

IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT
ROUSE AVENUE COURTS, NEW DELHI

LIR No.- 1071/2016

INDUSTRIAL DISPUTE BETWEEN :-

Shri Mahesh Chandra Rai
S/o Sh. Ram Nihora Rai,
R/o 466, Gali No. 12, Prem Nagar,
Kiradi Suleman Nagar,
Delhi-110086

.....Workman

VERSUS

M/s Scope Promoters (P) Ltd.
Hotel Swati Delux
17/A-32, WEA Karol Bagh,
New Delhi-110005

.....Management

Date of Institution :16-11-2015

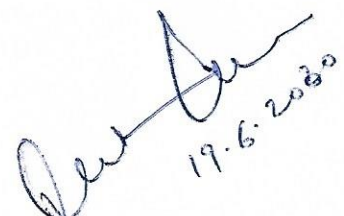
Date of Final Arguments :21-03-2020

Date of Award :19-06-2020

AWARD

1. The Workman has filed the present statement of claim under the Industrial Dispute Act, 1947, against the management-herein. The Dy. Labour Commissioner (CD), Government of NCT of Delhi vide its order No. F-24(165)Lab./CD/15/908 dated 12.10.15 (Ex. WW-1/1) referred an industrial dispute with the following terms of reference:

"Whether the services of workman Sh. Mahesh Chander Rai s/o Late Sh. Ram Nihora Rai have been terminated illegally and / or unjustifiably by the management by the management; and if so, what relief is he entitled to and what directions are necessary bin this respect?"


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2. As per the Corrigendum dated 28.11.2016 the name of the management has been described as M/s SCOPE PROMOTERS Pvt. Ltd. (Swati Group of Hotels). As per the submission of the ARM he did not want to file a fresh WS on behalf of the changed-name management and the WS filed by the management of (Swati Group of Hotels) was submitted to be the WS of M/s SCOPE PROMOTERS Pvt. Ltd. (Swati Group of Hotels).

VERSION OF THE CLAIMANT AS PER THE CLAIM:

3. The claimant-herein has stated in his claim that he has been working with the management since 02.06.2006 as Security Supervisor. The workers in the management had to work for 12 hrs. in two shifts. At the time of the joining the claimant-herein was paid Rs.2,750/- per month with an increment of Rs.500/- to Rs.600/- yearly. The Identification documents were issued by the management after two years mentioning the post of the claimant as 'watchman' whereas 'guard' has been mentioned in the experience certificate. The claimant felt deceived. The claimant-herein has stated that he had been working as Supervisor to the satisfaction of the management without giving a chance of any complaint. The claimant-herein was assured by the management that after the completion of 3 years of service there will be an increment in the wages of the claimant.
4. The claimant-herein has also averred that his monthly salary was deposited in his bank account No. 00261050059565 (HDFC Bank : Old Rajender Nagar). The deposits were also made in the P.F. Account No. DLCPM0029382000000008 since 06.11.2006. The claimant-herein had raised demands regarding the salary slip and the details regarding the EPF etc. which were ignored by the management. The claimant-herein had great difficulty in ascertaining the details thereof.


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5. In the year 2010-11 the salary of the claimant-herein was Rs.7,020/- per month but no wages were increased till the year 2014. The demands were raised for the salary increase and also for the duty hrs. to be made to 8 hrs. The overtime of the 4 hrs. @ double, one month Earned Leave, issuance of salary slip and the correct details of the monthly deductions were asked by the claimant-herein.
6. The claimant-herein further averred that in the year 2014 after serving for the entire year the claimant-herein filled a form for 15 days leave which was allowed by the management. However, the management deducted wages. The July 2014 wages of Rs.4,048/- was given on 11.08.2014 and the signatures of the claimant were obtained against the amount of Rs.9,500/-. This was objected by the claimant but the management told the claimant to leave job. Subsequently, the PF account of the claimant was closed by the management in Aug. 2013. The claimant got salary of Rs.5,456/- for Sept. 2014 on 11.10.2014; Rs.5,652/- salary of Oct. 2014 on 11.11.2014; Rs.5,263/- salary of Nov. 2014 on 10.12.2014.
7. On 10.12.2014 when the claimant-herein insisted upon the details of the wages then the MD of the management gave orders to the accountant Sh. Premveer Singh and Sh. Sandeep Rai to remove the claimant-herein from the post of Supervisor. The claimant was given the uniform of the Guard and was made to do duty of 12 hrs. The claimant-herein felt humiliated. Complaint dated 11.12.2014 was made to the Labour Commissioner and a show cause notice was served upon the management. The claimant-herein was called by Sh. Naresh Parekh (Director) and the claimant was assured of fulfilment of all his demands. The reply was given on 19.12.2014. However, another application was moved on 13.01.2015. On 14.01.2015 the claimant was made to serve management at different places as Guard just in order to compel the claimant-herein to leave the job. Complaint was made to the Labour Inspector on his M-


