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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 6th March 2013

No. 2306—li-1 (B)-14/2005-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th February 2013 in I. D. Case No. 84 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of (1) M/s The Garden Inn, (A unit of United Hotels and Properties Pvt. Ltd.) Bhubaneswar, (2) Hotel Hindustan International, Bhubaneswar and their workman Shri Damodar Maharana was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 84 OF 2005

Dated the 16th February 2013

Present :

S. A. K. Z. Ahamed, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

- (1) M/s The Garden Inn, .. First Party—Management No. 1
(a Unit of United Hotels and
Properties Pvt. Ltd.),
Bhubaneswar.
- (2) Hotel Hindustan International, .. First Party—Management No. 2
Bhubaneswar.

And

Shri Damodar Maharana, .. Second Party—Workman
At Baraput, P.O. Pathanpada,
Via Banki, Dist. Cuttack.

Appearances :

None	..	For the First Party—Management No. 1
Shri Subrat Mishra, Advocate	..	For the First Party—Management No. 2
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Shri Susant Dash, Advocate	..	For the Second Party—Workman

AWARD

The Government of Odisha in the Labour & E.S.I. 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. 10182— li-1 (B)-14/2005-LE., dated the 26th November 2005 :—

“Whether the action of the management of M/s The Garden Inn, a unit of United Hotels and Properties Pvt. Ltd., Bhubaneswar, Unit-III, Bhubaneswar in terminating the services of Shri Damodar Maharana, ex-Waiter with effect from 5th February 2003 is legal and/or justified ? If not, to what relief Shri Maharana is entitled ?”

2. The case of the second party as depicted in his claim statement, in short, is that he joined under the first party i.e. M/s Garden Inn, (a unit of M/s United Hotels and Properties Pvt. Ltd.) as a Steward in its Bar in the year 1995 and discharged his duty satisfactorily till 3-2-2003. It is averred that on 3-2-2003 on a complaint being lodged by a Guest before the Kharavelanagar Police Station that his Cell Phone was stolen away from the Hotel he had been to the Police Station but after being satisfied that he was in no way involved in that missing of Cell Phone of the Guest he was let off by the Police. It is further pleaded that on the next day i.e. on 4-2-2003 the management wanted from the workman a written report admitting his involvement in the theft of the Cell Phone and on his denial to comply the same he was not allowed to perform his duty on and from 5-2-2003. Subsequently on 13-2-2003 the management issued him an inter-office Memo to which the workman replied. According to the workman the action of the management in refusing him employment with effect from the 5-2-2003 amounts to retrenchment within the meaning of the provisions of the Industrial Disputes Act and the same having been effected without compliance of the provisions of Section 25-F of the I. D. Act, he is entitled to reinstatement in service with all back wages.

3. During pendency of this reference on 1-10-2006 the management entered into an Agreement (Lease Agreement) with M/s Hotel Hindustan International, Bhubaneswar, (a unit of S.P Jaiswal Estates Pvt. Ltd.) and leased out the Hotel as per the terms and conditions embodied in the Lease Agreement. Accordingly, on a petition being filed by the workman M/s Hotel Hindustan International was impleaded as first party No. 2 vide Order, dated 4th August 2011. In view of the above, the first party No. 2 entered contest and filed its written statement in the case. It may be stated here that the order of reference, dated the 26th November 2005 indicates that a copy of the reference was sent to the Chief General Manager of first party No. 1 and so also prior to it had sent its written views to the Conciliating Authority vide letter, dated the 10th September 2003 (which is evident from the copy of the conciliation failure report attached to the order of reference). But, despite that the first party No. 1 did not chose either to file written statement or to contest the case.

In connection with the dispute, the first party No. 2 took the stand in its written statement that the reference is not maintainable as against the first party No. 2. It is averred in the written statement that at the time of taking over the Hotel on lease basis from first party No. 1 the first party No. 2 was not informed about the pendency of the case, inasmuch as, the first party No. 2 has not taken any liability of pending dispute of any employee of the first party No. 1 as on the date of execution of the Lease Agreement. Referring to Clause No. 4.1 of the Lease Agreement, it is stated in the written statement that all liabilities and expenses of the Hotel preceding the effective date of the Lease Agreement shall be borne by the first party No. 1 and hence the first party No. 2 is in no way liable for employment or non-employment of the second party. On the background narrated above, the first party No. 2 has prayed to answer the reference in the negative.

4. On the basis of the averments made in the claim statement as well as the written statement, the following issues have been settled :—

ISSUES

- (i) “Whether the management of Hotel Hindustan International is the successor-in-interest of the erstwhile management of Hotel Garden Inn, Bhubaneswar on the strength of execution of agreement ?
- (ii) Whether the action of the management of M/s The Garden Inn, a unit of United Hotels and Properties Pvt. Ltd., Bhubaneswar, Unit-III, Bhubaneswar/ Hotel Hindustan International in terminating the services of Shri Damodar Maharana, ex-Waiter with effect from the 5th February 2003 is legal and/or justified ?
- (iii) If not, to what relief Shri Maharana is entitled ?”

5. The workman and the first party No. 2 have adduced both oral as well as documentary evidence in support of their respective stand. The workman while examined himself as W.W. No. 1 and relied on documents marked Exts. 1 to 5, the first party No. 2 in its turn has examined its Manager (HR & Administration) as M.W. No. 1 and got marked the Lease Agreement, Ext. A.

