?

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 to 14. Similarly the management has examined his Deputy General Manager (P. & A.) of the management as M.W. 1 and proved documents marked as Exts. A. to H.

FINDINGS

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

According to W.W. 1, he was working as Security Guard under the management with effect from 1-10-2000 to 20-9-2005. He was supplied with identity card and he was also covered under the Provident Fund and E.S.I. He was allotted the duty exceeding 12 hours to which he protested. So he fell victim to the vindictive attitude of the management. On 21-9-2005 all of a sudden he was not allowed to perform his duty and his employment was refused which amounts to termination of his service. He has completed 240 days of service during preceding 12 calendar months from the date of his termination. He was not given any prior notice or notice pay and retrenchment compensation. On the other hand, the management has taken the plea that the workman remained absent voluntarily from duty with effect from 21-9-2005 and in spite of registered notices directing him to join in his duty vide letters on 30-9-2005 and 4-10-2005, the workman remained silent. So it can safely be presumed that he had no interest to serve under the management and he is not entitled to get any benefit as claimed in this case. Perused the documents marked as exhibits on behalf of both the parties.

8. Admittedly, the workman was not working under the management with effect from 21-9-2005. The workman took the plea that his employment was refused whereas the management took the plea that the workman remained absent voluntarily and abandoned his service. But in the affidavit evidence the workman has clearly stated that he has not received any registered letters dated 30-9-2005 and 4-10-2005 asking him to join in his duty. Such two letters has been marked as Exts. A and B respectively. Ext. A was sent to the workman in his address at Daraba in the district of Jagatsinghpur and Ext. B was sent to him in his address at Maitrivihar, S-10, Chandrasekharpur, Bhubaneswar. The registered letter receipts are marked as Exts. A/1 and B/1 respectively. Though the management in his written statement has stated that the management has issued the letters by registered post but he has silent whether it was sent by registered post with A.D. But in the affidavit evidence the management has stated that the A.D. cards were lost during transit. So when a registered letter was issued to a person it would have been presumed to have been received by him, but if a person denied to have received the same, the burden of proof shifted on the person who had sent it to prove that it has been received by the addressee. But in the instant case the management is silent in this regard and has not proved any documentary evidence that the said two letters were received by the workman. According to the settled principle of law as reported in 2001 LLR 54 Supreme Court even when a workman fails to report for duty the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be removed from the rolls. The authority reported in 2000 LLR 425 as relied by the workman it has been held that abandonment of workman amounted to retrenchment and compensation not paid at the time of termination will render the termination illegal. Further in the authority reported in 2011 LLR 312 Delhi High Court it is well settled that while drawing the presumption that the workman has abandoned the job of his own accord holding of enquiry is

imperative. But in the instant case it is an admitted fact that no domestic enquiry was held against the workman for his remaining absent unauthorisedly from duty which is a gross misconduct. According to the settled principle of law as reported in AIR 2010 SC. 1236 the workman would have difficulty in having access to all official documents, muster rolls etc. in connection with his service which the workman claimed and deposed that he had worked for 240 days which the statutory requirement, burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. In the instant case the provisions of Section 25-F of the Industrial Disputes Act has not been complied with while terminating the service of the workman by way of refusal of employment and it is not a case of voluntary abandonment of service also. Section 25-F of the Industrial Disputes Act is a mandatory and precondition one for termination of service of a workman. So in this background on careful consideration of all the materials available in the case record as discussed above, I am inclined to hold that the termination of services of the workman with effect from 21-9-2005 on the ground of voluntary abandonment of employment by the management is neither legal nor justified and the workman is entitled for reinstatement in service.

9. Regarding back wages as per settled principle of law the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further according to the authority reported in 2004 (Supp.) OLR 694 when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However, on careful consideration of all the materials available in the case record, I am of the opinion that in lieu of back wages a lump sum amount of Rs.30,000 will meet the ends of justice in this case. Hence both the issues are answered accordingly.

10. Hence Ordered :

That the termination of services of Shri Rabindra Kumar Bhoi, Ex-Security Personnel with effect from 21-9-2005 on the ground of voluntary abandonment of employment by the management M/s. Mayfair Lagoon, an unit of Mayfair Hotel & Resorts Ltd., Bhubaneswar is illegal and unjustified. The workman Shri Bhoi is entitled to be reinstated in service with a lump sum amount of Rs. 30,000 (Rupees thirty thousand) only in lieu of back wages. The management is directed to implement this award within a period of one month from the date of its publication in the official Gazette failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
28-2-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
28-2-2011
Presiding Officer
Labour Court
Bhubaneswar

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