

I/391353/2023

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

No. Labr/. 3144 ./ (LC-IR)/

Date: 02/05 /2023

ORDER

WHEREAS an industrial dispute existed between M/s. Hindustan Motors Ltd., Hindmotor, Hooghly and Sri Avash Munshi, 8/B, Radhika Charan Chatterjee Lane, Uttarpara, Hooghly - 712258 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 10/04/2023 under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. 407 - L.T. dated 10/04/2023.

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,

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Assistant Secretary
to the Government of West Bengal

I/391353/2023

: 2 :

No. Labr/. 344 .1/(5)/(LC-IR) Date 02/05/2023

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

1. M/S. Hindustan Motors Ltd., Hindmotor, Hooghly.
2. Sri Avash Munshi, 8/B, Radhika Charan Chatterjee Lane, Uttarpara, Hooghly - 712258.
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 Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

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Assistant Secretary

No. Labr/. 344 .2/(2)/(LC-IR) Date 04/05/2023

Copy forwarded for information to:-

1. The Judge, Third Industrial Tribunal West Bengal, with respect to his Memo No. 407 - L.T. dated 10/04/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Assistant Secretary

H/H ITA
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Ananda
04/05/2023

**IN THE THIRD INDUSTRIAL TRIBUNAL,
NEW SECRETARIAT BUILDINGS, KOLKATA**

Present: Shri Mihir Kumar Mondal
Judge,
3rd Industrial Tribunal
Kolkata

Case No. 01 of 2017 u/s 10(1B)(d) of the I. D. Act, 1947

Sri Avash Munshi,
8/B, Radhika Charan Chatterjee Lane,
Uttarpara, Hooghly-712258

... APPLICANT

-Vs.-

Hindustan Motors Limited,
Hindmotor, Hooghly

... OP/COMPANY

A W A R D

DATED: 10TH DAY OF APRIL, 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 application u/s 10(1B)(d) of the Industrial Dispute Act, 1947 filed by one Sri Avash Munshi of Uttarpara, Dist. Hooghly against M/s. Hindustan Motors Ltd., Hindmotor, Dist. Hooghly challenging his dismissal from the services of the Company (Hindustan Motors Ltd.) vide Dismissal Order with reference to GEN/HRM/1743 dated 22.10.2008 with the prayer for granting relief of re-instatement with full back wages along with consequential relief in his favour.

The case of the Applicant is that he was employed under Hindustan Motors Ltd., which was famous in the automobile industry sector and whose factory is situated at Hindmotor, Hooghly whereas its registered office is at 9/1, R. N. Mukherjee Road, Kolkata-1. He has mentioned that he was one of the permanent

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workman of the Company and he was the Joint Secretary of Hindustan Motors and Hyderabad Industries Limited Sangrami Karmachari Union (having Regn. No. 22993) and the said Trade Union was the "Sole Bargaining Agent Union". He has claimed that in the year 2007, the Management of the Company as a matter of habit has started not to disburse wages/salary of the existing workers of the Company at that time. The wages/salary for the month of February was not paid till 11.03.2007. The 'Union' repeatedly made requests to the Management for release of salary but the Management did not pay heed to such requests and also did not take initiative to hold any bipartite meeting to discuss the issue of non-payment of salary and other issues. It is alleged in the Application that the Management of the Company became annoyed and being aggrieved by justified movement of the 'Union' had chalked out plans and programmes to victimize the leaders of such 'Union' and accordingly, the instant dispute had arisen and one 'Charge Sheet' was issued to him. It is mentioned in the Application that on 05.10.2006, another 'Charge Sheet' was served upon him on the allegation that on 29.09.2006, at around 6.15 a.m. while he was working in the paint shop department as an Operator, he along with Sri Prabir Ganguly of Axle Plant (MTM) and other outsiders participated in and also caused instigation to other contractor labourers to go for an illegal strike, sit down and stay in strike without any prior intimation and due to such 'strike', annual maintenance work of the whole plant during the Puja holidays was hampered. It is mentioned that there was an allegation against him and Sri Ganguly that they threatened contract labourers with dire consequences within factory premises and also manhandled one of the contractor and a contract labourer in course of 'strike' which was continued till 30.09.2006. It is mentioned that four charges were framed against him (Sri Avash Munshi) by 'Charge Sheet'

