

Before the Presiding Officer, Labour Court cum Industrial Tribunal – II, Gurgaon.

In the Matter of:

Workers of M/s Viva Global
Through Garment and Allied Workers Union

Versus

M/s Viva Global
Through Mr. Vipin Vohra

Statement of Claim

It is Most Respectfully Shown:

1. This Statement of Claim is being file according to the Letter of Reference of the Labour Department, Government of Haryana Dated. 29.09.2016, in which the Labour Department opined that there existed an Industrial Dispute between M/s Viva Global and Garment and Allied Workers Union, Annexure- P1. ~~The Department in that letter agreed~~ ^{admitted} that there existed a Lock Out and wanted the determination of the question:

The reference is based on an admitted fact of lockout and therefore wanted the determination of the question:

1st floor, Backside,
New Delhi
avishanker/

- Whether the Lock Out declared by M/s Viva Global, is Legal and Justified?
If not, to what relief the Workers are entitled to?

2. That the Workers named here had been employed at M/s VIVA GLOBAL, Plot No. 413, Phase III, Udyog Vihar, Gurgaon, Haryana.

3. That the Management of the above Company had been continuously violating the Labour Laws ~~including --- (fabrication)~~ in a gross manner.

Use the contract labour point to the bottom.

The Workers in this regard had made several representations to the Company as well as the Labour Department from July 2010. Workers and their Representatives, also had met with the Management's representatives including the Director Mr. Vipin Vohra many times requesting him to ensure that the Company complies with labour laws, but with no positive response.

Use Labour Inspector/Conciliation officer before instn.

4. That a collective complaint was given by the Workers of M/s Viva Global before the Conciliation Officer, Gurgaon, against the Management of the Company, stating the violations of labour laws in the Company premises, dated 14.07.2010

(Annexure- P2).

Conciliation by Aug 23rd.

5. That the Workers' representatives ~~had attempted many times to redress the~~ ~~took a proactive conciliatory approach~~ problems in conciliation but the Management had not only denied settling the

not allowed enter premises

not given work

matter but also intentionally and forcefully locked out the Workers on 25.08.2010. This illegal Lock Out in the Company was for those Workers who

ward of 2000 of mgmt

were associated with the Garment and Allied Workers Union (GAWU). The list

kept gates closed.

of Workers who were locked out by the Company Management is annexed here as Annexure- P3.

6. That this Lock Out was carried out without informing the labour department and without the permission of the Labour Department. The respondent had neither given any notice to the Workers nor informed them about the reasons of the Lock Out. 102 workers → more later

7. That the Lock Out was carried out against the mutually agreed understanding in the conciliation proceedings in the presence and under the instructions Labour Officer Mr. Suresh Yadav, whereby it was agreed to unconditionally reinstate all the on 25.08.2010, but instead they were locked out on the same day. The Workers were attacked by the Management supported goons and henchmen when they tried to enter the Company premises to get back to their work as per the directions of the Labour Officer. The Workers were attacked with canes and hockey sticks without any provocation. During the attack women Workers were also not spared. They were brutally beaten and their clothes were torn in broad daylight. The goons also abducted a workman named Anwar Ansari and kept him in their custody for more than 14 hours and beat him badly. It was only when the Workers filed an FIR in Dundahera Police station that the goons released Mr. Ansari under the pressure of the Police. The copy of FIR No.157 dated 26.08.2010 is annexed here as Annexure- P4.

Hunger Strike with
in front of Viva Global Union in
protest
Criminal Lawyer → Rajkumar

Time
Place
Facts

Unarmed
Lot of women
Peaceful
looking for
work

FIR
language
P/D

5. That the repr
Nas

8. That the representatives of the Management repeatedly called upon Workers Nagendra Singh, Abhay Kumar, Kanchan Kumari and Dharam Pal to threaten them of dire consequences if they continued their union activities. The also told that if the Workers do not leave the unions then they would declare a Lock Out to punish the Workers. *Make affidavit* *Vicarious + retaliation*

9. That it is to be noted that the Lock Out was carried out during the pendency of the legitimate conciliation proceedings and before the implementation of the settlement thus reached. The whole act of the Company Management was against the spirit of the Industrial Dispute Act, 1947, and the due procedures of a *Legal + valid* Lock Out were not followed by the Management Company. *→ Legal + valid*

10. That the Management of the Company denied the Workers their legal right to work and used all means, even illegal, to stop and refrain them to claim this right of theirs. That compelled by this the Workers sent representations dated 06.09.2010 and 14.09.2010 to the Deputy Labour Commissioner, Gurgaon, Assistant Labour Commissioner, Gurgaon and The General Manager of the Company for taking actions in respect to the said illegal Lock Out, but no action was taken.

