

: 2 :

No. Labr/. 775 . 1/(5)/(LC-IR)

21-08-
Date/2023

Copy with a copy of the Award forwarded for information and necessary action to:-

1. M/S. B.S. Enterprise, Durgachak Stadium Market, Stall No. 33, P.O. & P.S. Durgachak, Haldia, Purba Medinipur – 721602.
2. Sri Chandan Kumar Maity, S/o Late Subhod Chandra Maity, Village & Post Uttar Sonamui, P.S. Tamluk, Dist. – Purba Medinipur, Pin - 721648.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Assistant Secretary

No. Labr/. 775 . 2/(2)/(LC-IR)

21-08-
Date/2023

Copy forwarded for information to:-

1. The Judge, Third Industrial Tribunal West Bengal, with respect to his Memo No. 1032 - L.T. dated 10/08/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Assistant Secretary

H.A.(IT)
22/08/2023Dipankar
22/08/2023

1/428360/2023

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/. 775 / (LC-IR)/22015(16)/44/202 Date: 21-08- /2023

ORDER

WHEREAS an industrial dispute existed between M/s. B.S. Enterprise, Durgachak Stadium Market, Stall No. 33, P.O. & P.S. Durgschak, Haldia, Purba Medinipur - 721602 and Sri Chandan Kumar Maity, S/o Late Subhod Chandra Maity, Village & Post Uttar Sonamui, P.S. Tamluk, Dist. - Purba Medinipur, Pin - 721648 regarding the issue, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B) (d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Third Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Third Industrial Tribunal heard the parties under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

AND WHEREAS the Third Industrial Tribunal has submitted to the State Government its Award dated 10/08/2023 in case No 01/2022 under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. 1032 - L.T. dated 10/08/2023.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

Solt
Assistant Secretary
to the Government of West Bengal

**IN THE THIRD INDUSTRIAL TRIBUNAL,
NEW SECRETARIAT BUILDINGS, KOLKATA-700 001**

Case No. 01/2022 u/s. 10(1B)(d)

Present: Sri Mihir Kumar Mondal

Judge, 3rd Industrial Tribunal

Kolkata

Sri Chandan Kumar Maity,
S/o Late Subhad Chandra Maity,
Village & Post - Uttar Sonamui,
P.S. Tamluk, Dist. - Purba Medinipur.

..... APPLICANT

-Vs.-

1. M/s. B. S. Enterprise,
Durgachak Stadium Market,
Stall No. 33, P.O. & P.S. Durgachak,
Haldia, Purba Medinipur – 721 602.

..... OP NO. 1

2. M/s. Ruchi Soya Industries Ltd.
Durgachak, Ward No. 09,
P.O. & P.S. – Durgachak, Haldia,
Purba Medinipur – 721 602.

..... OP NO. 2



A W A R D

DATED: 10TH DAY OF AUGUST, 2023

This is a case u/s 10(1B)(d) of the Industrial Dispute Act, 1947. The instant case has been started on the basis of an application u/s 10(1B)(d) of the Industrial Dispute Act, 1947 filed by one Sri Chandan Kumar Maity of Village-Uttar Sonamui, Dist. Hooghly against (1) M/s. B. S. Enterprise, Durgachak Stadium Market, Haldia, Dist. Purba Medinipur and (2) M/s. Ruchi Soya Industries Ltd., Durgachak, Ward No. 09, Haldia, Dist.- Purba Medinipur challenging the matter of summarily termination of his service under M/s. Ruchi Soya Industries Ltd. with the prayer for granting relief of re-instatement with full back wages along with consequential relief in his favour after holding that his termination from the service under O.P. No. 1 was completely illegal, unjust, improper and inoperative. The applicant in his application u/s 10(1B)(d) under the Industrial Disputes Act has stated that on 31.01.16, he went to the workplace i.e. factory premises to join his usual duty but the General Manager of M/s. Ruchi Soya Industries Ltd. did not allow him to join his duty without assigning any reason whatsoever and thereafter he

reported such incident to OP No. 1 M/s. B. S. Enterprise and sought relief but to no good. In fact the applicant has interpreted such alleged act of refusal of employment to him by M/s. Ruchi Soya Industries Ltd. as 'summary termination' of his service from O.P No. 1 M/s. B. S. Enterprise.

