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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 17th November 2012

No. 9441—IR(ID)-132/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th August 2012 in Industrial Dispute Case No. 97 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Hotel Surya Kiran, At/P.O. Cantonment Road, Cuttack and its Workmen Shri Chittaranjan Das and 09 (nine) others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 97 OF 2010

Dated the 14th August 2012

Present :

Shri Raghubir Dash, o.s.J.s. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of Hotel Surya Kiran, . . . First Party—Management
At/P.O. Cantonment Road, Cuttack.

And

- (1) Chittaranjan Das, S/o Rajkishore Das, . . . Second Party—Workmen
Village Denga, P.O. Piteipur, Dist. Jagatsinghpur.
- (2) Dakshya Kumar Jena, S/o Bhikari Ch. Jena,
Village/P.O. Uttangara, Dist. Jajpur.
- (3) M. D. Hassan, S/o Gaffer Mohammed,
Village Manapur, P.O. Gadama, Dist. Cuttack.

- (4) Gadadhar Samal, S/o Batakrushna Samal,
Village/P.O. Dhanipur, Dist. Jajpur.
- (5) Bishnu Upadhaya, S/o Rabindra Upadhaya,
Village Chancho, P.O. Nakhar, Dist. Cuttack.
- (6) Pramod Kumar Swain, S/o Late Bholeswar Swain,
Village Ankurda, P.O. Gandia Patna, Dist. Dhenkanal.
- (7) Gufran Khan, S/o Late Pannaulla Khan,
Village Khanpur, P.O. Rasulpur, Dist. Puri.
- (8) Abdul Mustak Khan *alias* Musta Khan, S/o Abdul Rajak Khan,
Village Gahar Nagar, P.O. Charinagal, Dist. Jajpur.
- (9) Md. Idris, S/o Late Buland Akhtar,
Village Khajuria, P.O. Samang, Dist. Jagatsinghpur.
- (10) Jasimudin Khan, S/o Kina Khan,
Village Gahar Nagar, P.O. Charinagal, Dist. Jajpur.

Appearances :

For the First Party—Management	..	None
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For the Second Party—Workmen	..	Shri T. Lenka and S. N. Biswal, Authorised Representatives.

AWARD

The Government of Odisha in their Labour & ESI Department, exercising power conferred upon them by Section 12(5), read with Section 10(1)(d) of the Industrial Disputes Act, 1947, (for short, the Act) have referred the following dispute to this Tribunal for adjudication vide their Order No. 10648—ID-132/2010-LE., Dt. 20-12-2010 :—

“Whether the action of closure of the management of M/s. Hotel Surya Kiran, At Cantonment Road, Dist. Cuttack with effect from the 1st January 2010 is legal and/or justified ? If not, what are the benefits Shri Chittaranjan Das, Md. Hassan, Abdul Mustak Khan, D. K. Jena, Gadadhar Samal, Bishnu Upadhay, Gufran Khan, Md. Idris, Pramod Kumar Swain and Jasimuddin Khan are entitled to ?”

2. According to the disputant workmen, they were all working in Hotel Surya Kiran, Cantonment Road, Cuttack (First Party Management) with effect from different dates, each completing more than one year of continuous service. They were also covered under the E. P. F. and E. S. I. Schemes as employees working under the First Party. In course of their employment, they had severally requested the Management to increase their wages and improve other service conditions but to no effect. So, on the 16th November 2009, they raised a dispute before the District Labour Officer, Cuttack for which the Management bore grudge and with effect from the 1st January 2010, it refused employment to the disputant workmen taking the plea that the Hotel had been closed. According to the Second Party, the closure of the Hotel is illegal inasmuch as no closure notice was served nor notice pay and compensation paid to the disputant workmen. Therefore, they claim for reinstatement with back wages.

3. The First Party Management has failed to appear before this Tribunal despite of due service of notice. So, it has been set *ex parte*.

4. One of the disputant workmen is examined as W. W. No. 1 and documents have been marked from Exts. 1 to 2/6.

5. In terms of the reference, it is to be decided as to whether the closure of the Undertaking with effect from the 1st January 2010 is legal and/or justified.

