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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 4th December 2012

No. 9981—li/1(B)-10/2009-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st September 2012 in Industrial Dispute Case No. 10 of 2009 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Hotel Trident, Bhubaneswar and their Workman Sk. Akram Ali was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 10 OF 2009

Dated the 21st September 2012

Present :

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

Between :

The Management of . . . First Party—Management
M/s Hotel Trident,
Bhubaneswar.

And

Their Workman . . . Second Party—Workman
Sk. Akram Ali

Appearances :

Shri J. Parhi, Sr. Manager (MR) . . . For the First Party—Management

Sk. Akram Ali . . . For the Second Party—Workman himself

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them 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 following dispute to this Court for adjudication vide Order No. 3639—li/1(B)-10/2009-LE., dated the 15th April 2009 :—

“Whether the action of the management of M/s Hotel Trident, Bhubaneswar in terminating the services of Sk. Akram Ali, ex Cook with effect from the 28th February 2007 is legal and/or justified ? If not, to what relief he is entitled ?”

2. The case of the workman, in brief, as set out in his statement of claim is that he was appointed vide letter, Dt. 1-12-1986 on a total emolument of Rs. 995 per month and subsequently vide letter, Dt. 31-5-1987 he was confirmed in service. While working as such, the workman received a memo Dt. 21-11-2005 from the management calling upon him to explain the allegations levelled against him and on receipt of the memo, the workman on the said date submitted his explanation. On 9-1-2006 the workman received a charge sheet alleging Act of misconduct on 24-12-2005, 7-1-2006 and 21-11-2005 and simultaneously he was placed under suspension with immediate effect pending finalisation of the disciplinary action against him. On receipt of the charge sheet the workman on 10-1-2006 sought for certain documents/statements of the persons as per charge sheet, but the management did not supply the said documents. Thereafter the management in its letter, Dt. 28-2-2006 informed that Mr. Bijay Das Mohapatra a retired O.A.S. Officer appointed as Enquiry Officer and Mr. Jashobanta Parhi Manager M.R, was nominated as presenting Officer. During the enquiry the workman requested for assistance of one of the Union representative or to engage an advocate on his behalf in the domestic enquiry, but the same request was also refused by the management. Thereafter the enquiry was completed in absence of the workman. According to the workman, the domestic enquiry has been conducted unilaterally against the workman violating the principles of natural justice without affording reasonable opportunities of hearing and enquiry report is based on no enquiry. So according to the workman, the domestic enquiry was not conducted in a fair and proper manner and prayed for reinstatement in service with full back wages and other service benefits.

3. On the other-hand, the management appeared and filed written statement stating that the workman joined as a Trainee in Kitchen Department of the management from 18-11-2005 and after completion of training he was taken to the regular roll as commis-li with effect from the 1st December 1986. The entire service period of the workman was full of blemishes including habitual unauthorised absence disobedience of orders and other misconducts in employment. During employment of the workman, it was found to have indulged in recurring indiscipline activities of 21-11-2005, 24-12-2005 and 7-1-2006 for which he was issued with a charge sheet-cum-suspension order on 9-1-2006. But the workman did not give any reply to the said charge sheet. So, it was decided to conduct a fact finding enquiry for which an Enquiry Officer was appointed with due communication to the workman. The Enquiry Officer conducted the enquiry with reasonable opportunities being giving to the workman for participating in the enquiry. The principles of natural justice and fair play

were duly given to the workman during the enquiry but the workman did not avail the above opportunities and abandoned the proceedings and did not participate in the enquiry. In such view of the matter, the Enquiry Officer had no other alternative than to complete the enquiry in absence of the workman, Thereafter, the Enquiry Officer submitted his report wherein the charges levelled against the workman were proved. On receipt of the enquiry report, the management supplied a copy of enquiry report to the workman and gave an opportunity to show cause vide notice Dt. 18-7-2006. Besides the above, personal hearing was afforded to the workman on 18-9-2006 and 14-10-2006 but no satisfactory explanation was submitted by him against the proposed punishment. Ultimately the management imposed punishment of dismissal from service. On these averments, the management has prayed that the reference should be answered in favour of the management.

4. In view of the above pleadings of the parties, the following issues are settled:—

ISSUES

- (i) “Whether the domestic enquiry conducted by the management against the workman was fair and proper ?
- (ii) Whether the action of the management in terminating the services of the workman with effect from the 28th February 2007 is legal and/or justified ?
- (iii) If not, to what relief he is entitled ?”

5. In order to substantiate their plea, the management has examined two witnesses altogether out of whom M.W.1 is the Enquiry Officer and M.W.2 is the Senior Manager (MR) of the management and proved the documents under the cover of Exts.A to M. On the other hand, the workman examined more on its behalf.

FINDINGS

6. *Issue No.(i)*—It is worthless to mention here that this Court vide Order No.28, Dt. 8-5-2012 passed necessary orders on the question of fairness of administrative action dealing with the issue “whether the enquiry is fair and proper” and the same has not violated the principles of natural justice has already been decided in favour of the management.

7. *Issue Nos.(ii) and (iii)*—In view of the Issue No.(i), now the point for determination is to whether the termination of employment of the workman by the management with effect from the 28th February 2007 is legal and/or justified and if not to what relief.

On the above issues, the workman has not come forward and stated nothing regarding the disproportionate of punishment. On the other hand, the management has deposed and urged that the termination of the workman from service by the management is legal and justified because the workman was punished as per the provisions of Certified Standing Orders. So, in view of the above

unchallenged testimony and submission, I am of the opinion that the action of the management in terminating the services of the workman with effect from the 28th February 2007 is legal and justified and the workman is not entitled to get any relief as prayed for. Hence both the issues are answered accordingly.

8. Hence Ordered :

That the action of the management of M/s Hotel Trident, Bhubaneswar in terminating the Services of Sk. Akram Ali, ex Cook with effect from the 28th February 2007 is legal and justified and the workman Ali is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K.Z. AHAMED
21-9-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED
21-9-2012
Presiding Officer
Labour Court, Bhubaneswar

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