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dated 05.10.2006 and he was placed under suspension. It is mentioned that during such period of suspension, on 01.06.2007, another 'Charge Sheet' was issued against him on the allegation that he was found in and around factory premises on several occasions on 13.03.2007 and other dates when he instigated other employees to participate in illegal strike as well as he along with others made physical obstruction to the employees who were willing to join the duty. Another allegation against him was that on 01.04.2007, he instigated the strikers and actively took part to obstruct the ingress of total 9 trucks, out of which 7 were loaded with raw materials such as oil tanker and other components and 2 were loaded with finished products violating the Order of the Hon'ble High Court, Calcutta passed in connection with W.P. No. 5714 (W) of 2007 causing hamper to the production of the factory. He has mentioned in the application that on 10.04.2007 at the time of starting of general shift, he along with others indulged in pelting stones, brick bats towards the employees who were going to join their duties through the Station Gate of the factory and in course of such incident, some workers were assaulted and one of them sustained injury and also one Manager of 'Machine shop' became severely injured and he was initially admitted to H. M. Hospital and subsequently, he was shifted to C.M.R.I., Kolkata. It has been disclosed that five charges were brought against him by way of charge sheet. It was mentioned in the said charge sheet that show cause notice dated 13.04.07 for dismissal was not exhaustive and for that reason charge sheet dated 01.06.07 was issued. It has been mentioned that the applicant being workman submitted his reply to the charge sheet dated 05.06.2006 and in such reply, he denied all the allegations leveled against him and inter alia he mentioned that he went to the factory premises for a deputation programme, which was intimated to the Management of

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the Company in writing well in advance. He has categorically denied that on 30.09.2006, he took active part in the alleged unlawful activities of the contractor labourers. It is mentioned that a domestic enquiry in respect of charge sheet dated 05.06.2006 took place and such enquiry was held initially by Mr. Dipankar Jana and thereafter by one Mr. Alok Roychowdhury. The enquiry report was served upon him. The said enquiry report goes to show that 3 charges out of 4 charges leveled against him were proved. It is mentioned that the applicant being the workman submitted representation against such biased report of the enquiry officer on 13.08.2008 stating that inspite of his specific request, the proceeding of enquiry was recorded in Bengali language and in the result, either he himself or his representative failed to understand the proceeding. It is mentioned by the applicant that when it was realized by the Management of the Company that ousting him from his service became difficult, with a view to materialize their ultimate decision to dismiss him from his service, the Management slapped another 'Charge Sheet' dated 01.06.2007 on him but prior to that, on 13.04.2007 a show cause notice regarding dismissal was issued to him. He submitted his reply on 15.06.2007 against charge sheet dated 01.06.2007 and in the reply, he denied all the material allegations leveled against him. He has categorically denied the allegations that he instigated employees to participate in the strike as well as he physically obstructed employees, who were willing to join duties, and put obstruction on the way to ingress of loaded trucks inside the factory premises. It is mentioned that the Management of the Company with a view to materialize their pre-determined decision to dismiss him from the service, domestic enquiry was instituted and the same was conducted by one Advocate, Mr. Sahasrangshu Bhattacharyya, a legal professional. The enquiry report was served upon him through forwarding letter

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dated 25.08.2008. It is mentioned that in an enquiry proceeding against him, one Mr. Ajoy Kundu being the presiding officer appointed by the Company held enquiry proceeding at his chamber situated at 7, Old Post Office Street, 1st floor, Room No. 17, Kolkata-700 001. Notice of such enquiry was issued but the said 'Notice' did not contain any offer to him to engage any co-employee as his representative in the said enquiry proceeding to defend him. He submitted a written prayer on 15.07.2007 before the Presiding Officer of such enquiry proceeding, requesting him to draw up the same in Bengali, which is his mother language and considering that he does not know any other language and his such prayer was allowed. In spite of that, the Enquiry Officer continued to record the proceeding of such enquiry in English up to 09.09.2007. He raised objection but his objection was not considered by the Enquiry Officer. Even the matters which were recorded in English were not read over or explained to him in Bengali and as a result, he failed to understand the contents of the recording matters. He has raised question about the recording of the proceeding since his consent was not taken regarding procedure of enquiry as well as the process of marking documents as 'exhibits' since the documents produced by the Company were directly marked as 'exhibited documents' without proving those complying formalities. It is mentioned that in course of enquiry one witness namely Mr. Ranjan Kumar Deb, Chief Security Officer admitted that the workman (applicant) was the Joint Secretary of Sangrami Shramik Karmachari Union (SSKU). It is mentioned that he being the workman submitted one written representation on 11.09.2008 before the Management of the Company, wherein it was categorically mentioned that the Company appointed Enquiry Officer became biased and held him guilty. It is also mentioned that Enquiry Officer was a member of legal profession and thus, ought to have given