6. The disputant workmen in their claim statement have not pleaded as to how the closure of the Undertaking is illegal. Though it is pleaded that the Management refused employment to the disputant workmen without any valid reason, at the same time, it is admitted in the claim statement that the Management has closed down the Undertaking. Though it is claimed that the closure is illegal, no reason is assigned in support of that plea. It is claimed that no written notice with regard to the intended closure was served. Therefore, there may be a presumption that the Second Party alleges non-compliance of Section 25-FFA of the Act which, *inter alia*, lays down that an employer who intends to close down an Undertaking shall serve, at least 60 days before the date on which the intended closure is to become effective, a notice in the prescribed manner on the appropriate Government. But, it is not pleaded as to whether fifty or more workmen were employed in the Undertaking. If the number of workmen is less than fifty, then the requirements of Section 25-FFA of the Act will not apply to the First Party. Though W. W. No. 1 has adduced evidence, his affidavit evidence is almost a reproduction of the averment made in the claim statement. Thus, there is also no evidence disclosing the grounds on which the closure can be said to be illegal or unjustified. In absence of materials, it cannot be said that the action of the Management by closing down the Undertaking is either illegal or unjust.

In this case, the disputant workmen do not allege that the Management after denying employment to them on the ground of closure of its business has employed any other workmen in their place and is running the Hotel as usual. Therefore, it cannot be said that the closure is only a ruse or pretence in Workmen of Straw Board Manufacturing Co. Ltd. Vrs. M/s. Straw Board Manufacturing Co. Ltd., AIR 1974(SC) 1132, their Lordships have observed that the workmen cannot question the motive of the closure once the closure has taken place in fact. The matter may be different, if under the guise of closure the establishment is being carried on in some shape or form or at a different place and the closure is only a ruse or pretence. No employer can be compelled to carry on his business, if he chooses to close it in truth and reality for reasons of his own. Therefore, the disputant workmen are not entitled to any relief that they should have been awarded, if it were a case of illegal or unjustified closure.

7. The disputant workmen claim that the Management has not paid notice pay and compensation to any of them. Under Section 25-FFF of the Act, Compensation is to be paid to the workmen in case of closing down of an Undertaking. Every workman who has completed one year of continuous service in the concerned Undertaking immediately before its closure is entitled to notice pay and compensation in accordance with the provisions of Section 25-F of the Act. The Management has not appeared to deny the Workmen's allegation that notice pay and compensation was not paid to them. Therefore, W.W. 1's evidence is to be accepted and it is to be held that the Management has not complied with the provisions contained in sub-section (1) of Section 25-FFF of the Act. But, that is not a ground to hold the closure either illegal or unjustified. All that, the disputant workmen can claim is an amount equivalent to notice pay and retrenchment compensation that they would have been entitled to get, had it been a case of retrenchment.

8. In the facts and circumstances, this Tribunal cannot grant the relief the disputant workmen have claimed, i.e. the relief of reinstatement with back wages. However, this Tribunal can grant the relief of payment of notice pay and retrenchment compensation. In the Straw Board

Manufacturing's case (*supra*) their Lordships have observed that there is no legal bar to refer to the Tribunal to determine the compensation of closure of an Undertaking. It is further observed that the scheme of Section 25-FFF does not necessarily indicate that a claim under the said Section can be made only under Section 33-C of the Act and that the Industrial Tribunal, in a reference, has no jurisdiction to grant appropriate relief in that behalf.

In view of such observation of the Hon'ble Supreme Court, this Tribunal is of the considered view that it can grant the relief of payment of notice pay and compensation in terms of sub-section (1) of Section 25-FFF, read with Section 25-F of the Act.

The reference is answered accordingly. The Management to pay to the disputant workmen notice pay and compensation in terms of sub-section (1) of Section 25-FFF, read with Section 25-F of the Act within a period of two months of the date of publication of the Award in the Official Gazette.

Dictated & corrected by me.

RAGHUBIR DASH
14-08-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
14-08-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
J. DALANAYAK
Under-Secretary to Government