The case of the Applicant is that he was employed under O.P No. 1 M/s. B. S. Enterprise situated at Durgachak Stadium Market, Durgachak, Dist.-Purba Medinipur and the said M/s. B. S. Enterprise had a contract with M/s. Ruchi Soya Industries Ltd. for supplying workmen. Consequently, M/s. B. S. Enterprise deputed him to the factory of M/s. Ruchi Soya Industries Ltd. for functioning as Laboratory Chemist helper and thus he was working there since 15.01.2007 but a problem cropped up on 31.01.2016 because on that date the General Manager of M/s. Ruchi Soya Industries Ltd. did not allow him to join his usual duty without assigning any reason whatsoever and therefore, he reported the matter/incident to his employer M/s. B. S. Enterprise and requested them to resolve the impasse but to no good. He made sincere persuasion for several times as well as approached on several occasions the O.P No. 1 & O.P No. 2 with the request for allowing him to join his normal duty at the factory premises of O.P No. 2 but nothing pleasant happened and thus he submitted written application before the Deputy Labour Commissioner, Government of West Bengal, Haldia, Dist.- Purba Medinipur raising industrial dispute. The applicant has pleaded that lastly he submitted application before the Conciliation Officer for issuing certificate about the pendency of conciliation proceeding and he received such Certificate on 02.12.2020. He has mentioned in the application that at the material time his salary was Rs. 9,300/- per month.

It is admitted that he could not file application before the Industrial Tribunal within the directory time limit as provided u/s 10(1)(b) of the Act, 1947 due to Covid-19 pandemic situation and thus he prayed for condonation of delay in filing the application within the statutory time limit.

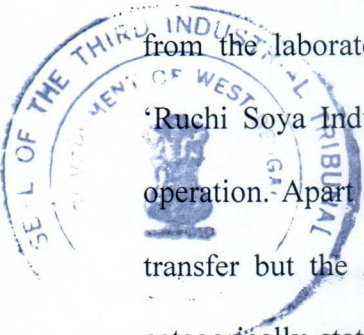
It has been mentioned in the application that due to wrongful and arbitrary termination from the service, he became fully unemployed and he has been passing days in tremendous financial stringencies. It is mentioned that inspite of his sincere efforts, he was not able to secure any other alternative employment elsewhere. He has claimed that his termination from the service on and from 31.01.2016 was absolutely unjust, arbitrary and illegal. Accordingly, the

applicant has prayed for his reinstatement with full back wages under M/s. B. S. Enterprise along with other incidental benefits.

The O.P No. 1 i.e. M/s. B. S. Enterprise on receiving the notice from this Tribunal entered its appearance and filed written statement to contest the 'Application' u/s 10(1B)(d) of the Industrial Dispute Act, 1947.

The O.P No. 2 M/s. Ruchi Soya also entered its appearance in this case on receiving the notice and filed written statement to contest the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947.

The OP No. 1 by its WS has denied all the statements of the applicant containing various allegations leveled against the OP No. 1. The OP No. 1 by its WS raised question on the maintainability of the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. The OP No. 1 by its WS has disclosed that it runs the business of providing manpower to various organizations according to their requirements. The OP No. 2 had engaged the OP No. 1 Firm for providing manpower in its factory according to the requirement and consequently the OP No. 1/Firm deployed the Applicant/Workman including other workmen at the factory premises of the OP No. 2 situated at Durgachawk, Haldia. The said Applicant/Workman was deployed in the laboratory department of the factory of the OP No. 2 on 'no work no pay basis'. Subsequently, the OP No. 2 decided to reduce the manpower and thus, no scope was left there for continuing the Applicant for work in the laboratory department of the factory of the OP No. 2. In view of the situation, the Applicant was transferred to another department of the same factory of the OP No. 2 without altering his emoluments drawn by him while working at the laboratory department and the Applicant was instructed to join at his new place of posting but he did not join in his new assignment at another department of the OP No. 2. The matter of such transfer of the Applicant from the laboratory department to other department was communicated to the President of 'Ruchi Soya Industries Limited Progotisil Contractor and Workers' Union' seeking their co-operation. Apart from that the Applicant was verbally advised to comply with the order of the transfer but the Applicant refused to abide by the order of the transfer. The OP No. 1 has categorically stated that there was no termination of the service of the Applicant. It has been pleaded categorically that verbally communicating the order of transfer to the Applicant cannot be exaggerated as 'termination' and it has been mentioned specifically that since no termination of service of the Applicant took place, no question of illegal termination thus arises in respect of



the Applicant. The OP No. 1 by his WS has raised objection against the prayer of condonation of delay in filing the application u/s 10(1B)(d) of the Industrial Disputes Act, 1947 after the lapse of statutory period of filing the same. The OP No. 1 has prayed for dismissal of the claim of the Applicant.