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him the opportunity to engage any member from legal profession as his representative to defend him in the enquiry proceeding but nothing was done. He has pointed out that there was no mention in the 'Charge Sheet' dated 01.06.2007 that he (Avash Munshi) instigated and incited other employees to participate in illegal strike and further none of such employees turned up to depose against him in the said enquiry proceeding. It is mentioned that the vindictive attitude of Management of the Company against him is well transpired in view of slapping of one after another 'Charge Sheet' on him. Lastly, on 22.10.2008, the Management of the Company finally dismissed him from the service on the basis of 'Charge Sheet' dated 01.06.2007. It is mentioned that one industrial dispute was pending before the 5th Industrial Tribunal, Kolkata-1 over the 'Charge Sheet' dated 01.06.2007 which was started by virtue of Reference No. 1355-IR dated 16.08.2002 of the appropriate Government and thus, one approval application was filed before the said Industrial Tribunal u/s 33(2)(b) of the Industrial Dispute Act, 1947. The said application was registered and started Case No. 46 of 2010, in which he being the workman participated but the Ld. 5th Industrial Tribunal by Order dated 11.05.2015 had been pleased to approve such dismissal of workman. It is mentioned that after dismissal, he approached the Dy. Labour Commissioner, Govt. of West Bengal, office at Serampore for intervention to the matter on 10.06.2015 in writing and accordingly, conciliation proceeding was drawn up. No fruitful result came out in the conciliation proceeding and thus, he applied for conciliation pending certificate on 28.10.2016 in writing and accordingly, the conciliation officer issued the appropriate certificate on 10.11.2016. 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 various family

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difficulties and thus, he prayed for condonation of delay. It is mentioned that due to wrongful and arbitrary dismissal 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 could not be able to secure any other alternative employment elsewhere. He has claimed that the dismissal order dated 22.10.2008 was absolutely unjust, arbitrary and illegal. It is mentioned that the amount of his last drawn gross salary was Rs.5,700/-.

The Company i.e. Hindustan Motors Limited has contested the 'Application' u/s 10(1B)(d) of the Industrial Dispute Act, 1947 by filing Written Statement. The OP/Company by its W.S. has denied all the statements of the applicant containing various allegations leveled against the OP/Company and its Management. The OP/Company by its W.S. raised question on the maintainability of Order of Reference. The OP/Company has contended in the W.S. that this 'Application' is not sustainable in law since the same has been filed at a belated stage i.e. after statutory period of limitation. The OP/Company has claimed that the instant case is not maintainable in law since the same suffers from infirmity as well as on the ground that the case is based on incorrect assumption. It is claimed that the workman/applicant raised no dispute proper with the OP/Company. It is categorically mentioned that Industrial Tribunal cannot be used as Appellate Forum in respect of domestic enquiry conducted by the employer. It is mentioned that charge sheet dated 05.10.2006 was issued to the applicant/workman complying the law and applicant/workman submitted his reply on the charge sheet and thereafter, the enquiry was held in scrupulous manner complying the rules of natural justice and after conclusion of the enquiry, the Enquiry Officer submitted report holding the applicant/workman guilty of the charge leveled against him. The

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For the Applicant
Govt. of India