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9312875697 phone but no action was taken. The claimant was often shown absent from duty.

8. The claimant further avers that he had gone on leave from 07.03.2015 to 23.03.2015 after being duly permitted by Sh. Rajesh Jain (MD). The claimant returned to join duty on 24.03.2015. The wages for March 2015 was received by the claimant on 10.04.2015 and the amount was Rs.3,700/-. When the salary slip was asked for the management abused the claimant-herein. The management was served upon legal notice dated 28.04.2015 by the claimant which was received by the management on 06.05.2015. Sh. Naresh Parekh called the claimant and badly scolded and reprimanded and ordered the removal of the claimant. The claimant demanded written orders which was refused by the management. The claimant was not allowed to work from 09.05.2015 onwards. The number of the claimant-herein was deleted from the entry machine and the wages for the month April 2015 was refused by the management. This was informed by the claimant to the Labour Inspector. No action was taken. On 05.08.2015 the complaint was made to the Labour Joint Commissioner office Pusa Road. The claimant has sought reinstatement along-with back wages.

THE VERSION OF THE MANAGEMENT

9. The management-herein has filed the written Statement and has stated that the claimant-herein has not come with clean hands and had remained absent with effect from 31.03.2015. The management has denied that the claimant joined as Security Supervisor. It is asserted by the management that the claimant had worked from 07.11.2006 till 31.03.2015 as 'watchman'. The management has denied the version of the claimant with respect to the wages, bonus and other benefits etc. As per the WS the claimant-herein had abandoned his job on his own. It has been denied by the management that the claimant used to work for 12 hrs. Various letters dated 15.04.2015, 06.05.2015


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and 21.05.2015 were written by the management to the claimant but the claimant-did not join the duties.

10. The management has denied all the assertions of the claimant including the assertions of the claimant regarding the wage increase of Rs.500/- to Rs.600/- per year; closure of the PF Account of the claimant in Aug. 2013 without intimation to the claimant; promotion after the completion of 3 yrs. of service; duty of 12 hrs. of the claimant; issuance of ID card after 2 yrs.; non-increase of salary after 2010 till 2014; threat of termination of service. However, the management has admitted that it had started cash payment of the salary for the convenience of the workers. All the other averments of the claimant-herein regarding the late payment etc. have been denied by the management. It has been vehemently denied by the management that the claimant-herein was removed from services on 14.01.2015 or that the workman was forced to leave the job etc.

11. The management has specifically asserted that the demands raised by the claimant are not sustainable as the workman had himself abandoned the job on his own.

REJOINDER OF THE CLAIMANT:

12. In the rejoinder the claimant has reiterated the averments of his claim and denied the version of the management-WS. The facts of the claim are reiterated regarding the wage increase of Rs.500/- to Rs.600/- per year; closure of the PF Account of the claimant in Aug. 2013 without intimation to the claimant; promotion after the completion of 3 yrs. of service; duty of 12 hrs. of the claimant; issuance of ID card after 2 yrs.; non-increase of salary after 2010 till 2014; threat of termination of service. The claimant-herein has denied various letters dated 15.04.2015, 06.05.2015 and 21.05.2015 allegedly written by the management to the claimant but the claimant-did not join the duties. However,


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the claimant has admitted that he had received a letter dated 23.05.2015 which was delivered to him on 25.05.2015 but has also stated that the claimant was on valid leave from 07.03.2015 to 23.03.2015 after being duly permitted by Sh. Rajesh Jain (MD). The claimant already returned to join duty on 24.03.2015. The said letter was sent maliciously as per the claimant.

