

I/436836/2023


H.A.(IT) 14/09/2023
 Dipankar
 14/09/2023 : 2 :

No. Labr/. 846/. 1/(5)/(LC-IR)

Date 14/09/2023

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

1. M/s. E. P. I. India Pvt. Ltd., 9, Ram Mohan Roy, P.S. Amherst Street, Kolkata - 700009.
2. Mustafa Ali Khan, S/o. Raoswen Khan, Vill. Bidhichandrapur, P.O. Udaynarayanpur, Dist. Howrah - 711412.
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/. 846/. 2/(2)/(LC-IR)

Date 14/09/2023

Copy forwarded for information to:-

1. The Judge, Third Industrial Tribunal West Bengal, with respect to his Memo No. 1123 - L.T. dated 31/08/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Assistant Secretary

1/436836/2023

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

No. Labr/.⁸⁴⁶ / (LC-IR)/22015(16)/48/2023 Date: 14/09/2023

ORDER

WHEREAS an industrial dispute existed between M/s. E. P. I. India Pvt. Ltd., 9, Ram Mohan Roy, P.S. Amherst Street, Kolkata - 700009 and Mustafa Ali Khan, S/o. Raoswen Khan, Vill. Bidhichandrapur, P.O. Udaynarayanpur, Dist. Howrah - 711412 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.

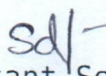
AND WHEREAS the Third Industrial Tribunal has submitted to the State Government its Award dated 31/08/2023 in case No 01/2018 under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. 1123 - L.T. dated 31/08/2023.

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,


Assistant Secretary
to the Government of West Bengal

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

Case No. 01/2018 u/s. 10(1B)(d)

Present: Sri Mihir Kumar Mondal

Judge, 3rd Industrial Tribunal

Kolkata

Mustafa Ali Khan,
son of Raoswen Khan,
Vill. Bidhichandrapur,
P.O. Udaynarayanpur,
Dist. Howrah-711412

..... Applicant

-Vs.-

M/s. E. P. I. India Ltd.,
9, Ram Mohan Roy,
P.S. Amherst Street,
Kolkata-700009

..... Opposite Party

A W A R D

DATED: 31ST DAY OF AUGUST, 2023

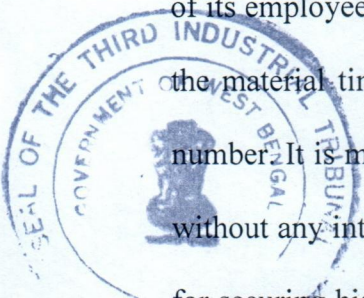
This is a case u/s 10(1B)(d) of the Industrial Dispute Act, 1947. The instant case has been started on the basis of an application u/s 10(1B)(d) of the Industrial Dispute Act, 1947 filed by one Mustafa Ali Khan of Village-Bidhichandrapur, P.O. Udaynarayanpur, Dist. Howrah against M/s. E. P. I. India Ltd. having its workshop at T. N. Mukherjee Road, P.O. Dankuni, Dist. Hooghly challenging the matter of termination of his service under M/s. E. P. I. India 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./Company 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 27.10.17, he went to the workplace i.e. workshop premises to join his usual duty but his entry to the workshop was refused.

The case of the Applicant is that he was employed under O.P./Company M/s. E. P. I. India Ltd. being a technical and skilled worker on 01.01.1986 and his ordinary place of posting was at the factory of the Company situated at T. N. Mukherjee Road, P.O. Dankuni, Dist. Hooghly. He has claimed that he is a license holder in the field of electrical wiring. He had been working under the OP/Company since the date of his joining. He visited his workplace on 27.10.2017, but his entry to his workplace was denied and he was informed that his service had been terminated although no cause was assigned to him in the matter of his dismissal from his

service by the OP/Company. Accordingly, he made a written complaint demanding justice to the Labour Commissioner, Serampore against such illegal order of dismissal/termination. A conciliation proceeding was started by the Assistant Labour Commissioner but the OP/Company did not turn up in response to the notice for such conciliation proceeding. He on expiry of 60 days applied for certificate of pending dispute and on receiving certificate dated 22.02.2018 filed this case.

The O.P./Company M/s. E. P. I. India Ltd. 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./Company M/s. E. P. I. India Ltd. by its WS has denied all the statements of the applicant containing various allegations leveled against the OP/Company. The OP/Company by its WS raised question on the maintainability of the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. The OP/Company by its WS has mentioned that there was no severance of employer and employee relationship and thus actually no 'industrial dispute' as defined under Industrial Disputes Act had actually arisen. It has been mentioned that the OP/Company is engaged in the business of repairing and rewinding of electrical equipments and the total number of its employee was never more than 12/13 in number. It has been specifically mentioned that at the material time total number of employees including the applicant was not exceeding six in number. It is mentioned that the applicant/workman since 27.10.2017 stopped attending his duty without any intimation to the management but many a time the management tried to contact him for securing his attendance but such attempts went in vain. It is mentioned that the Management of the company thought that due to some genuine reason the applicant failed to join his duty but on receiving the notice from the office of the Assistant Labour Commissioner, the management came to learn that the applicant/workman made a false allegation of his dismissal from his service against the management. On receiving the notice the management held an investigation to ascertain whether any employee of the company had actually obstructed the applicant/workman to enter into the workshop but it was revealed that no such incident took place. The management requested in writing to the workman to appear before the Director as a measure of further investigation but the workman did not respond to such request. The management has specifically denied the allegation of dismissal of the workman from his service, which was raised by the workman. The management accordingly initiated disciplinary action