report of the enquiry was also served upon the applicant/workman. It is mentioned that on 01.06.2007 another 'Charge Sheet' was issued against the applicant and the applicant submitted his reply on 15.06.2007 and thereafter, enquiry on the 'Charge Sheet' was held on different dates. After completion of the enquiry, the Enquiry Officer submitted his report holding the applicant guilty of the charges leveled against him. The copy of the enquiry report was sent to the applicant with liberty to submit the presentation against the report and accordingly, the applicant on 11.09.2008 submitted his representation against the report. It is mentioned that the OP/Company considering charge sheet, reply of the workman to the charge sheets, proceeding of the enquiry, connecting papers and documents, report of the Enquiry Officer and representation submitted by the applicant and also considering the past records decided to dismiss the application from the service of the Company and accordingly, he was dismissed vide letter dated 22.10.2008. It is mentioned that since a proceeding of an industrial dispute was pending before the Ld. 5th Industrial Tribunal, Kolkata, the OP/Company submitted an application u/s 33(2)(b) of the Industrial Dispute Act, 1947 on 22.08.2010 seeking necessary approval and the said application was registered as Case No. 46 of 2010. It is mentioned that the Ld. 5th Industrial Tribunal, Kolkata vide order dated 11.05.2015 was pleased to accord approval for dismissal of the applicant. The OP/Company has prayed for dismissal of the 'Application' u/s 10(1B)(d).

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

ISSUES

1. *Is the application u/s 10(1B)(d) of the Industrial Disputes Act, 1947 maintainable in fact and in law?*

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The Industrial Tribunal
Kolkata, District Court

2. *Whether the dismissal from service of the applicant, Sri Avash Munshi w.e.f. 22.10.2008 by the management of M/s. Hindustan Motors Limited, Hind Motor, Hooghly is justified.*
3. *To what relief or reliefs if any, the applicant/workman is entitled to?*

After framing of the issues, the evidence of this case was started. On scrutiny of the record, it is found that the applicant/workman examined himself as PW 1 in support of his case. It is seen that after conclusion of examination in chief of PW 1 Avash Munshi in continuation of his examination in chief on affidavit, his cross-examination by the OP/Company was started and he was cross-examined in part on 24.04.2019 but his cross-examination was deferred on the prayer of the Ld. Advocate for the OP/Company. Next date for cross-examination of PW 1 was fixed. It is seen that after going through several developments ultimately this Tribunal failed to secure the presence of the OP/Company in the proceeding of this case and thereafter on 21.03.2022, the then Ld. P.O. of this Tribunal passed order for proceeding of this case *ex-parte* in absence of the OP/Company and accordingly, next date (12.04.2022) for *ex-parte* hearing. During *ex-parte* hearing, the Ld. Advocate for the workman refused to adduce any further witness and thus, date for hearing argument was fixed. The then Learned Presiding Officer of this Tribunal on completion of hearing argument fixed date for passing award. The erstwhile Learned Presiding Officer of this Tribunal transferred from this Tribunal and thus, the award was not passed. This Presiding Officer after joining in this Tribunal according to the prayer of the applicant/workman fixed the date for hearing *ex-parte* argument afresh and accordingly, *ex-parte* argument has been heard afresh. Thus, the case has become ready for passing award.

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Learned Presiding Officer
Tribunal

During evidence of PW 1, following documents were proved and admitted in evidence and accordingly those were marked as exhibited documents. The documents are as follows:-

1. Exbt.-1 : Copy of certificate dated 28.03.2005 issued by the Registrar of Trade Union;
2. Exbt.-2 : Copy of Union's letter dated 14.06.2006 addressed to the contractors of the company;
3. Exbt.-3 : Copy of Union's letter dated 24.08.2006 addressed to the company;
4. Exbt.-4 : Copy of Union's letter dated 10.09.2006 addressed to the company (2 pages);
5. Exbt.-5 : Copy of Union's letter dated 18.09.2006 addressed to the company (2 pages);
6. Exbt.-6 : Copy of Union's letter dated 29.09.2006 addressed to the company (2 pages);
7. Exbt.-7 : Copy of charge sheet dated 05.10.2006;
8. Exbt.-8 : Copy of Union's letter dated 15.10.2006 addressed to the company;
9. Exbt.-9 : Copy of workman's letter dated 10.10.2006 addressed to the Inspector-in-Charge of the local police station (3 pages);
10. Exbt.-10 : Copy of Union's letter dated 11.10.2006 addressed to the company;
11. Exbt.-11 : Copy of the reply of the charge sheet dated 13.10.2006 signed by the workman;
12. Exbt.-12 : Copy of the letter dated 09.11.2006 addressed by the Union to the Factory Manager of the Company;

