

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 882 CUTTACK, MONDAY, APRIL 11, 2011/CHAITRA 21, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd April 2011

No. 3502—li-1(B)-105/2002-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th January 2011 in Industrial Dispute Case No. 11/2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Prachi Resorts Ltd., Khandagiri, Bhubaneswar and their Workmen Shri Bijay Kumar Ghadei and Shri P. K. Jena was referred to for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 11 OF 2003

Dated the 25th January 2011

Present :

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

Between :

The Management of
M/s. Prachi Resorts Ltd.,
Khandagiri,
Bhubaneswar.

.. First Party—Management

And

Their Workmen
Shri Bijay Kumar Ghadei
and P. K. Jena.

.. Second Party—Workmen

Appearances :

S. T. Ullaha	. . For the First Party—Management
Shri B. C. Bastia, Advocate.	. . For the Second Party—Workmen
Shri A. K. Sahoo, 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 have referred the matter in dispute to this Court vide Order No. 1408-li/1-(B)105/2002-LE., Dt. 14-2-2003 of the Labour & Employment Department, Bhubaneswar for adjudication :—

2. The terms of reference is as follows :

“Whether the termination of services of Shri Bijay Kumar Ghadei, Security Guard and Shri Prasanta Kumar Jena, Security Guard with effect from 1-8-2001 by the management of M/s. Prachi Resorts Ltd., Khandagiri, Bhubaneswar is legal and/or justified ? If not, to what relief they are entitled ?”

3. The case of the workmen in brief is that they were working as Security Guards under the management since April, 1993 and April, 1996 respectively. The management is engaging in hotel business and supply of foods and accordingly the workmen were the workmen and the establishment of the management is an industry under the Industrial Disputes Act. Though the workman were appointed in the year 1993 and 1996 respectively, they were issued with the appointment letters much after only to deprive them from their legitimate dues. During their duty hour when they detected some illegal actions of their superiors, they were targeted by their superiors who bore grudge against them. To fulfil their above end the management called for an explanation from the workmen on 16-7-2001 alleging 8 pieces of wooden planks to have been shifted and kept hidden inside the pump house under lock on 12-7-2001 by the workmen which were brought to the hotel on 10-7-2001 by the Centering Contractor. The workmen submitted their explanation denying their involvement to the allegations. The enquiry was conducted arbitrarily without affording reasonable opportunities to the workmen. They were also not allowed to cross-examine or to adduce evidence and the copy of the enquiry report was not supplied. Basing on such illegal and arbitrary enquiry, the management terminated their service with effect from 1-8-2001. The workmen were not on duty when the alleged detection was made and further one key of locked pump house was already remained with the Resort in-charge of the management. There was also a gap to insert the wooden plank into the pump house without opening the lock. So in this background, the workmen have

raised an industrial dispute before the labour authority and when the conciliation failed, the matter was referred to the Government and this reference has been received and this I.D. case has been initiated wherein the workmen have prayed for their reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to the management, the dismissal of the Security Guards for committing theft are fully justified and proportionate as the management lost confidence in them. Some construction was going on in the establishment of the management and the Contractor Shri R. K. Sahoo had brought about 8 wooden planks for centering work and he kept the same in the hotel premises. On 12-7-2001 he reported to the management that the same were missing, for which a search was made for the same and it was found that the same were kept hidden in the pump house of the hotel of the management. The keys of the pump house were always kept in the custody of the Security Guards. The contractor had brought the planks on 10-7-2001 at midnight for work in the morning. At that time, the workman Shri P.K. Jena was the Security Guard was on duty. On 11th morning Shri Jena was on duty and the workman Shri B. K. Ghadei was in the after-noon duty. Further enquiry revealed that the removal of the planks from the working place to the pump house was the handiwork of both the workmen. So on 16-7-2001 charge-sheet were issued against them. They received the same and they submitted their written explanation to the management which was found not to be satisfactory for which the management decided to hold a domestic enquiry and Shri S. Satyanarain was appointed as Enquiry Officer to hold the enquiry and they were directed to appear for the enquiry before the Enquiry Officer on 23-1-2001. Accordingly the workmen appeared in the enquiry on 23-1-2001. The enquiry was conducted in their presence and was completed on the same day. The Enquiry Officer submitted his enquiry report to the management on 24-1-2001. Basing on the said report when the workman were found guilty of the charges framed against them, the management issued a letter to them for personal hearing on 26-7-2001 and after the personal hearing when the management found that they were guilty of serious misconduct, they were dismissed from service and their dues were finally settled and paid accordingly. So in this background the management has prayed for answering 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 Bijaya Kumar Ghadei, Security Guard and Shri Prasanta Kumar Jena, Security Guard, with effect from 1-8-2001 by the Management of M/s. Prachi Resorts Ltd., Khandagiri, Bhubaneswar is legal and/or justified ?
- (ii) If not, to what relief they are entitled ?