13. The following issues were framed :

ISSUE No.1 : Whether termination of service of the claimant by the management on 09.05.15 is illegal and / or unjustifiable? OPW

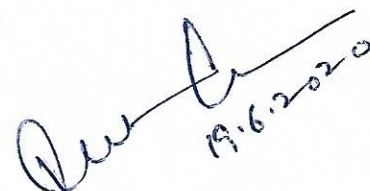
ISSUE No.2 : Whether the claimant himself left the job by remaining unauthorisedly absent w.e.f. 31.03.15? OPM

ISSUE No.3 : Relief.

14. The ISSUES No.1 & 2 are intricately connected and thus would be disposed of together.

15. The cross-examination of the workman-herein reveals (relevant portion only)

"I joined the management on 02.06.2006 at Swati Delux Hotel, 17 A/32, WEA Karol Bagh, New Delhi-110005.....I received letter Ex WW1/M1 and thereafter I went to the Management for joining the duty but I was not allowed. I did not receive letter dated 29.05.2015 sent by the management. This letter is now mark as Mark WW1/M1. This bears my correct address..... I was working as Security Supervisor. I submit that the contents of Ex. WW1/5 are not true as I was posted as Security Supervisor and not Security Guard. I filed this case for making my job permanent and for other facilities. I have personally prepared my statement of claim which bears my signature at point A.


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..... My services were terminated on 09.05.2015 by Sh. Dilip Jha and Sh. Rajesh Jain..... The facilities pf PF, Bonus and ESI were available but the same were not proper. I have not given reply to the letters given by the management for calling back on duty. Vol. (I have received only one letters)."

16. The workman has admitted that he had received the letter dated 29.05.2015 (document Ex. WW1/M1 is the letter of termination from services) which states that the management had asked the workman to join the duties vide its letter dated 21.05.2015 but the workman had not joined. The workman stated that he had went to join the duty but was not allowed by the management.

17. The cross-examination of the management witness Sh. Babu Lal Sharma (Manager of M/s Scope Promoters Pvt. Ltd.) examined as MW-1:

"Ex.WW-1/5 was not issued by the Management..... It is wrong to suggest that the workman was appointed Security Supervisor. The workman was appointed as watchman and Ex.WW1/2 is already on record. I cannot give the exact date of issuing of the I-card of Ex.WW1/2.

It is correct that management maintains the file of all the employees regarding the appointment.

I have not filed any document from the file of the workman with regard to his appointment.

I have not filed any document regarding the rules and regulation for enhancement if salary as well as promotion of employee, reducing of working hours, double payment of overtime, overtime charges or earned leaves vol. It was according to the efficiency of the workman.

.... It is correct that the workman had worked for 14 days in May-2015. It is correct that i have not filed any postal receipt regarding

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letter dt. 21-05-2015 issued to the workman.. Vol. Same was sent through ordinary post.We have not provided any salary slip to the workman. It is correct that if works for more than 8 hours a day then he is liable to pay overtime for extra working hours.

...

The workman had resumed in the month of April 2015 and the salary for the month of April was made to the workman in the month of May.

..... It is correct that PF department issue the universal account number. After the merger of both the universal account number from PF department, all the account was transferred from PF account No.29382/65 to PF account No. 29382/81 (previous account). Till May 2015 we made payment to the PF account of workman.

.....

It is correct that we had opened the PF account No. 29382/81 in the name of Mahesh Chand but all the documents of the workman are in the name of Mahesh Chander Rai . It is correct that date of birth of workman is also wrongly mentioned in PF Account No. 29382/81. It is correct that the workman cannot withdraw the mount from PF Account No. 29382/81 without correction in name and date of birth of workman.

..... It is correct that legal notice Ex.WW1/17 bears the correct address of the management. It is correct that the management have not replied to the legal notice dated 28.4.15 Ex.WW-1/17.