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- 13.Exbt.-13 : Copy of the letter dated 18.11.2006 addressed by the workman to the Labour Commissioner;
14. Exbt.-14 : Copy of Union's letter dated 28.12.2006 addressed to the company;
- 15.Exbt.-15 : Copy of the letter dated 17.01.2007 addressed by the workman to the E.O.;
- 16.Exbt.-16 : Copy of Union's letter dated 09.02.2007 addressed to the company;
- 17.Exbt.-17 : Copy of Union's letter dated 15.02.2007 addressed to the company;
- 18.Exbt.-18 : Copy of Union's letter dated 27.02.2007 addressed to the company;
- 19.Exbt.-19 : Copy of workman's letter dated 27.02.2007 addressed to the E.O.;
- 20.Exbt.-20 : Copy of Union's letter dated 07.03.2007 addressed to the company;
- 21.Exbt.-21 : Copy of Union's letter dated 09.03.2007 addressed to the company;
- 22.Exbt.-22 : Copy of Union's letter dated 11.03.2007 addressed to the Factory Manager of the company;
- 23.Exbt.-23 : Copy of letter dated 12.03.2007 addressed by the workman to the Factory Manager;
- 24.Exbt.-24 : Copy of Order dated 28.03.2007 of the Hon'ble High Court at Calcutta in W.P. No. 5714(W) of 2007 (8 pages);
- 25.Exbt.-25 : Copy of show cause notice dated 13.04.2007 issued by the company against the workman;

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- 26.Exbt.-26 : Copy of letter dated 16.05.2007 addressed to the E.O. issued by Avash Munshi;
- 27.Exbt.-27 : Copy of charge sheet dated 01.06.2007 (2 sheets);
- 28.Exbt.-28 : Copy of letter dated 05.06.2007 addressed to S. Mitra issued by Avash Munshi (2 sheets);
- 29.Exbt.-29 : Copy of letter dated 13.06.2007 addressed to the E.O. issued by Avash Munshi;
- 30.Exbt.-30 : Copy of letter dated 15.06.2007 relating to reply of workman;
- 31.Exbt.-31 : Copy of letter dated 15.07.2007 addressed to the E.O. by the workman;
- 32.Exbt.-32 : Copy of letter dated 02.03.2008 addressed to the E.O. by the workman (2 sheets);
- 33.Exbt.-33 : Copy of letter dated 14.03.2008 issued by the company to the workman (2 sheets);
- 34.Exbt.-34 : Copy of letter dated 23.03.2008 addressed to DM(HRM) of the company issued by the workman (2 sheets);
- 35.Exbt.-35 : Copy of letter dated 27.03.2008 addressed to the E.O. by the workman;
- 36.Exbt.-36 : Copy of letter dated 16.07.2008 addressed to the E.O. by the workman (4 sheets);
- 37.Exbt.-37 : Copy of letter dated 03.08.2008 addressed by the company to the workman (8 sheets);
- 38.Exbt.-38 : Copy of letter dated 13.08.2008 addressed to GM(HRM) of the company by the workman (2 sheets);
- 39.Exbt.-39 : Copy of letter dated 25.08.2008 issued by the company to the workman, Avash Munshi;

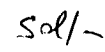
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 374/2008/2008
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- 40.Exbt.-40 : Copy of letter dated 11.09.2008 addressed to GM(HRM) of the company by the workman (2 sheets);
- 41.Exbt.-41 : Copy of order of dismissal dated 22.10.2008 issued by the company to the workman (9 sheets);
- 42.Exbt.-42 : Copy of letter dated 11.11.2008 by the workman to the company;
- 43.Exbt.-43 : Copy of order dated 11.05.2015 of the Ld. 5th I.T. in Case No. 46/08 u/s 33(2)(b) (14 sheets);
- 44.Exbt.-44 : Copy of letter dated 10.05.2016 addressed to DLC, Serampore by the workman (2 sheets);
- 45.Exbt.-45 : Copy of Form P-4 dated 28.10.2016 signed by the workman;
- 46.Exbt.-46 : Copy of corrigendum dated 14.06.2017 issued by ALC, Serampore.