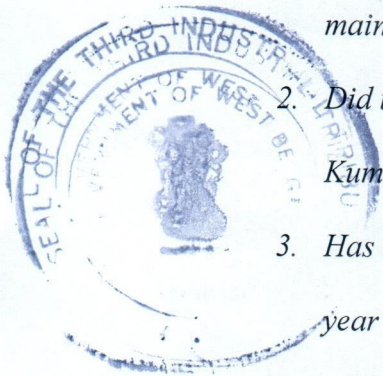
The OP No. 2 by its WS has denied all the material allegations leveled against it by the Applicant and inter-alia has disclosed that the Applicant was an 'employee' of the OP No. 1 and thus there was no employer-employee relationship in between the OP No. 2 and the Applicant. The OP No. 2 by its WS has claimed that the application filed by the Applicant under section 10(1B)(d) of the Industrial Disputes Act is not maintainable in the eye of law. The OP No. 2 by its WS has mentioned that no termination of the service of the Applicant took place and thus there was no ground for taking recourse of section 10(1B)(d) of the Industrial Disputes Act, 1947 to file the instant application. The OP No. 2 prayed for holding that the application is not maintainable against the OP No. 2 and for issuance of direction upon the Applicant to strike out the OP No. 2 as a party to this case.

On the basis of pleadings of the parties, the following issues were framed in this case:

ISSUES

1. *Is the instant application u/s 10(1B)(d) of the Industrial Disputes Act, 1947 is maintainable?*
2. *Did the OP/M/s. B. S. Enterprise terminate the service of the applicant Sri Chandan Kumar Maity w.e.f. 31.01.2016? If yes, whether such termination is justified.*
3. *Has the workman been in permanent service of the OP/M/s. B. S. Enterprise for one year or more?*
4. *What relief, if any, the Applicant is not entitled to in this case?*

After framing of the issues, date for hearing on merit was fixed but on the subsequent date, it was informed by both the parties that the OP No. 1 had already absorbed the workman in their firm and payment of wages had already started. Subsequently on 04.05.2023 a joint petition was filed mentioning that the industrial dispute between the workman and the OP No. 1 particularly had been settled amicably and on the basis of settlement of dispute outside the Tribunal, they would file Memorandum of Settlement. Accordingly, on 30.03.2023, the parties to this case have filed a joint petition along with a joint 'Memorandum of Settlement' with the prayer for accepting the said settlement and to dispose of this case in terms of joint 'Memorandum of Settlement'.



The workman Sri Chandan Kumar Maity examined himself as PW1 in support of the Memorandum of Settlement and he proved the joint Memorandum of Settlement and the same was marked as Exbt.-1.

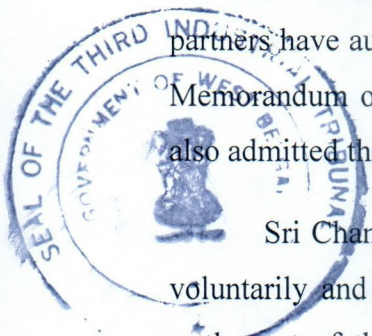
One Sk. Sabir, one of the partners of OP No. 1 M/s. B. S. Enterprises examined himself as OPW 1 in support of the Memorandum of Settlement. In course of his evidence, he identified the Exbt.-1.

Sk. Sabir, one of the partners of OP No. 1 M/s. B. S. Enterprises was present before this Tribunal on 08.08.2023. Sk. Sabir and Mr. Chandan Kumar Maity were joint signatories on the joint petition and joint 'Memorandum of Settlement'. According to the 'Memorandum of Settlement' the OP No. 1 M/s. B. S. Enterprise has already absorbed their workman Sri Chandan Kumar Maity. The Company has provided employment w.e.f. 04.01.2023. Moreover, the OP No. 1 M/s. B. S. Enterprise has already paid an amount of Rs.20,000/- by way of cheque and that amount has already been credited to his account and he is satisfied on receiving such amount.

On perusal of the evidence of PW1, it is found that he voluntarily and on his own volition entered into the joint Memorandum of Settlement and he becoming fully satisfied, put his signature on the Memorandum of Settlement. It is seen that the PW1 has deposed that he will have no claim or demand outside the Memorandum of Settlement in respect of this particular industrial dispute. During cross-examination, he has admitted that he settled the industrial dispute with his immediate employer M/s. B. S. Enterprise in full satisfaction of his claim and he has no demand or claim against the OP No. 2.