..

The workman was not never terminated, therefore, issuing the letters by the management for joining does not arise."


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18. The perusal of the cross-examination of MW-1 reveals contradiction to the averments in the affidavit. In paragraph no. 7 & 8 of the affidavit of MW-1 it is written;

"7. That the workman absented himself for the service w.e.f. 31.03.2015 and never turned up. The management issued warning letters to the workman vide letters 15.04.2015, 06.05.2015 and 21.05.2015, to join the duty as management is suffering for the absence of workman. All the letters were received by the workman but no response was there on the part of the workman.

8. That the workman has abandoned his job on his own and the management has tried its level best to accommodate the workman but of no use."

19. The case of the management is that the workman had been absent since 31.03.2015 whereas the witness MW-1 has admitted that in his cross-examination that the workman had worked for 14 days in May-2015. It was also admitted by MW-1 that any postal receipt regarding letter dt. 21-05-2015 issued to the workman was not filed. Furthermore, the management has admitted unfair practice of opening PF account in the wrong name and date of birth of workman. The entire defence of the management falls here.

20. The Employees' State Insurance Scheme of India is a multi-dimensional Social Security Scheme tailored to provide Socio economic protection to the 'employees' in the organized sector against the events of sickness, maternity, disablement and death due to employment injury and to provide medical care to the insured employees and their families. The scheme provides full medical care to the employee registered under the ESI Act, 1948 during the period of his incapacity, restoration of his health and working capacity. It provides financial assistance to compensate the loss of his/ her wages during the period

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of his abstention from work due to sickness, maternity and employment injury. The scheme provides medical care to his/her family members also. The ESI scheme is a self financing scheme. The ESI funds are primarily built out of contribution from employers and employees payable monthly at a fixed percentage of wages paid. The State Governments also bear 1/8th share of the cost of Medical Benefit. It is the statutory responsibility of the employer under Section 2A of the Act read with Regulation 10-B, to register their Factory/ Establishment under the ESI Act.

21. As per Employees' State Insurance (General) Regulations, 1950

52A. Abstention verification

(1) Every employer shall furnish to the appropriate office such information and particulars in respect of the abstention of an insured person from work for which sickness benefit ²²[* * *] or disablement benefit for temporary disablement, as provided under the Act has been claimed or paid, in Form No. 28 and within such time as the said office may in writing require in the said form.]

(2) Every employer shall furnish to the appropriate office such information and particulars in respect of the abstention of an insured woman from work for which maternity benefit as provided under the Act has been claimed or paid, in Form 28A and within such time as the said office may in writing require in the said form.]

22. The management-herein has not placed on record or even averred that the ESIC was intimated of the absence of the workman.

23. The workman has been able to discharge its onus of proof. The management as neither been able to discharge its onus of proof not its onus of shifting proof.

24. There is yet another aspect relating to the "Domestic Enquiry". Even if we assume the date of joining as Nov. 2006 (as averred by the management) the domestic enquiry ought to have been conducted by the management. The Division Bench of The Hon'ble Delhi Court in Shakuntala's Export House (P) Ltd Vs. Secretary (Labour) MANU/DE/0541/2005 has held that abandonment

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amounts to misconduct which requires proper inquiry. The judgment of the Single Judge was upheld by the Division Bench is reported as 117 (2005) DLT 479. To the same effect is another judgment in MCD Vs. Begh Raj 117(2005) DLT 438 laying down that if the workman had abandoned employment, that would be a ground for holding an enquiry and passing an appropriate order and that having not been done, the action of MCD could not have been sustained.