against the workman and accordingly, charge sheet by letter dated 25.01.2018 was issued over the matter of misconduct due to unauthorized absence, breaking of discipline, loss of production, financial loss. Enquiry was started by way of appointing outsider by way of issuance of notice but the applicant did not participate in the enquiry. The OP/Company has pleaded that the applicant/workman is not entitled to get any relief as prayed for and thus has prayed for dismissal of the case on the ground of non-maintainability as well as on the merit.

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. *Has the Company/OP terminated the service of the applicant by way of refusal of employment illegally on 27.10.2017 as alleged?*
3. *What relief, if any, the Applicant is entitled to?*

After framing of the issues, date for hearing on merit was fixed. In course of hearing on merit, the applicant/workman examined himself as PW1 by way of filing examination in chief on affidavit and he was cross examined in full. After going through some developments, the date of adducing evidence on behalf of the company was fixed. During pendency of this case, a talk of settlement of the case was started between the parties and both the parties to this case could reach for the compromise of the dispute. Subsequently on 25.08.2023 a joint petition was filed mentioning that the industrial dispute between the workman and the OP/Company had been settled amicably and on the basis of settlement of dispute outside the Tribunal. Accordingly, they 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'. A petition was filed with the prayer for recalling the PW1 Mustafa Ali Khan for his examination as witness on the Memorandum of Settlement.

The workman Mustafa Ali Khan i.e. PW1 has been recalled and he has been examined in chief as PW1 in support of the Memorandum of Settlement. He has identified the joint Memorandum of Settlement.

Mr. Sujay Samanta being one of the Directors of M/s. E. P. I. India Pvt. Ltd. examined himself as OPW 1 in support of the Memorandum of Settlement. In course of his evidence, he identified the Memorandum of Settlement.

Mr. Sujay Samanta being one of the Directors of OP/Company M/s. E. P. I. India Pvt. Ltd. was present before this Tribunal on 25.08.2023. Mr. Sujay Samanta and Mustafa Ali Khan were joint signatories on the joint petition and joint 'Memorandum of Settlement'. According to the 'Memorandum of Settlement' the OP/Company has already handed over a Demand Draft

bearing No. 851132 dated 21.08.2023 amounting to Rs.2,00,000/- (Rupees two lakhs only) in the name of Mustafa Ali Khan to the workman/Applicant against proper receipt.

Today, the applicant/workman through his Ld. Advocate has submitted a petition along with the photo copy of the relevant page of his Bank Pass Book stating that an amount of Rs.2 lakhs 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 signatures 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. He has also admitted that he settled the industrial dispute with his employer M/s. E. P. I. India Pvt. Ltd. in full satisfaction of his claim and he has no demand or claim against his employer.

On perusal of the evidence of OPW1 it is found that the Company i.e. M/s. E. P. I. India Pvt. Ltd. has amicably settled the industrial dispute with its workman Mustafa Ali Khan and in terms of the amicable settlement, he being one of the Directors of the Company has already handed over a Demand Draft bearing No. 851132 dated 21.08.2023 amounting to Rs.2,00,000/- (Rupees two lakhs only) in the name of Mustafa Ali Khan to the workman against lump sum payment. He has identified the Memorandum of Settlement and he is fully satisfied with the terms and conditions of the Memorandum of Settlement. In his evidence, he has disclosed that he is one of the Directors of the Company and the other Director has knowledge about the settlement of the industrial dispute of this instant case.

Mustafa Ali Khan 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.2,00,000/- has already been credited to his Bank Account and he has expressed his satisfaction in the matter of amicable settlement of the Industrial Dispute.

Ld. Advocate for M/s. E. P. I. India Pvt. Ltd. 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 Company i.e. M/s. E. P. I. India Pvt. Ltd. and its former 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 by the Tribunal 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 Mustafa Ali Khan has become entitled to get Rs.2,00,000/- in full satisfaction of his claim of this case and he has already received a Demand Draft bearing No. 851132 dated 21.08.2023 amounting to Rs.2,00,000/- (Rupees two lakhs only) in the name of Mustafa Ali Khan in full satisfaction of his claim against proper receipt. According to the declaration submitted by the applicant, an amount of Rs.2 lacs has already been credited to his account. The applicant/workman will have no further demand from M/s. E. P. I. India Pvt. Ltd. in any manner whatsoever. The Management of M/s. E. P. I. India Pvt. Ltd. will render necessary assistance to Mustafa Ali Khan in the matter of withdrawal of EPF amount, if any, by him from Employees Provident Fund Organization after passing the settlement award of this case.