11. That in view of the inordinate delay on part of the Labour department, the Garment and Allied Workers Union was compelled to file a writ petition numbered 17722/2010 before the High Court at Chandigarh whereby the

604
factory floor
be-

Hon'ble High Court vide its order dated 07.03.2011, ordered the Deputy Labour Commissioner to resolve the dispute within three weeks. The copy of the order is annexed as Annexure P- 5.

12. That ~~after this order of the High court the DLC acknowledged to consider the demand of the Workers and pass an order in accordance with law. Conciliation meetings took place on 11th March, 21st March, 29th March, 5th April, 26th April and 2nd May, 2011 between the Workers' Representatives and the Management's Representatives under the supervision of the Deputy Labour Commissioner.~~
following the direction of the Hon'ble High Court the DLC was compelled to consider the demand of the Workers and pass an order in accordance with law.

Get -
Proceedings

13. That the Company ~~agreed to lift the lock out of 42 Workers out of 102 Workers and said that 20 Workers had already taken their full and final settlement. The Management denied to lift the Lock Out of the rest 40 Workmen on fictitious grounds and had no explanation or proof of the same. That the said 42 Workers were allowed to join the Company on 9th may, 2011, but the Company failed to provide them with proper work and a peaceful atmosphere at workplace. List of the 42 Workers so reinstated is annexed as Annexure- P6.~~
partially followed their ~~business~~ duties
alleged
gone work to
RESUME

14. That the Management started harassing the Workers on a regular basis and subjected them to physical violence and abusive languages and women Workers were subjected to sexual slurs and harassment. A lady guard followed them from
not given work
intimidated

to the Deputy...
of the order

constant surveillance. Threat of sexual violence

factory floor to the toilet often insulting them and threatening them with beatings, killings and ^{intimidation} scaring them with possible rapes. Environment of fear.

15. Subsequently the Company started suspending Workers on fictitious grounds like misbehavior and without following the proper legal procedure ^{like giving Show Cause Notice} of the Industrial Disputes Act, 1947. On May 23, 2011 Abhay Kumar was ^{provision of Industrial order Act} suspended, in the same way Workers Nagendra Singh, Kanchan Kumari and Dharam Pal were suspended on the 25th. It is to be noted that no notice was served upon the Workers and no ~~suspension~~ allowance was paid. In a planned ^{Not any retrach. not Allowed} and intentional manner all the Workers reinstated were ~~suspended~~ ^{one by one. No. Subsistence All.}

When the conciliation was going on between GAWU and the Management, in during which the Management absented itself, the Management instead resorted to ^{period of suspension} violence on the factory floor. Women Guards were supplied with sticks and knives to attack Workmen on 28.06.2011. This was reported to the Udyog Vihar Police station. In this way the Management Locked Out all the reinstated ^{All the workers who were allowed} Workers. ^{During conciliation to resist. mala fide intention -}

16. That on 14.09.2011 the GAWU filed a general Demand Notice for directions to lift the illegal and unjustified Lock Out, annexed here as Annexure- P7. The management made a plea that they are not able to secure orders from the buyers because their reputation in market had been damaged due to international attention on their violation of labour laws. This was only because

not allowed to enter premises + not given work - gain locked out

conciliation of 40 workers ongoing

From [Date] to [Date] gradually refused work

Continued the lockout of all the workers violating the contract ~~making the understanding reach~~ of the deeds of the Company itself- the workers and the GAWU had also

insisted as well as requested the Management to follow the due Labour Laws and the stipulated procedures and practices mentioned therein but the company was too adamant to listen. In this whole chain of events, the workers were the only victims. The GAWU on its part tried to mend the reputation of VIVA GLOBAL in the International Market by sending Joint- representations wherever needed by the Company.

17. That the GAWU and the Company were also preparing a Draft agreement for settlement. In that agreement GAWU agreed to communicate to the buyers the willingness of the Management to properly comply with Labour laws and respect freedom of association of workers according to the Indian and international Labour standards. Both the parties agreed on most of the terms except a few which were being talked upon. The Copy of the said Drafted agreement is annexed here as Annexure- P8.

18. That due to the bad faith of the Management, particularly of the management persons Mr. Sharma, Mr. Mohan Dimri and Mr. Munchun who in spite of the ongoing ~~settlement~~ ^{conciliation} proceedings resorted to threatening and using violence against the workers. On June 28th 2011 the Management did not come to the Conciliation proceeding instead engaged in violence on the factory floor and Lockout fully.