6. In order to substantiate their plea, the workman Shri Bijaya Kumar Ghadei has examined as W.W.1 and prove documents marked as Exts.1 to 13. The management has not adduced any evidence on its behalf either oral or documentary.

FINDINGS

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

It is admitted by both the sides that a domestic enquiry was held in this case and thereafter when both the workmen were found guilty about the charges levelled against them regarding theft of wooden planks, the management dismissed them from service on the ground that the management has lost confidence on them. Before deciding the above two issues, the fairness of the domestic enquiry should be decided first though specific issue has not been framed about it and both the sides have knowledge about it. So before proceeding to other issues, I will first see whether the domestic enquiry conducted against both the workmen by the management was fair and proper. W.W.1 deposes that he and other workman namely, Prasanta Kumar Jena were working under the management as Security Guard and the said fact has also been admitted by the management. They were working under the management from the date of their appointment till the date of termination continuously. The xerox copies of their appointment letters have been duly marked as Exts.1 and 3. Ext.2 is the xerox copy an experience certificate. The management called for an explanation vide letter Dt. 16-7-2001 alleging that 8 pieces of wooden planks which were brought to the Hotel on 10-7-2001 by the Centering Contractor found to have been shifted and kept hidden inside the pump house under lock on 12-7-2001. The xerox copies of such explanations were duly marked as Exts. 4 and 5. Both the workmen have submitted their explanations denying their involvement to the allegation but the management in order to satisfy their anger conducted an enquiry in a very perfunctory manner which was just an eye wash. Exts. 6 and 7 are the xerox copies of the explanations submitted by the workmen. The enquiry was conducted in an arbitrary and cavalier fashion without affording reasonable opportunities to the workmen and in utter violation of the principles of natural justice. The enquiry procedure was not followed. The workmen were not allowed to cross-examine the management witnesses and to adduce evidence. Further more the copy of the enquiry report was not supplied to them. Basing on such illegal enquiry report, the management terminated their services with effect from 1-8-2001. Exts.8 and 9 are the xerox copies of intimation to the workmen regarding appointment of Enquiry Officer and conducting of enquiry. Exts. 10 and 11 are the xerox copies of the notices to the workmen regarding their personal hearing before the management. Exts.12 and 13 are the xerox copies of the dismissal orders. As mentioned earlier, the management has not proved any document on its behalf to show that the enquiry was fair and proper. No witness was examined by the management also. The main allegation of the workmen is that they were not given sufficient opportunities regarding cross-examining the management witnesses and to adduce evidence on their behalf. There is no material on record as to who were the witnesses into such enquiry. The enquiry proceeding has not been filed. The workmen have also taken the plea that the copy of the enquiry was not supplied to them. To counter it, there is no material on record. On the other hand, though the W.W.1 has been cross-examined by the management at length nothing has been elicited from his mouth to dis-believe the sworn testimony of the workman. So in this background, in absence of sufficient material in favour of the management regarding enquiry, it cannot be said that the enquiry was fair and proper. Hence, I came to the finding that the domestic enquiry conducted by the management against both the workmen was not fair and proper.

8. The management has not adduced any evidence to prove the charges levelled against the workmen. While dismissing/terminating the services of both the workmen the mandatory provisions of Section 25-F of the Industrial Disputes Act has not been followed by the management. So in this background, on careful consideration of all the materials available in the case record as discussed above I came to the finding that the termination of service of both the workmen with effect from 1-8-2001 by the management is neither legal nor justified. Both the workmen are entitled to be reinstated in service.

9. Regarding back wages, according to the 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 in view of 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. 50,000 to each workman as compensation will meet the ends of justice in this case.

10. Hence ordered :

That the termination of services of Shri Bijay Kumar Ghadei, Security Guard and Shri Prasanta Kumar Jena, Security Guard with effect from 1-8-2001 by the management of M/s. Prachi Resorts Ltd., Khandagiri, Bhubaneswar is illegal and unjustified. Both the workmen Shri Ghadei and Shri Jena are entitled to be reinstated in service with a lump sum amount of Rs. 50,000 (Rupees fifty thousand) only to each workman as compensation 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 & corrected by me.

S. K. DASH
25-1-2011
Presiding Officer
Labour Court
Bhubaneswar.

S. K. DASH
25-1-2011
Presiding Officer
Labour Court
Bhubaneswar.

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