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

Sdt M.K. Mondal
Judge

Judge
3rd Industrial Tribunal
Govt. of West Bengal



Sdt Mihir Kr. Mondal
Judge

Third Industrial Tribunal
Kolkata-1
31.08.2023

Judge
3rd Industrial Tribunal
Govt. of West Bengal

MEMORANDUM OF SETTLEMENT

Name and address of the parties: E.P.I (India) Private Ltd, 9 Ram Mohan Roy Road, Kolkata 700009 (hereinafter referred to as employer)

And

Their workman Mostafa Ali Khan @
Mustafa Ali Khan @ Golam Mustafa Khan
(hereinafter referred to as workman)

Name of the person representing
the employer : Mr. Sujoy Samanta, Director

Name of the person representing
the workman : Self

Short recital of the case : The workman stopped attending duty since November 2017 without any intimation to the management but raised an industrial dispute for termination of service by way of refusal of employment by filing an application under Section 10(1B)(d) of the Act being numbered 01 of 2018. The opposite party duly entered its appearance and filed written statement and evidence was concluded on the part of the workman and during the midst of the proceedings the workman also attended the age of superannuation. Presently the case is at the stage of evidence of the management. At this stage the workman *and* the management *agreed* so that the case is settled out of court expressing *his* unwillingness to pursue with the case anymore and the management has *accepted* to his appeal sympathetically. Accordingly, both parties have settled the matter amicably on the following terms and conditions:

Terms and condition:

1. The management shall pay a lump sum amount of Rs.2,00,000/- (Rupees two lacs only) to the workman vide demand draft no. 851132 dated 21st August, 2023 drawn on State Bank of India, Hatibagan Branch in consideration of his prayer.

3132 20/08/2023
25.08.23

Samanta
25/08/2023

2. The workman accepted his superannuation w.e.f 21st April, 2022 from service by the management and further agrees not to raise any dispute or issue regarding his employment or pursue with the case pending before the learned Third Industrial Tribunal.
3. In consideration of the amount paid by the management, the workman hereby undertakes that he will not make any monitory or other demand whatsoever directly or otherwise against the management in relation to his employment or otherwise and further agrees and accepts that he has no grievance or claim.
4. The parties shall file a joint petition before the Ld. Tribunal praying for an award in terms of the settlement.

ଅଧ୍ୟକ୍ଷ ଗ୍ରାମିଣୀ
25.08.23

Signature of the workman

Seemank
25/08/2023

Signature of management's representative

RECEIPT

25.08.2023

I, Mostafa Ali Khan @ Mustafa Ali Khan @ Golam Mustafa, residing at Village – Bidhichandrapur, PS Udaynarayapur, Howrah 711412 being the applicant/ workman in the case no. 01/2018 u/s 10(1B)(d) pending before the Ld. Third Industrial Tribunal, Kolkata have received a sum of Rs.2,00,000/- (Rupees Two lacs) only vide demand draft no. 851132 dated 21st August, 2023 drawn on State Bank of India, Hatibagan Branch towards my full and final settlement including all dues from E.P.I (India) Private Ltd, 9 Ram Mohan Roy Road, Kolkata 700009. I have no further claims monetary or otherwise against the company.

Mustafa Ali Khan
25.08.23

भारतीय स्टेट बैंक
जारी करीब **State Bank of India**
Issuing Branch: HATIBAGAN (CALCUTTA)
कोड क्र / CODE No: 01503
Tel No. 033-25557410

मांगद्राफ्ट
DEMAND DRAFT

Key: ROHDUT
Sr. No: 961315

21082023
D D M M Y Y Y Y

मांगे जानेपर MOSTAFA ALI KHAN *****

या उनके आदेश पर
OR ORDER

ON DEMAND PAY
रुपये **RUPEES** Two Lakh Only

अदा करें ₹ 200000.00

IOI 000547851132
Name of Applicant

Key: ROHDUT Sr. No: 961315
E.P.I. (INDIA) PRIVATE LIMITED

AMOUNT BELOW 200001(2/6)

मूल्य प्राप्त / VALUE RECEIVED

भारतीय स्टेट बैंक

STATE BANK OF INDIA
अदाकर्ता शाखा / DRAWEE BRANCH: HOWRAH
कोड क्र / CODE No: 00091

प्राधिकृत हस्ताक्षरकर्ता
AUTHORISED SIGNATORY

AMAR NATH DAS
S. S. No. - D-9410
BRANCH MANAGER

₹ 1,50,000/- एवं अधिक के लिखत दो अधिकारियों द्वारा हस्ताक्षरित होने पर ही वैध है।
INSTRUMENTS FOR ₹ 1,50,000/- & ABOVE ARE NOT VALID UNLESS SIGNED BY TWO OFFICERS

⑈851132⑈ 0000020001: 000547⑈ 16

Received the Demand Draft dated 21/08/23
amounting Rs. 200000/-
अनुसूच आलम खाँ

25/08/2023