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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 16th October 2014

No. 8087—IR(ID)-44/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th August 2014 in Industrial Dispute Case No. 04 of 2011 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of M/s Hotel Moti Pvt. Ltd., Gandhinagar, Berhampur and their workman Shri Sankarsan Sahu was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 4 OF 2011

Dated the 18th August 2014

Present :

Shri Debasis Rout, o.s.J.s. (Jr. Branch),
Presiding Officer, Labour Court, Jeypore, Koraput.

Between :

The Managing Director, . . . First Party—Management
M/s Hotel Moti Pvt. Ltd., Gandhi Nagar, Main Road,
Berhampur, At/P.O. Berhampur, Dist. Ganjam.

Versus

Its workman . . . Second Party—Workman
Shri Sankarsan Sahu, S/o Late Bhaskar Sahu,
Vill./P.O. Dakhinapur, P. S. Berhampur Sadar,
Dist. Ganjam.
Under Sections 10 & 12 of the Industrial Disputes Act, 1947.

Appearances :

Shri M. K. Prusty, Manager, Hotel Moti	..	For the First Party—Management
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Self	..	For the Second Party—Workman
Date of Argument	..	05-08-2014
Date of Award	..	18-08-2014

A W A R D

The matter arises out of a reference made by the State Government in the Labour & Employment Department, Odisha, Bhubaneswar under Section 12(5) read with Section 10(1) of the Industrial Disputes Act, 1947 vide Memo No. 7577(5)-LE., dated 19th August 2011 for adjudication of the following dispute :

“Whether the action of the management of M/s Hotel Moti Pvt. Ltd., Gandhi Nagar, Berhampur in terminating the service of Shri Sankarsan Sahu, Ex-Security Guard with effect from the 29th March 2010 is legal and/or justified ? If not, to what relief the workman is entitled ?

2. The case of the second party workman, as would appeared from the statement of claim filed by him is that, he was appointed as a Security Guard in the year 1987 under M/s Hotel Moti Pvt. Ltd., Berhampur. During his tenure of service he tender his duty sincerely and faithfully. The management issued the suspension Order against him on the 29th March 2010 without any valid reason and he also submitted the show cause reply to the suspension order but in vain. He has not received the gratuity and pension till today. The second party workman further pleaded that he is a poor, simple sober in nature and also old aged person have been consisting of five (5) members of his family and he has no other source of income. Therefore he prayed the Hon’ble Court be pleased to grant G. P. F. and Pension in his favour.

3. The case of the first party management as per W. S. filed by him is that, the workman was engaged as Security Guard on the 2nd October 1991. The nature and service of the Security Guard is to protect profit and interest of the first party management. As Security Guard, the workman was required to ascertain the arrival and departure of inmates and to watch their nature, but the conduct of the workman was never fair and proper for which first party always receives complain from the inmates. On the 26th March 2010 the Police of Berhampur Town P. S. raided the hotel and rubbed the criminals from the hotel and car parks inside the premises which belongs to the criminals. Since the workman failed to furnish the details of daily parking inside the premises to the management in time, the Management faced humiliations before the police for which the management lost its image in the society for which the second party workman was placed under suspension of the 29th March 2010. The management issued with Memo dated the 13th April 2010 to the workman to submit the explanation. Since the explanation submitted by the workman on the 20th April 2010 was not found satisfactory and another notice issued to the workman but the workman did not

receive the same. On the 5th May 2010 the Management received a letter of resignation from the second party workman and the same was accepted by the management and intimated in notice dated the 6th May 2010 with regard accepting of resignation of the workman. Instead of facing disciplinary enquiry process, the workman submitted resignation. The W. S. submitted by the workman does not indicate any illegality on the Schedule of reference as per order of the State Government. Therefore the Hon'ble Court may be pleased to pass appropriate Award in favour of the first party management.

4. On the aforesaid pleadings of the parties, the following issues have been framed :—

(i) "Whether the action of the management of M/s Hotel Moti Pvt. Ltd., Gandhi Nagar, Berhampur in terminating the service of Shri Sankarsan Sahu, Ex-Security Guard with effect from the 29th March 2010 is legal and/or justified ?

(ii) If not, what relief the workman is entitled to ?"

5. In order to prove its case, the workman has examined himself as W. W. No. 1 and has not exhibited any documents. On the other hand the first party management declined to adduce any evidence on his behalf.

FINDINGS

6. *Issue Nos. (i) and (ii)*—The above issues are taken of together for the sake of convenience. The workman examined as W. W. No. 1 stated that, he was working as Security Guard under the M/s Hotel Moti Pvt. Ltd. in the year 1987. He further stated he is entitled to get the arrear leave salary, one moth salary and bonus of Rs. 5,700 from the management. The engagement of the workman by the management from the year 1987 is disputed by the management. It is admitted fact that the workman was employed under the management and he was placed under suspension on the 29th March 2010. The order is challenged by the workman to be illegal and unjustified. On the other hand, the management contended that the conduct of the workman was never fair and proper for which the management always receives compliant against him and conduct of the workman was not good and he was cautioned in many times but he never mended himself for which the workman was placed in the suspension. The management further contended the management received a letter of resignation from the workman on the 5th May 2010 due to health problem. The management accepted the resignation of the workman and intimated the same dated the 6th May 2010 and advised him to appear within 15 days to receive the monetary benefits but the workman did not turn up. The statement of claim, the workman stated that, the management issued a suspension order against him without any valid reason, and he has not received the gratuity and pension.

7. As has been stated earlier that the workman was working under the M/s Hotel Moti, Berhampur as a Security Guard and the Management terminated the workman on the 29th March 2010 and notice was issued to the workman and the workman submitted show cause reply to the suspension Order, even though the workman has completed 240 days of service but there is no material on the record to show that, the management has complied the provisions of Section 25-F of the Industrial

Dispute Act Rather the management contended that, the Management received a letter of resignation from the workman on the 5th May 2010 and accepted the resignation of the workman and intimated the same on the 6th May 2010. In support of its contention no oral and documentary evidence adduced by the Management. to establish that, the management received letter of resignation from the workman. On the other hand, there is no evidence to show that the services of the workman has been terminated by way of punishment inflicted in a disciplinary proceeding. Therefore it can be said that the Management terminated the workman without complying the provisions of the I. D. Act. In the present case the workman employed under the M/s Hotel Moti, Berhampur (Gm) and he has been continued service till the date of his termination, but the Management having not followed the provision prior to termination of his service. So the termination Order is not legal. It is further noticed that there is no allegation of victimisation or unfair labour practices brought by the workman against the management. There is also no evidence that the action of the Management is vindictive. On the other hand the management contended that the conduct of the workman was not good in the past and he was cautioned in many times but he never mended himself, and he never acted in the interest of Hotel. But the workman has not stated anything both in his pleadings and in his evidence to disprove the contention of the Management. Rather he stated in his evidence that he is entitled to get the arrear dues salary of Rs. 5,700 from the Management. In view of the aforesaid discussion, I am of the opinion that it will meet the ends of justice, if it is ordered for payment of compensation to the second party workman.

8. Thus the reference is answered on contest against the first party management without costs and accordingly the termination of Shri Sankarsan Sahu, Ex-Security Guard by the Management of M/s Hotel Moti Pvt. Ltd., Berhampur is held illegal and unjustified. Considering the above facts, the second party workman be awarded due compensation and notice pay.

Dictated and corrected by me.

DEBASIS ROUT
18-8-2014
Presiding Officer
Labour Court, Jeypore

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18-8-2014
Presiding Officer
Labour Court, Jeypore

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