FINDINGS

6. *Issue No. (ii)*—Admittedly, the workman was working under the first party No. 1 i.e., M/s Garden Inn, which was a unit of M/s United Hotels and Properties Pvt. Ltd. It is in the evidence of W.W. No. 1 that he was continuously working under the first party No. 1 with effect from the 7th June 1995 till 5-2-2003 when he was refused employment and his last drawn monthly wages was Rs. 1,795. Stating about the cause of his refusal of employment, W.W. No. 1 deposed that on 3-2-2003 a Guest of the Hotel namely Ashok Agarwal lodged a report in Kharavelanagar Police Station regarding missing of his Cell Phone and in that connection though the Police called him to the Police Station but later on let him off finding his innocence. He stated that the first party No. 1, however insisted the workman to file a written Memo pleading guilty in the matter and on his refusal to comply such instruction it did not allow him to enter into the Hotel premises and consequently he was prevented from resuming his duty. W. W. No. 1 has filed and proved the Inter-office Memo., dated the 5th February 2003 (Ext. 3) issued in his favour. It transpires therefrom that with regard to

the aforesaid complaint of the Guest the workman was asked to show-cause by 48 hours as to why disciplinary action would not be taken against him. Ext. 4 is a letter of the management alleging refusal of Ext. 3 when tendered to the workman and further intimating him that such refusal also tantamounts to a misconduct. He deposed that although he submitted an explanation in the matter on 13-2-2003, yet the first party neither called him to resume duty nor conducted any enquiry into the matter. Although the first party No. 1 did not chose to appear before this Court nor did it file written statement, but the conciliation failure report attached to the order of reference indicates that during conciliation of the matter the first party No. 1 had sent its views upon the complaint made by the workman. There the first party No. 1 admitting about the report made by one of its guests regarding missing of his Cell Phone and in that connection the workman was called to the Police Station had taken the stand that by refusing to receive an inter-office Memo., dated the 5th February 2003 the workman absented himself from duty and subsequently on 15-2-2003 he came to the Hotel and abused the officials of the Management and thereafter left the place and remained absent unauthorisedly. It was further intimated to the Conciliation Officer that infact there was no refusal of employment, as alleged by the workman.

It is thus clear from the testimony of W.W. No. 1 as well as from the materials available on record that though the first party No. 1 has taken the plea of unauthorised absence of the workman but for that matter neither any show-cause nor any enquiry was conducted giving a scope to the workman to explain. Further if at all for the incident of 3-2-2003 the workman disobeyed the lawful instruction of the authority, the first party was not precluded to start a disciplinary proceeding against the workman and proceed against him. A perusal of the conciliation failure report does not indicate that such a course was adopted by the first party. Hence, it is a clear case of termination of service of the second party by way of refusal of employment with effect from the 5th February 2003. In view of his rendering continuous service under the first party No. 1 for more than seven years it was incumbent upon the first party to comply with the provisions of Section 25-F of the I. D. Act before doing away with the services of the workman. The non-compliance of the above provisions by the first party No. 1 while terminating the services of the workman therefore renders its action illegal as well as unjustified.

Issue No. 2 is answered accordingly.

7. *Issue No. (i)*—The first party No. 2 laid much emphasis on this issue and argued that on the face of the Lease Agreement (Ext. A) it has nothing to do with the claim of the second party, inasmuch as, the first party No. 2 feigned its knowledge either about the employment or removal of the second party from service by the first party No. 1. It is argued on its behalf that in view of Clause No. 4.1 of the Lease Agreement the first party No. 2 cannot be held liable for the claim advanced by the second party, it being not the Successor-in-interest of the first party No. 1. True it is that in view of Clause No. 4.1 of the Lease Agreement, Ext. A the past liability shifts to the first party No. 1. But, Clause No. 4.3 of Ext. A discloses that the first party No. 1, even after the Lease Agreement, shall continue to make payment of salaries, wages and other perquisites and emoluments including Bonus to the employees of the Hotel and the first party No. 2 shall be liable and obliged to reimburse first party No. 1 with regard to all such payments. Further, Clause No. 1.3 of Ext. A discloses that on

account of any dispute employees will not have any right of claim from first party No. 2 but they can only claim it from first party No. 1. It is, however, there in the said Clause that the first party No. 2 will be the right to settle the claims of the employees on its account if so desires.

Keeping in view the terms of the Lease Agreement though it cannot be held that the first party No. 2 is the Successor-in-interest of the first party No. 1, but at the same time the other Clauses, referred to above, show that the first party No. 2 owes certain responsibility in the matter of payment of wages and other perquisites to the employees of the erstwhile management and further it has the discretion to settle dispute/claim of such employees, if so desires. Hence it is held that the first party No. 2 though cannot be burdened with the relief to be granted in this reference but in view of stipulations contained in Ext. A it should impress upon the first party No. 1 to resolve the issue concerning the second party because while entering into the Lease Agreement the first party No. 1 did not make it known to the first party No. 2 that such a dispute pertaining to the second party after failure of conciliation is pending adjudication before this Court.

Issue No. 1 is therefore answered with the aforesaid observations.

8. *Issue No. (iii)*—In view of the discussions made on Issue No. 2, the workman is held entitled to reinstatement in service and as held under Issue No. 1 both the first parties to find out the ways and means to get the Award implemented soon it becomes enforceable after publication. As regards back wages, it is not pleaded in the claim statement that since the date of his removal from employment the second party is not gainfully employed elsewhere. That apart, the second party who is an able bodied person is not expected to have remained unemployed during the period. Hence, while disentitling him from any back wages, this Court considers it appropriate to Award him some compensation. Accordingly, a compensation of Rs. 25,000 (Rupees twenty-five thousand) only is awarded in his favour.

Issue No. 3 is answered and the reference is disposed of accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
16-2-2013
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
16-2-2013
Presiding Officer
Labour Court
Bhubaneswar

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