25. In the context of Ex.WW1/M1 whereby the workman's services with the management were terminated there is not mention of initiation of any enquiry. The Hon'ble Supreme Court also in D.K. Yadav Vs J.M.A. Industries Ltd (1993) 3 SCC 259 has held that even where the standing orders of the employer provide for dismissing the workman from service for unexplained absence, the same has to be read with the principles of natural justice and without conducting domestic inquiry and without giving an opportunity of being heard, termination of service on the said ground cannot be effected. The same view was reiterated in Lakshmi Precision Screws Ltd. Vs. Ram Bahagat AIR 2002 SC 2914 (in this judgment Sakattar Singh mentioned below was distinguished). In V.C. Banaras Hindu University Vs. Shrikant AIR 2006 SC 2304 it was held that although laying down a provision providing for deemed abandonment from service may be permissible in law, it is not disputed that that an action taken thereunder must be fair and reasonable so as to satisfy the requirements of Article 14 of Constitution of India; if the action is found to be illogical in nature, the same cannot be sustained.

26. In M/s Fateh Chand vs Presiding Officer Labour Court & Anr. 2012 LLR 468 .Delhi, our own the Hon'ble High Court observed that the management has to bring on record sufficient material to show that the employee has abandoned the service and abandonment cannot be attributed to the employee without there being sufficient evidence. On failure to report for duty, the management has to call upon the employee and


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if he refuses to report, then an enquiry is required to be ordered against him and accordingly action taken. In the absence of anything placed on record by the petitioner management, no presumption against the respondent can be drawn. It was held to be a case of violation of Section 25F of the Act.

27. In MCD vs Sukhbir Singh 1994 ILR 332, in case of abandonment of service, it was held that the management was duty bound to conduct an inquiry. Reference in this regard may also be made to Shakuntala Export House (P) Ltd. vs P.O. Labour Court X & Anr. 117(2005) DLT 479.

28. In the case of Shiv Dayal Soin and Sons vs., The Presiding Officer, Labour Court in LPA 801/2002 decided on 20.12.2007, the Division Bench of the Hon'ble Delhi High Court has held in para 11 thereof which is as follows:-

"However, it is pertinent to note that a mere accusation that the Workers had abandoned their jobs is not enough to accept the said imputation, degree of proof required to establish abandonment of service, is rather strict and the management in this case has failed miserably to discharge the said burden of proof..."

29. Observation of the Hon'ble Supreme Court in the Case of G.T.Lad v. Chemical and Fibres of India Ltd., reported in (1979) 1 SCC 590 throws great deal of light on this aspect, The Court noted as under:

"5a. Re Question 1: In the Act, we do not find any definition of the expression 'abandonment of service.' In the absence of any clue as to the meaning of the said expression, we have to depend on meaning assigned to it in the dictionary of English language. In the unabridged edition of the Random House Dictionary, the word 'abandon' has been explained as meaning 'to leave completely and word 'abandon' has been explained as meaning 'to leave completely and finally; forsake utterly; to relinquish, renounce; to give up all concern in something'. According to the

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Dictionary of English Law by Earl Jowitt (1959 Edn.) 'abandonment' means 'relinquishment of an interest of claim'. According to Black's Law Dictionary 'abandonment' when used in relation to an office means 'voluntary relinquishment.' It must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an 'abandonment of office'."

30. In Shiv Dayal Soin and Sons (supra) also relied upon in Buckingham and Carnatic Co. vs. Venkatiah AIR 1964 SC 1272 it was observed :

"abandoning or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf and thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case".

31. In view of the above discussion and the facts of the present case it cannot be said that the workman abandoned his job with the management. The management-herein has not been able to discharge their onus to show that the workmen had abandoned the job by remaining absent. This issue is decided in favour of workman and against the management.

32. Therefore, in view of the aforesaid discussion the management has failed to prove that workman has abandoned the service as he voluntarily remained absent. **Issue No. 1 & 2 are decided accordingly in favour of the claimant/workman and against the management.**


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33. The onus to prove the ISSUE No.2 was on the management and same could not be discharged by the management. Thus the ISSUE No.2 is decided in favour of the workman and against the management-herein.

ISSUE No.3 - RELIEF:

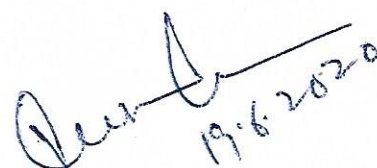
34. The workman-herein has sought the relief of reinstatement in the service with full back wages along with the continuity of service and all the consequential benefits.