Dates of
FER Draft
orders.

locked out the m
brutally!

10

MS
do

locked out the main gate so that no worker could go out. The workers were brutally beaten and nobody was spared.

19. That the conciliation proceedings thus failing the Workers were compelled to file a Statement of Claim in the Labour court on 16.11.2011 as the Labour Department, Gurgaon was taking inordinate amount of time in referring the same. The failure report of the Labour Office is annexed here as Annexure- P9. The copy of the Statement of Claim is annexed as Annexure- P- 10 and the Application of the Company seeking dismissal of the Statement of Claim is annexed here as Annexure- P11.

20. Thereafter the Labour Court passed an order dated 19.10.2012, dismissing the Statement of Claim as not maintainable. The copy of the said order is annexed here as Annexure- P12.

21. That aggrieved by the lethargy of the Appropriate Government , Haryana in referring the matter to the Industrial Adjudicator the GAWU and the workers made complaints dated 14.07.2010, 02.01.2011, 07.08.2012 to the Additional Chief Secretary, Labour and Employment, Government of Haryana which was duly received, however no reply to the said complaint had been received. The copy of the complaints as well as the postal receipts is Annexed here as Annexure- P13.

Govt. was in collusion.
It did not refer.
Apally, negligence, amounting to collusion.

GAWU had also
Labour Laws
the

Continuous
asking for
punishment
daily

22. That in respect of the delay in referring the dispute to the Industrial Adjudicator by the Appropriate Government a Writ petition numbered CWP 5493/2013 was filed in the High Court, Chandigarh, which is still pending in the Hon'ble High Court.

23. That in the meantime the Company was closed down and its owner Mr. Vipin Vohra has sold all his assets in Gurgaon and shifted out of Gurgaon. It is to be noted that due to the dilatory tactics of the management, the illegal means used by them and the lack of diligence on part of the Labour Department, Gurgaon, the Appropriate Government and the lethargy of the Labour officers in Gurgaon the matter has lingered on for about six years without getting any proper direction.

24. That the whole scenario depicted above is to explain the circumstances created by the Management of the Company to nurture itself at the cost of the Workers and their Legitimate rights, the blatant violation of labour laws and statutory provisions and to take up any means to oppress voices of Workers protesting for their proper wages, leaves and respectable treatment at the factory premises.

25. That the **Garment and Allied Workers Union**, had been fighting for Labour rights since its inception and its only emphasis is that the Workers get their fair earned wages and an dignified treatment at the work place and that the Companies

ID Act Sections.
to be mentioned

Cite VLP

employing th
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Industrial Adjudicator
193/2013 was
High

employing them follow the due statutory laws are obligated towards the law and that there is no violation to the peril of the workers.

26. That the lack of diligence shown by the Management of VIVA GLOBAL and their failure to appear in Conciliation Proceedings and failure to comply with the necessary legal provisions shows that they never intended to allow the workers their valid rights. What started with the company violating labour laws lead to the protest of the workers and their subsequent termination and then at every stage the Management tried to cover up for its wrongdoings, with might as well as manipulations.

27. That the ~~second Lockout~~ ^{compliance of the order of the HC} was also done when the high court directed settlement ^{and understanding reached therein} was in operation and therefore was a direct violation of law. This is clear from the acts of the Company. Due to the lockout and subsequent termination of the workers they were out of work for 5 years thereafter. Many of them went back to their home state as it was hard to find jobs, more because of the ongoing ^{partially lifted} dispute with VIVA GLOBAL. ^{Resumption of lockout}

28. That the management has not a single penny to the workers since before the first Lock out, neither has it paid them their earned gratuity, bonuses and also the Lock out/ Retrenchment compensations . Wages for the period of unemployment is also to be paid to the Workers. As the Company is closed now the owner of the then running company is liable for all of these payments.

Continuation of
lockout

29. That on the 29th March, 2016, the Labour Department, Gurgaon sent its Reference Letter which was received by us on 15.04.2016 after about four and a half years of receiving the dispute. However in this Letter the Labour Department only agreed to entertain the question in para one out of the four demands put forward by the Workers.

