

/403285/2023

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

No. Labr/. <sup>460</sup>460. ./ (LC-IR)/ 11L-22/18 Date: ... <sup>07-06</sup>07-06-2023

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. 799/(LC-IR)/IR/11L-22/2018 dated 05/10/2018 the Industrial Dispute between M/s CPM India Sales and Marketing Pvt. Ltd.,  $\frac{1}{2}$ , Fern Road, Gariahat, Kolkata - 700019 and Smt. Sangeeta Sharma, 5B, Chakraberia Lane, Kolkata - 700020 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fifth Industrial Tribunal, West Bengal.

AND WHEREAS the said Fifth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 30/05/2023 on the said Industrial Dispute vide memo no 664 - L.T. dated - 30/05/2023.

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

I/403285/2023

No. Labr/ 460/1(s)/(LC-IR)

Date: ...07-06-2023

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

1. M/s CPM India Sales and Marketing Pvt. Ltd., 1/2, Fern Road, Gariahat, Kolkata - 700019.
2. Smt. Sangeeta Sharma, 5B, Chakraberia Lane, Kolkata - 700020.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

*Z. ALI (A/S)*  
*Matter related to IR.*  
*Pl. look into it*  
*09/06/2023*

*30*  
 Assistant Secretary

No. Labr/ 460/2(s)/(LC-IR)

Date: ...07-06-2023

Copy forwarded for information to:

1. The Judge, Fifth Industrial Tribunal, West Bengal with reference to his Memo No. 664- L.T. dated - 30/05/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

*For upload in website of the dept.*  
*09/06/2023*  
 Assistant Secretary

*H.A. (IT)*  
*For upload in website of the dept.*  
*09/06/2023*

*Dipankar*  
*09/06/2023*

**In the Fifth Industrial Tribunal, West Bengal**  
**New Secretariat Buildings, Kolkata.**

**Present: Shri Kamal Sarkar, Judge,**  
**Fifth Industrial Tribunal, Kolkata.**

**Case No. VIII-24/2018**

In the matter of an Industrial Disputes between M/s. CPM India Sales and Marketing Pvt. Ltd., 1/2, Fern Road, Gariahat, Kolkata - 700019 and their workman Smt. Sangeeta Sharma, 5B, Chakraberia Lane, Kolkata-700020.

**A W A R D**

This case arose by way of Order of Reference Vide No. Labr/799/(LC-IR)/IR/11L-22/18 dated 05/10/2018 by order of the Governor signed by the Assistant Secretary, to the Govt. of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata - 700 001, mentioning that an Industrial Dispute exists between between M/s. CPM India Sales and Marketing Pvt. Ltd., 1/2, Fern Road, Gariahat, Kolkata - 700019 and their workman Smt. Sangeeta Sharma, 5B, Chakraberia Lane, Kolkata-700020 relating to the issues as mentioned in the order of reference stated to be being matters / matter specified in the Second / Third Schedule of the Industrial Disputes Act, 1947, further mentioning that it is expedient that the said dispute should be referred to an Industrial Tribunal constituted under section 7A of the Industrial Disputes Act, 1947 and therefore, in exercise of power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947, the Governor is pleased by this order of reference to refer this dispute to the Seventh Industrial Tribunal stated to be constituted under Notification No. 3115-IR/IR/3A-6/59, dated 21.06.1960 for adjudication requiring this Tribunal to submit Award to the State Govt. with a period of Three months from the receipt of this order of reference by the Tribunal in terms of Sub-Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 subject to other provisions of the Act, the issues as have been framed in the above mentioned order of reference being.

**I S S U E (S)**

1. Whether the termination of service of Smt. Sangeeta Sharma by the management of M/s. CPM India Sales and Marketing Pvt. Ltd. w.e.f. 05/04/2016 is justified?
2. What relief, if any, is she entitled to?

The case record shows that after receipt of the above noted order of reference, the Seventh Industrial Tribunal issued summons to both the parties as per order of reference and after receiving two summons; the workman and the management appeared before the Seventh Industrial Tribunal and thereafter date was fixed for filing their respective written statement along with list of documents. Thereafter both the parties have filed their respective written statement and also the list of documents before the Ld. Seventh Industrial Tribunal and finally Ld. Seventh Industrial Tribunal vide his order dated 01/08/2019 in reference with G. O. No. Labr./699/(LC-IR)/23099/15/2019, dated 26/07/2019 had transferred the present case before this Fifth Industrial Tribunal and on the same date this Tribunal had received the case record.