On perusal of the evidence of OPW1 it is found that the Firm i.e. M/s. B. S. Enterprise has already absorbed its workman Sri Chandan Kumar Maity w.e.f. 04.01.2023 and has also paid an amount of Rs.20,000/- against lump sum payment through cheque. He has identified the Memorandum of Settlement and he is fully satisfied with the terms and conditions of the Memorandum of Settlement. During cross-examination he has disclosed that there are three partners of M/s. B. S. Enterprise including himself and the other two partners have knowledge about the settlement of the industrial dispute of this instant case. He has deposed that other two partners have authorized him to settle the industrial dispute as well as to put his signature on the Memorandum of Settlement as well as joint petition praying for settlement of dispute. He has also admitted that OP No. 2 has no concern in this settlement.

Sri Chandan Kumar Maity has stated openly before this Tribunal that he spontaneously, voluntarily and without being influenced by any person or force, has entered into amicable settlement of the Industrial Dispute and he put his signatures on the joint petition and joint 'Memorandum of Settlement'. He has submitted that an amount of Rs.20,000/- has already been credited to his Bank Account and he has been working under M/s. B. S. Enterprise and his work place in the factory of M/s. Ruchi Soya Industries Limited and he has expressed his satisfaction in the matter of amicable settlement of the Industrial Dispute. Sk. Sabir, one of the partners of M/s. B. S. Enterprise expresses his satisfaction over the performance of their workman Sri



Chandan Kumar Maity and he also expresses his good intention to cooperate with their workman Sri Chandan Kumar Maity.

Ld. Advocate for M/s. B. S. Enterprise has prayed for passing Award on settlement of the Industrial Dispute amicably.

In view of greater interest of keeping industrial peace and good relationship between the Firm i.e. M/s. B. S. Enterprise and its workman, I accept the Memorandum of Settlement, which is found as legal, reasonable and fair, made by the parties to this case jointly and thus, an order of Award is being passed over the same. The Memorandum of Settlement be made part of the Award in respect of dispute raised.

In view of such amicable settlement of the dispute, there is no necessity of making discussion on the issues, so framed in the referral order to make appropriate decision. Accordingly, all the issues are disposed of in the light of joint Memorandum of Settlement.

Hence,

it is

Ordered

That the instant Industrial Dispute brought before this Tribunal by filing application u/s 10(1B)(d) of the Industrial Disputes Act, 1947 is settled in terms of joint Memorandum of Settlement.

According to the joint Memorandum of Settlement the Applicant Sri Chandan Kumar Maity has already been reinstated in his job under M/s. B. S. Enterprise and he has been drawing wages/salary on and from 04.01.2023. According to the joint Memorandum of Settlement there was no break of service tenure of the Applicant Sri Chandan Kumar Maity with his employer M/s. B. S. Enterprise. Thus the employment of Sri Chandan Kumar Maity is treated as continuous employment since 15.07.2006 under M/s. B. S. Enterprise.

This Tribunal finds that the joint Memorandum of Settlement is legal, reasonable and fair.

This is the settlement Award of this case passed by this Tribunal.

Copies of this Award be sent to the Labour Department, Government of West Bengal in accordance with usual norms and rules.

Dictated and corrected

Sd/- M.K. Mondal

Judge

Judge
3rd Industrial Tribunal
Govt. of West Bengal



Sd/-
Mihir Kumar Mondal

Judge

Third Industrial Tribunal
Kolkata-1
10.08.2023

Judge
3rd Industrial Tribunal
Govt. of West Bengal

MEMORANDUM OF SETTLEMENT

1. Name of the Parties and addresses : M/s. B. S. Enterprise
having its office at
Durgachak Stadium Market,
Stall No. 33
P.O. & P.S. Durgachak,
Haldia, Purba Medinipur,
Pin - 721602

AND

Their workman
Sri Chandan Kumar Maity
Vill. & P.O. Uttar Sonamui,
P.S. Tamluk,
Dist. - Purba Medinipur,
Pin - 721648

2. Representing the Company : S.K. Sahir, Partner
B.S. Enterprise
3. Representing the Workman : Workman himself

SK Sahir

4. SHORT RECITAL OF THE CASE

Sri Chandan Kumar Maity is an employee of the company.

Sri Chandan Kumar Maity raised an Industrial dispute alleging refusal of his employment with effect from 31.01.2016 before the Ld. Third Industrial Tribunal, Kolkata. The contention of the management is that there was no refusal of employment and / or termination of services of Sri Chandan Kumar Maity.