Decisions with reasons

Issue Number - 1

In this case, the applicant/workman examined himself as PW 1. The OP/Company started cross-examination of PW 1 and such cross-examination was deferred but subsequently, the OP/Company did not avail the opportunity to complete the cross-examination of PW 1, the reason was best known to them. The erstwhile Learned Presiding Officer of this Tribunal vide order dated 21.03.2022 had taken view to consider the proceeding of this case as ex-parte and thereafter heard ex-parte argument. Similarly, in view of such observation of the erstwhile Presiding Officer of this Tribunal, afresh argument of this case has been heard by this present

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 Judge
 Industrial Tribunal
 District of West Bengal

Presiding Officer ex-parte in absence of the OP/Company. The applicant/workman in his Application in Form-T [under Rule 12A(4) of the W.B. Industrial Disputes Rules, 1958] i.e. in his W.S. specifically admitted that he received the certificate [Form-S under Rule 12A(3) of the W.B. Industrial Disputes Rules, 1958] from the Conciliation Officer on 10.12.2016 but due to some difficulties such as financial hardship and family problem, he could not able to file such application in Form No.-T within statutory period i.e. within 60 days from the receiving of Certificate of Conciliation Officer. He has admitted that he filed such application in Form No.-T on 06.04.2017. It is seen from the W.S. submitted by the OP/Company and the Part-1 of such W.S., the OP/Company has only pointed out that – *“the application u/s 10(1B)(d) of the Industrial Disputes Act, 1947 is unsustainable since the same is a belated one.”* It is clear that in the W.S., the OP/Company did not agitate strongly the point of filing the case at a belated stage specifically mentioning how the case was filed at a belated stage. It seems that such objection is a formal one. Moreover, the OP/Company did not cross-examine the PW 1 controverting/challenging the matter of filing the case after statutory period of 60 days as stipulated in Section 10(1B)(c) of the Industrial Disputes Act, 1947. Moreover, the then Ld. Judge of this Tribunal on 06.04.2017 skipped to pass any specific order on the prayer for condonation of delay (which has been admitted in para 15 of such W.S) in filing appropriate Application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 which was filed along with Form-T. It is to mention here that the applicant/workman filed the copy of Form-S along with the Form-T on 03.04.2017 whereas the Order Number 1 was passed on

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06.04.2017 admitting and registering the Application u/s 10(1B)(d) of the Industrial Disputes Act, 1947. In view of the above discussion, it is palpable that the OP/Company had ignored the matter of filing of the Application u/s 10(1B)(d) of the Industrial Disputes Act, 1947 beyond stipulated period u/s 10(1B)(c) of the Industrial Disputes Act, 1947. Similarly, there should not be any hesitation to mention here that the then Ld. Judge of this Industrial Tribunal did not consider the matter of filing of the 'Application' beyond stipulated period but issued notice upon the OP/Company asking them to file W.S. on the next date so fixed by such order dated 06.04.2017. So, it can be said that the prayer of the applicant/workman for condonation of delay was deemed as allowed by the then Ld. Judge of this Industrial Tribunal.

Considering the above discussion, it is clear that there is nothing to hold that the 'Application' u/s 10(1B)(d) of the Industrial Disputes Act, 1947 is not maintainable in fact and in law.

Thus, the Issue Number - 1 is decided in affirmative in favour of the workman/applicant.

Issues Numbers - 2 & 3

For the sake of convenience and brevity, both the issues are taken together for discussion.

At the very outset of the discussion, it will be purposeful to mention here that in this case, on receiving the notice from this Tribunal, the OP/Company entered its appearance in this case, submitted W.S., list of documents, took part in the evidence of PW 1 and cross-examined the PW 1 in part and subsequently, did not turn up to complete the cross-examination of PW 1 as well as did not adduce any witness in its favour. It is worth

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mentioning that the erstwhile Ld. Judge of this Tribunal observing the conduct of the OP/Company on 21.03.2022 passed Order with the direction that the case would proceed ex-parte in absence of the OP/Company and thereafter, he heard ex-parte argument. The then Ld. Judge of this Tribunal after hearing ex-parte argument fixed the date for passing Award but he was transferred without passing the Award. The present Presiding Officer of this Tribunal had to heard ex-parte argument afresh to keep the harmony of previous orders passed by the erstwhile Learned Presiding Officer of this Tribunal.