*30.05.2023* Thereafter both the parties of this case have filed their respective written statement and also filed their lists of documents and date was fixed on 01/10/2021 for evidence of the workman. On 01/10/2021, 02/12/2021, 28/02/2022, 12/04/2022 and 07/07/2022 the petitioner consecutively prayed for time and on 07/07/2022 this Tribunal has allowed for time as a crying chance with a cost of Rs. 5,000/- and date was fixed on 05/08/2022. On 05/08/2022 the workman herself along with her Ld. Advocate were present before this Tribunal but she did not file any affidavit in chief and no adjournment petition was also filed rather she filed a petition praying for waiving of the cost but she did not show any cogent ground for her earlier adjournments. Accordingly her petition for waiving of the cost was rejected and she was show caused by this Tribunal that why necessary order shall not be passed against her and date was fixed on 18/08/2022 for show caused and also for payment of cost.

On 18/08/2022 the workman herself was present but she did not file any show caused and also not paid the cost and even no prayer was there for minimizing or waiving the cost, rather she had filed an adjournment petition and the ground stated therein which was rejected by this Tribunal and as in spite of getting so many opportunities the petitioner did not adduce any evidence before this Tribunal so, her evidence was closed and opportunity had given to the company to adduce evidence on their part in any.

On 13/12/2022, date was fixed for evidence on the part of the company. On that day the workman appeared and submitted that here previous Lawyer is not cooperating with her and accordingly she need some time to take proper steps to contest the case on which Ld. Advocate for the company did not raise any objection and this Tribunal had allowed time to the workman to take appropriate steps by 2.30 p.m. to the same date. At 2.30 p.m. the workman filed 3 separate petitions, one is reply to the show cause, another is praying for waiving of cost and another one is for recalling the order no. 39, dated 18/08/2022. As per prayer of the Ld. Advocate for the company the case was adjourned on that date and



fixed on 07/02/2023 for hearing of those petitions dated 13/12/2022. Surprisingly, on 07/02/2023 none appears on the part of the workman and accordingly after a reasonable time all the three petitions dated 13/12/2022 filed by the workman was rejected as none moved and date was fixed on 09/02/2023 for passing necessary order. On 09/02/2023 the workman did not appear and no steps had taken by her accordingly date fixed on 06/03/2023 for evidence on the part of the company. On 06/03/2023 the management had adduced evidence and date was fixed on 11/04/2023 for hearing argument. On 11/04/2023 the argument was heard and ultimately the dated fixed for passing order.

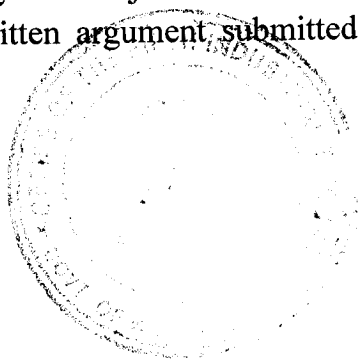
Now the present case has referred by the Government before this Tribunal with the issues of termination of service of Smt. Sangeeta Sharma by the present OP/Management whether justified or not along with other relief if any she is entitled for.

*Q. Ahn*  
30.05.2023  
The workman had filed her written statement with a prayer to hold by the Tribunal that her termination was unjustified, illegal as well as violation of Principal of Labour Laws and also with a prayer for her reinstatement of her service. On the contrary the OP/Company also filed their statement of defense denying all materials allegation of the workman case and prays for dismissal of the workman case. The representatives of the company in her evidence also corroborate the company's case.