During the pendency of the said dispute before the Ld. Third Industrial Tribunal, both the parties have amicably settled the matter fully and finally outside the Tribunal and accordingly the settlement has been arrived at on the following terms and conditions.

5. Terms of settlement :

- a) That Sri Chandan Kumar Maity being apprised of the fact that the contract made between M/s. B. S. Enterprise and M/s. Ruchi Soya Industries Ltd. came to end and there is no scope of his deployment at his previous place of work. The offer given to him to work at different place by the management of M/s. B. S. Enterprise has been accepted by him and accordingly he has been given employment at another location with effect from 4th January 2023

B. S. ENTERPRISE

SK Sahir
Partner

Chandan Kumar Maity

Contd..

- b) It is agreed by and between the parties hereto that there would not be any loss of continuity of service of Sri Chandan Kumar Maity and his salary shall not be lesser than his previous salary.
- c) The company has agreed to pay the lump sum amount of Rs. 20,000/- to Sri Chandan Kumar Maity for his livelihood and the said amount has already been paid to him and he has accepted the same.
- d) It is agreed by and between the parties hereto that Sri Chandan Kumar Maity shall have no claim for back-wages or for any salary or for any benefits whatsoever in nature for the period from 01.02.2016 and onwards against the company or M/s. Ruchi Soya Industries Ltd.
- e) Sri Chandan Kumar Maity has agreed that he will not proceed with the case initiated by him at the Ld. Third Industrial Tribunal, Kolkata being Case no. 01/2022/10 (1B)(d) further and the said case is to be treated as settled.
- f) That no other amount either statutory or otherwise is due and payable to Sri Chandan Kumar Maity nor any claim be preferred by him before any court of law or Authority or Tribunal / Court against the company. Since Sri Chandan Kumar Maity has been taken in employment the question of reinstatement is redundant.
- g) It is agreed by Sri Chandan Kumar Maity that the dispute raised by him before the Ld. Third Industrial Tribunal, Kolkata by initiating case being numbered 01/2022/10 (1B)(d) is treated as settled fully and finally.
- h) It is agreed by and between the parties hereto that a joint petition of compromise enclosing therewith the copy of this settlement will be submitted before the Ld. Third Industrial Tribunal, Kolkata praying for necessary award that the matter has been settled between the parties.
- i) This settles all the demands, dues and disputes fully and finally.

IN WITNESS WHEREOF both the parties have signed this settlement
on this the~~08.08.23~~^{Aug-23} day of July, 2023.

B. S. ENTERPRISE
For the Company *Sh. Sahir*
Partner

Chandan Kumar Maity
Workman
8.8.2023

Witness :

Bidish Das.
9734835361

BEFORE THE LEARNED THIRD INDUSTRIAL TRIBUNAL,
WEST BENGAL

Case No. 01/2022/10(1B)(d)

In the matter of :

An Industrial Dispute u/s
10(1B)(d) of the Industrial
Disputes Act, 1947.

-Between-

Sri Chandan Kumar Maity,
-Applicant

-And-

1. M/s. B.S. Enterprise and
another
- Opposite Parties

The humble joint petition on
behalf of the applicant and the
Opposite Party No. 1 above
named.

Most Respectfully Sheweth :

1. That during the pendency of the application filed u/s 10(1B)(d) of the Industrial Disputes Act, 1947 by the applicant Sri Chandan Kumar Maity and the Opposite party No.1 started bi-partite discussion for an amicable settlement of the dispute preferred in the above case outside the Tribunal.
2. That after protected discussion in an atmosphere of cordiality a memorandum of settlement has been arrived at between the parties on 08.08.2022 and the terms and conditions have been incorporated therein. In terms of the said settlement the present case has been settled fully and finally.

A xerox copy of the said memorandum of settlement is annexed hereto and marked as Annexure - 'A'.

3. That the petition is made bonafide and for ends of justice.

Contd..

B. S. ENTERPRISE

Sh Sahir

Partner

Chandan Kumar Maity .

Received the copy
without the objection
for Ruchi Soya
Industries Ltd
The of no 2
Submission by
for the of no 2
2/8/23

Shahid
Sind to Kanchan
8.8.2023
Subhash Chandra
8/8/2023

In the circumstances it is therefore humbly prayed that the Ld. Tribunal may be graciously pleased to pass an award in terms of the said settlement disposing the case and / or pass any other order or orders as Your Honour may deem fit and proper.

And for this act of kindness your petitioner as in duty bound shall ever pray.

D. S. ENTERPRISE
Sh Sakin
Partner

For the Opposite Party No. 1

Charan Kumar Maurya

For the applicant