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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 23rd May 2012

No. 4056—li/1-(BH-I)-3/2007(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th October 2011 in Industrial Dispute Case No. 1 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Anandamayee Hotel (P) Ltd., At/P.O. Chandipur, Dist. Balasore and its Workman Shri Sadhan Ch. Pradhan was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 1 OF 2008

Dated the 18th October 2011

Present :

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

Between :

The Management of
Anandamayee Hotel (P) Ltd.,
At/P.O. Chandipur, Dist. Balasore. . . First-party—Management

And

Their Workman
Shri Sadhan Ch. Pradhan . . . Second-party—Workman

Appearances :

None . . . For the First-party—Management

Shri S. Ch. Pradhan . . . 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. 7151—li/1(BH-I)-3/2007-LE., dated the 1st June 2007 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the termination of Shri Sadhan Ch. Pradhan, Room Attendant from services with effect from the 1st May 2006 by way of refusal of employment by the Managing Director, M/s Anandamayee Hotel (P) Ltd., At/P.O. Chandipur, District Balasore having Corporate Office at 47/4, Becharam Chatterjee Road, Behala, Kolkata-700 034 is legal and/or justified ? If not, what benefit Shri Pradhan is entitled to get ?"

3. The case of the workman, in brief, as set out in his statement of claim is that he was appointed as Waiter by the management on 8-1-2002. At the time of appointment, his salary was fixed at Rs. 1,800 per month. Subsequently, his pay was enhanced to Rs. 2,200 per month. During the tenure of his employment, the workman was discharging various duties as Waiter and other duties sincerely and satisfactorily as and when assigned to him by the management. He was covered under the Provident Fund Scheme. The workman availed leave from 17-4-2006 to 29-4-2006 for illness of his wife and when the workman reported for his duty on 30-4-2006, the management did not allow him to join in his duty and verbally told the workman that his service is no more required and thereby terminated his service by way of refusal of employment. At the time of termination, the workman has neither served any prior notice or notice pay in lieu of one month notice and any compensation as required under Section 25-F of the Industrial Disputes Act, 1947. The workman has stated that preceding the date of his termination by way of refusal of employment, the workman has worked for more than 240 days of continuous service. It is further stated that the workman was neither charge-sheeted for any misconduct nor any domestic enquiry was conducted against him by the management. The workman has further stated that after his termination, the management has retained some juniors to the workman in service and also appointed some outsiders. On these averments, the workman has prayed for his reinstatement in service with full back wages and service continuity so also consequential service benefits.

4. The management was set *ex parte*

5. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved documents, such as, xerox copy of E.P.F. slip for the year 2001-2002 and the xerox copy of letter, Dt. 28-4-2006 under the cover of Exts. 1 and 2, respectively.

6. The workman in his affidavit evidence has corroborated the facts as stated in his statement of claim. Since the management has been set *ex parte* and the evidence both oral and documentary tendered by the workman have remained unchallenged, I have no option but to answer in affirmative.

7. It is stated by the workman that no one month prior notice was served on him before he was terminated. Also no notice pay and retrenchment compensation was paid to him before refusal of employment by the management. Thus the management has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and precondition one. In the result, in my opinion, the workman is entitled to be reinstated in service.

8. Regarding back wages, admittedly when the workman has 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 full back wages is not justified. However, on the facts and circumstances of this case as discussed above, I am of the view that instead of granting full back wages, 50% back wages will meet the ends of justice.

9. Hence, ordered :

That the termination of Shri Sadhan Ch. Pradhan , Room Attendant from services with effect from the 1st May 2006 by way of refusal of employment by the Managing Director, M/s Anadamayee Hotel (P) Ltd., At/P.O. Chandipur, Dist. Balasore having Corporate Office at 47/4, Becharam Chatterjee Road, Behala, Kolkata-700 034 is neither legal nor justified. The workman Shri Pradhan is entitled to be reinstated in service with 50% 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 *ex parte*.

Dictated and corrected by me.

S. A. K. Z. AHAMED
18-10-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
18-10-2011
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By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government

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