It is thus prayed that:

- The Court determine the fact whether the Lock out carried on by the Management of Viva Global was Legal and Justified? *declare illegal, unjust, unfair*
- That decide what Compensation the workers are entitled to in lieu of their illegal retrenchment, now that the Company is closed and they cannot be reinstated. *Resume work on lifting of lock out.*
- That the Owner of the then running Company be directed to pay the back wages for the period of unemployment and the legal expenses incurred by the workers. *from Aug 28 2010 till lifting of lock out.*
- That now as the company was closed during the pendency of this dispute and as the workers cannot be reinstated to work by the company- the Owner of the company be directed to pay Compensation in lieu of that Reinstatement.
- That the entire case file of the dispute since first arisen be summoned from the Labour Office Gurgaon, and copies be provided to the parties

Through counsels:



Viva Global
MANUFACTURERS & EXPORTERS

दिनांक - 28 सितम्बर 2010

Card No-P1430
निलम देवि
पति-शर्वन कुमार
गांव-भावनिपुर
पोस्ट-भावनिपुर
जिला-दरभंगा
बिहार-847104

Presented on
30/9/10

विषय - सेवा समाप्ति

प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

प्रोबेशन पीरियड के दौरान आपकी सेवाये सन्तोषजनक नहीं पाई गई, अतएव प्रबन्धकगण ने आपको दिये गये न्युक्ति पत्र कि नियम सन्ख्या 2 के अनुसार आपको दिनांक 30/09/2010 (A.N.) से सेवामुक्त करने का निर्णय लिया है।

आपको निर्देशित किया जाता है कि आप अपना पूर्ण एव अन्तिम हिसाब फ़ैक्ट्री के अकाउन्ट्स विभाग से किसी भी कार्यदिवस, पर प्राप्त कर ले।

प्रतः

वीवा ग्लोबल

[Signature]

(प्रबन्धक)



BL A 3730
Center No: 09-106:10
TONGELAN DEVI,
GARGHANA

Br:Jugans.
Jan-21-00 10/09/2010 12:55
[unclear]

CC - Labour officer, Gurgaon

37



Viva Global
MANUFACTURERS & EXPORTERS

दिनांक - 28 सितम्बर 2010

Card No-P1442

बबिता

पति-लालन कुमार

गांव-हर्पुर

पोस्ट-बन्क हर्पुर

जिला-मुन्गेर

बिहार-811202

विषय - सेवा समाप्ति

प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

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व्रतः

वीवा ग्लोबल

(प्रबन्धक)



THE MANAGER
VIVA GLOBAL
INDUSTRIAL AREA
GURGAON
HARYANA

cc - labour officer - Gurgaon

34.



Viva Global
MANUFACTURERS & EXPORTERS

दिनांक - 28 सितम्बर 2010

Card No-P1443

सन्तोष कुमार

पिता-रम मिलन

गांव-रासिन

पोस्ट-रासिन

जिला-चित्तूर (बन्दा)

उत्तर प्रदेश-210208

विषय - सेवा समाप्ति

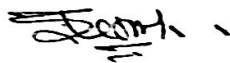
प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

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वत्त:

वीवा स्टांबल



(प्रबन्धक)



विविध कार्यालय
प्लॉट नं. 372
फेज-III, इंदौर रोड
गुरुगढ़, हरियाणा-122016

☎ 011-26101111
☎ 011-26101112
☎ 011-26101113

cc - labour offices, Gurgaon



Viva Global
MANUFACTURERS & EXPORTERS

दिनांक - 28 सितंबर 2010

Card No-P1448

सम्सद आलम

पिता-तहैर हुस्सैन

गांव-पल्टन बाज़ार

पोस्ट-पल्टन बाज़ार

जिला-प्रताप गड

उत्तर प्रदेश-230001

विषय - सेवा समाप्ति

प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

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व्रतः

वीवा ग्लोबल

(प्रबन्धक)



T.C. GURDABERA <122916>

Counter No: 109-Code: 10

PO: SAHARANPUR
 HARYANA

CC- Labour officer, Gurgaon

40.



Viva Global
MANUFACTURERS & EXPORTERS

दिनांक -- 28 सितम्बर 2010

Card No-P1463
नितिश कुमार
पिता-अजय प्रसाद
गांव-मुबारकपुर
पोस्ट-गर्थुवा
जिला-नालन्दा
बिहार-803119

विषय - सेवा समाप्ति

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व्रतः

वीवा ग्लोबल

(प्रबन्धक)



CC-Labour Officer - Gurgaon

41



Viva Global
MANUFACTURERS & EXPORTERS

दिनांक - 28 सितम्बर 2010

Card No-P1480

रेखा

पति-उपेन्द्र प्रसाद

गांव-चेरु

पोस्ट-सर्महा

ज़िला-नालन्दा

बिहार-811104

विषय - सेवा समाप्ति

प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

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कृत:

वीवा ग्लोबल

(प्रबन्धक)



INDIA POST
3721
GURGAON
HARYANA

cc- Labour officer-Gurgaon

42



Viva Global
MANUFACTURERS & EXPORTERS

दिनांक - 28 सितम्बर 2010

Card No-P1433

मन्जु

पति-अशोक कुमार

ब्लाक-गोविन्दपुर

पोस्ट-बोहोरग

जिला-नालन्दा

बिहार-803107

विषय - सेवा समाप्ति

प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

प्रोबेशन पीरियड के दौरान आपकी सेवाये सन्तोषजनक नहीं पाई गई, अतएव प्रबन्धकगण ने आपको दिये गये न्युक्ति पत्र कि नियम सन्ख्या 2 के अनुसार आपको दिनांक 30/09/2010 (A.N.) से सेवामुक्त करने का निर्णय लिया है।

आपको निर्देशित किया जाता है कि आप अपना पूर्ण एव अन्तिम हिसाब फ़ैक्ट्री के अकाउन्ट्स विभाग से किसी भी कार्यदिवस, पर प्राप्त कर ले।

व्रतः

वीवा ग्लोबल

(प्रबन्धक)



cc - Labour officer - Buxgan



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MANUFACTURERS & EXPORTERS

दिनांक - 28 सितम्बर 2010

Card No-P1389
राम बाबु शाह
पिता-महेश लाल साह
गांव-बसनतपुर पट्टि
पोस्ट-सरैया
जिला-मुजफ्फरपुर
बिहार-843127

विषय - सेवा समाप्ति

प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

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व्रतः

वीवा ग्लोबल

(प्रबन्धक)



CC-Labour officer-Gurgaon

44.



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दिनांक - 28 सितम्बर 2010

Card No-P1488
उशा सिंह
पति-रमेश सिन्हा
गांव-हुम्जाबाद
पोस्ट-हुम्जाबाद
जिला-सुलतानपुर
उत्तर प्रदेश-227815

विषय - सेवा समाप्ति

प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

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व्रतः

वीवा ग्लोबल

(प्रबन्धक)



MINISTRY OF LABOUR
GOVERNMENT OF INDIA
NEW DELHI

CC - Labour office, Gurgaon

45.



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दिनांक - 28 सितम्बर 2010

Card No-P1491

रेनु देवि

पति-सुनिल सौ

गांव-भराहपुर

पोस्ट-पटना

जिला-पटना

बिहार-800001

विषय - सेवा समाप्ति

प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

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व्रतः

वीवा ग्लोबल

(प्रबन्धक)

CC-Labour officer-Gurgaon



011-26148888 4000119
E. A. 0716
Ministry of Labour, Government of India
New Delhi, India
110011

For: Gurgaon
Date: 28/09/2010
28/09/2010

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MANUFACTURERS & EXPORTERS

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सुरेन्द्र दास

पिता-जागा दास

गांव-पहरपुर

पोस्ट-पहरपुर

जिला-वैसाली

बिहार-844508

विषय - सेवा समाप्ति

प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

प्रोबेशन पीरियड के दौरान आपकी सेवाये सन्तोषजनक नहीं पाई गई, अतएव प्रबन्धकगण ने आपको दिये गये न्युक्ति पत्र कि नियम सन्ख्या 2 के अनुसार आपको दिनांक 30/09/2010 (A.N.) से सेवामुक्त करने का निर्णय लिया है।

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व्रत:

वीवा ग्लोबल

(प्रबन्धक)

CC-Labour officer, Gurgaon



1. 28/09/2010 (A.N.)
2. 30/09/2010
3. 30/09/2010
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1. 28/09/2010
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5. 30/09/2010

47.



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MANUFACTURERS & EXPORTERS

दिनांक - 28 सितम्बर 2010

Card No-P1523

धर्मन्दर कुमार

पिता-रम जतन प्रसाद

गांव-मकशुदपुर

पोस्ट-शाहजनपुर

जिला-पटना

बिहार-800001

विषय - सेवा समाप्ति

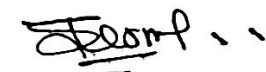
प्रबन्धकगण ने आपको न्युक्ति पत्र दिनांक 01/04/2010 द्वारा छह माह के प्रोबेशन पीरियड पर नियुक्त किया था।

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व्रतः

वीवा ग्लोबल



(प्रबन्धक)

CC-labour officer-Gurgaon

भारतीय डाक
100001
गुरुग्राह



DHARMENDER

D.