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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 14th May 2012

No. 3771—li/1(B)80/2005(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th January 2012 in I. D. Case No.46 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Nilachal Lodge, Puri and its Workman Shri Tarunaditya Mishra, House keeping Supervisor was referred to for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 46 OF 2005

Dated the 7th January 2012

*Present :*

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

*Between :*

The Management of M/s Nilachal Lodge, Puri	..	First Party—Management
And		
Its Workman, Shri Tarunaditya Mishra	..	Second Party—Workman

*Appearances :*

Shri S.K. Sahoo	..	For the First Party—Management
Shri T. Mishra	..	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. 8780 –li/1(B)-80/2005 LE., dated the 20th October 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows:

“ Whether the action of the employer of M/s Nilachal Lodge, Puri in terminating the service of Shri Tarunaditya Mishra, House keeping Supervisor with effect from the 22nd July 2001 is legal or justified ? If not, to what relief is Shri Mishra entitled ? ”

3. The case of the workman, in brief, as set out in his statement of claim is that he was initially engaged as House keeper under the management in the year 1998 and due to his satisfactory work, the management has given the charge of House keeping Supervisor in the month of September, 2000 and was getting Rs. 1,500 per month towards his wages. On the 22nd July 2001 the workman requested the management to enhance his monthly wages but the management instead of considering his request, terminated his service with effect from the 22nd July 2001 without serving any prior notice or notice pay in lieu thereof and retrenchment compensation as provided under Section 25-F of the Industrial Disputes Act, 1947. According to the workman, the management has also not paid his wages for the month of July, 2001. Therefore, the action of the management in terminating his service is neither legal nor justified and has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement denying the plea of the workman. According to the management, the workman was never an employee or engaged by the management as a House keeper or House keeping Supervisor at any point of time. Therefore, the question of disengagement or termination from service by the management does not arise at all. On the other hand, according to the management, the workman was working as Sales Representative and was coming to the establishment of the management at regular intervals in order to supply of sanitation materials as and when required by the management. Thereafter, the workman tried to sale duplicate products for which the management stopped purchasing the products from the workman. So the workman became angry and raised a false dispute against the management. So in this backgrounds, the management has prayed that the workman is not entitled to get any relief as prayed for.

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

#### ISSUES

- (i) “Whether the action of the employer of M/s Nilachal Lodge, Puri in terminating the service of Shri Tarunaditya Mishra, House keeping Supervisor with effect from the 22nd July 2001 is legal or justified ?
- (ii) If not, to what relief is Shri Mishra entitled ?”

6. In order to substantiate its plea, the management has examined its Manager as M.W. 1 and proved the copies of muster roll from April, 2001 to August, 2001, copies of wage register from April, 2001 to August, 2001, copy of return of contribution to E.S.I. Corporation, copy of extract of register of employees maintained under the E.S.I. (General) Regulation, 1950 for the period from April, 2001 to September, 2001, copies of challans from April, 2001 to August, 2001 submitted under E.P.F. Act and copy of annual statement of contribution under E.P.F. Act for the period from April, 2001 to March, 2002 under the cover of Exts. A to F respectively. On the other hand, though the workman has raised the present dispute and filed his statement of claim, but did not adduce any evidence in support of his case.

## FINDINGS

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

Before going to discuss the evidence of M.W. 1 in detail, it is pertinent to mention here that though the workman has categorically pleaded in his statement of claim that he was initially engaged as House keeper with effect from 1998 and became House keeping Supervisor with effect from September, 2000 and due to request for enhancement of his monthly pay, the management had illegally terminated his service with effect from the 22nd July 2001 but he has miserably failed to establish that he has ever working under the management. So also, he has not filed a single piece of paper to prove the above facts. On the other hand, the affidavit evidence of M.W. 1 and documents filed by him clearly reveals that the workman had never engaged by the management. So when the workman has totally failed to establish that there was any relation of master and servant between the management and him, the question of compliance of mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 does not arise.

8. So in view of the above discussion and on perusal of the documents filed by the management, it clearly shows that the workman was never an employee under the management and thus, he is not entitled to get any relief in this case.

9. Hence it is Ordered :

That, when the workman was never an employee under the management, the question of any action of the employer of M/s Nilachal Lodge, Puri in terminating the service of the workman Shri Tarunaditya Mishra, House keeping Supervisor with effect from the 22nd July 2001 does not arise. So the workman Shri Mishra is not entitled to get any relief from the management in this case.

The reference is answered accordingly.

Dictated and corrected by me.

S.A.K.Z. AHAMED  
07-01-2012

Presiding Officer, Labour Court  
Bhubaneswar.

S. A. K. Z. AHAMED  
07-01-2012

Presiding Officer, Labour Court  
Bhubaneswar.

By order of the Governor  
M.R. CHOUDHURY  
Under-Secretary to Government