35. The term "reinstatement" has not been elucidated in the Industrial Disputes Act, 1947. The Shorter Oxford English Dictionary, Vol. II, 3rd Edition stated that, the word "re-instate" means to reinstall or re-establish (a person or thing in a place, station, condition etc.); to restore to its proper and original state; to reinstate afresh and the word "reinstatement means the action of reinstating; re-establishment. "As per Black's Law Dictionary, 6th Edition, "reinstatement" means 'to reinstall, to re-establish, to place again in a former state, condition, or office, to restore to a state or position from which the object or person had been removed'. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule.

36. Held by the Hon'ble Supreme Court in Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324. The concept of reinstatement was also discussed therein:

"17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer."

37. The ruling in Deepali Gundu Surwase (supra) relied on at least three larger, three judge bench rulings :

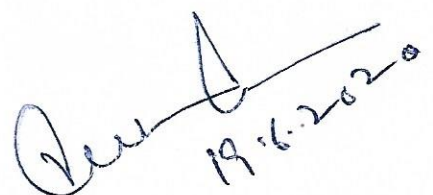

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- a. Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Pvt Ltd AIR 1979 SC 75;
- b. Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court AIR 1981 SC 422;
- c. General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC591)

38. The relevant discussion in Deepali Gundu Surwase (supra) is as follows:

"33. The propositions which can be culled out from the aforementioned judgments are:

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*
- ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*
- iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact.*


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DIRECTIONS TO THE MANAGEMENT:

39. The ISSUE No.3 pertaining to RELIEF is decided in favour of the workman and against the management-herein with the following directions :

40. The last working date can be taken as 09.05.2015 when the workman was not allowed to join duty.

- a. Relief of reinstatement – granted with 100% back wages (as per the last drawn admitted salary of Rs.7,020/- per month) granted / ordered from 09.5.2015 till date;
- b. Relief of the continuity of service along with all the other benefits is also granted / ordered w.e.f. 09.5.2015 the last working day;
- c. The management is further directed to correct the name / date of birth of the workman-herein in the PF Account No. **PF Account No. 29382/81**
- d. No other order / direction.

41. Reference answered accordingly in above terms/directions. Matter disposed of.

Announced as per the advisory / orders of the Hon'ble High Court vide its order/letter No.R-235/RG/DHC/2020 DATED 16-05-2020 and the Amended Protocol Letter No:24/DJ/RADC.2020 dated 07-05-2020 of Ld. District & Sessions Judge-Cum-Special Judge (PC-Act), CBI, Rouse Avenue District Courts, New Delhi.

Dated:19-06-2020



(VEENA RANI)

Presiding Officer Labour Court
Rouse Avenue Courts, New Delhi
Judge Code : DL0271

Note:- Digital signature expired on 22-02-2020. Already applied for renewal but not renewed till today.



**IN THE COURT OF Ms. VEENA RANI, PRESIDING OFFICER LABOUR COURT
ROUSE AVENUE COURTS, NEW DELHI**

LIR No.- 1071/2016

Shri Mahesh Chandra Rai S/o Sh. Ram Nihora Rai

v.

M/s Scope Promoters (P) Ltd.

Hotel Swati Delux

19-06-2020

Present : Sh. Israr Ahmad Advocate, AR of the workman through electronic mode i.e. email ID (adisrar1974@gmail.com) & Mobile No:9811067689 had already given consent to pass final order in this case.

Sh. B.L. Sharma, Authorized Representative of Management through electronic mode i.e. email ID (babulal.sharma@hotelswati.com), Mobile No:9910174633 had already given consent to pass final order in this case.

Vide my separate detailed AWARD the award is passed in favour Shri Mahesh Chandra Rai S/o Sh. Ram Nihora Rai for the relief as stated in the said AWARD. A copy of the award be uploaded on the website of RADC. A copy of the same be also delivered to both the parties as well as to the concerned Department through electronic mode or through Dak, if possible. File be consigned to Record Room.

Announced in the open court.

Dated: 19-06-2020



(VEENA RANI)

**Presiding Officer Labour Court
Rouse Avenue Courts, New Delhi**

Judge Code : DL0271