Now it is the case referred by the Government as per prayer of the workman Smt. Sangeeta Sharma who in spite of the filling her written statement did not turn up to proceed the case and also to prove the case by way of adducing evidence on her behalf. It is the settle principal of Law that the petitioner has to prove her case by her own merits and not upon the weakness of the opposite party's case. Though the opposite party in this case has adduce evidence conflicting the workman case but ultimately the workman did not turn up to prove her case which clearly denote that she is not interested to proceed for hearing of this case. Now Rule-21 of the West Bengal Industrial Disputes Rule, 1958 stated as follows:-

*"If without sufficient cause being shown, any party to a proceeding before a Board, Court, Labour Court, Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal or Arbitrator may proceed as if such party had duly attended or had been represented."*

In view of the above provision this Tribunal has proceeded this case ex parte against the present workman/petitioner of this case. The O.P/Company has adduced evidence both oral and evidentiary from which it reveals that they have rebut the petitioner's case and also prayed for rejection of the case of the petition. Ld. Advocate for the O.P/Company in his written argument submitted that the petitioner/workman was



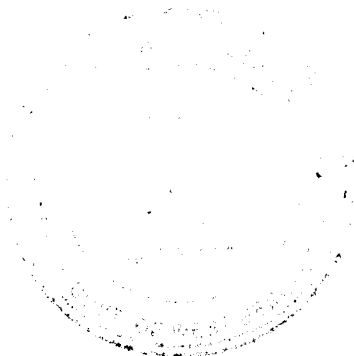
appointed for the post of Supervisor in the company's client GSK Project in Kolkata and Clause 6(a) of the context of employment provided 15 days notice period for either party to terminate the services without any reason and the company sent a discontinuation letter dated 05/04/2016 to the workman stating that due to unforeseen circumstances the services are being discontinued and also clarified that the client of the company had dissolved the supervisor's post and hence the services are being terminated/discontinued. The company had offered 15 days' salary in lieu of the termination but the workman refused to encash the draft given by the company equivalent to 15 days' salary and returned the same to the company file the present case. According to Ld. Advocate for the company the workman did not adduce any evidence to prove any of her claim before this Tribunal and accordingly her petition liable to be dismissed.

Admittedly in spite of having sufficient opportunity to prove her case by adducing evidence the workman/petitioner has failed to avail the same and the reason best known to her, she did not adduce evidence in this case.

*Rahm*  
30.05.2023 In view of the foregoing discussions and above findings this Tribunal has no hesitation to hold that the applicant/workman has palpably failed to prove her case on the contrary the O.P./Company by filing the written statement as well as by adducing evidence both oral and documentary has rebutted the petitioner's case and accordingly the reference made U/s. 10(2A) of Industrial Dispute Act, 1947 has got no merit as petitioners failed to prove her case as she withhold her to adduce any evidence in this case.

Now, a reference made U/s. 10 of the Industrial Dispute Act, 1947 can not be rejected or dismissed as it would not amount to an award. An ex-parte award normally is passed on the strength of Rule 21 of West Bengal Industrial Disputes Rule 1958. The Tribunal is supposing to pass an 'Award' which has been defiled U/s. 2(b) of the Act, and it is clearly stipulated the determination of the Industrial Dispute or any question, relating to thereto, referred to the Tribunal. Once, an order of reference has been made, the Tribunal is bound to decide the same.

In the light of the above discussions, this Tribunal finds and holds that the Applicant/workman has failed to prove that there is any disputes between the parties as she refrained herself from adducing any evidence in this case and the O.P./Company has rebutted her case by adducing evidences both oral and documentary and accordingly the present case is liable to be disposed off on ex-parte against the petitioner/workman of this case.



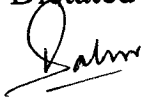
Hence,

**ORDERED**

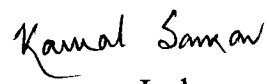
that the Industrial dispute under order of reference Vide G.O. No. Labr/799/(LC-IR)/IR/11L-22/18 dated 05/10/2018 is disposed off on ex-parte against the petitioner/workman Smt. Sangeeta Sharma but without cost as the applicant workman has failed to prove any dispute between the parties as prayed for and the applicant workman is not entitled to get any relief and no award can be passed on the Order of reference in the instant case in favour of the applicant/workman as she did not adduce any evidence in this case in support of her contention.

Accordingly, this case is disposed off on ex-parte and this order is to be treated as an Award of this Tribunal.

Dictated and Corrected by me.



Judge  
5<sup>th</sup> Industrial Tribunal  
30/05/2023



Judge  
5<sup>th</sup> Industrial Tribunal  
30/05/2023