The applicant/workman has deposed in this case as PW 1 in support of his Application u/s 10(1B)(d) of the Industrial Disputes Act, 1947. In course of evidence of PW1, he has proved 46 documents and thus, those documents were marked chronologically as Exbt.1 to Exbt.46. It is to mention here that those documents were proved before this Tribunal in course of examination in chief of PW1 in presence of the Ld. Advocate for the OP/Company. Thus, it can be safely said that the Ld. Advocate representing the OP/Company in this case has full knowledge about all those exhibited documents. It seems that it will be redundant to mention that the applicant/workman submitted his Examination In Chief On Affidavit before this Tribunal and thereafter, he was examined in chief before this Tribunal on dock in continuation of his Examination In Chief On Affidavit. Thus, he tendered his Examination in Chief On Affidavit before he got examined on dock. It is seen that the applicant/workman Avash Munshi almost reproduced the contents of his Written Statement submitted along with Form-T in his examination in chief on affidavit. The PW1 in his oral evidence has corroborated the contents of

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Industrial Tribunal
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the Written Statement, which was filed earlier. He has proved the documents in support of his version as depicted in his examination in chief on affidavit i.e. the PW1 in his oral evidence has corroborated his case as he made out in the Application u/s 10(1B)(d) of the Industrial Disputes Act, 1947. At the cost of repetition, it is to mention here that the OP/Company did not cross-examine the PW1 in full and thus, the version/evidence of the PW 1 remains unchallenged and uncontroverted. Similarly, the documents which have been proved and marked as exhibited documents in course of evidence of PW1, remain unchallenged and uncontroverted. So, there is nothing to disbelief the unchallenged testimony of PW1. I am of the opinion that this is redundant but it is necessary to mention here that no duly proved documentary evidence has come before this Tribunal in connection with this case from the OP/Company side as a matter of countering the documentary evidence of the applicant/workman or to defeat the claim of the applicant/workman.

Now, considering all facts and circumstances and in view of the above discussion, it is well transpired that dismissal of Sri Avash Munshi from his service w.e.f. 22.10.2008 by the Management of M/s. Hindustan Motors Limited, Hind Motor, Hooghly is not at all justified.

Thus, the issue no. 2 is decided in affirmative in favour of the workman/applicant.

The applicant/workman has prayed for an order upon the OP/Company for his reinstatement in the service along with full back wages.

In view of decision of issues number 1 and 2, the applicant/workman is entitled to get an Award of his reinstatement in the service under M/s. Hindustan Motors Limited as well as an order of payment of back wages

Sd/-

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since 22.10.2008. The applicant/workman in his W.S. has averred that his last drawn full gross salary was Rs.5,700/- per month. It has already been held that the decision of the Management of M/s. Hindustan Motors Limited to dismiss their workman Sri Avash Munshi was not justified and thus, he is entitled to reinstatement in his original position. It is revealed from the facts and circumstances and evidence on record that the salary of the workman Sri Avash Munshi remained stopped w.e.f. 22.10.2008. There is no evidence on record that the workman Avash Munshi remains employed in other place and earning money from such employment for his livelihood and maintaining family. Actually, the OP/Company did not adduce any evidence to establish the workman Sri Avash Munshi has been working for gain at any other concern or he has been earning money by running business etc. In absence of such specific averment supported with cogent and reliable evidence to the effect that the workman Sri Avash Munshi is not unemployed since 22.10.2008, the workman Sri Avash Munshi is entitled to get back wages on and from 22.10.2008 till the date of his reinstatement in the OP/Company and such rate of back wages is fixed at 50% of last drawn salary per month i.e. 50% of Rs.5,700/- p.m. which will be just and reasonable. The workman/applicant Sri Avash Munshi in his W.S. has prayed for an order of reinstatement with full back wages along with other consequential relief without making specific about such consequential relief. This Tribunal has already come to the conclusion that the applicant/workman is entitled to get reinstated in the position of his service and he is entitled to get back wages to the tune of 50% of his last drawn gross salary per month since 22.10.2008 till his reinstatement in the service

Sd/-

Judge

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of the OP/Company. Apart from this two specific reliefs, the workman/applicant has not prayed for any specific relief. So, there is no question of granting any fictitious consequential relief.

Thus, the issue number 3 is decided accordingly.

Hence,

it is

Ordered

that the applicant/workman Sri Avash Munshi is entitled for reinstatement in his service as well as in the position/post held by him prior to his dismissal from the service and also he is entitled to get back wages to the tune of 50% of his last drawn gross salary (Rs.5,700/-) per month since 22.10.2008 till his reinstatement in the service of the OP/Company within 90 days of such reinstatement.

This is the 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/-
Judge

Sd/-
Judge
Third Industrial Tribunal
Kolkata-1
10.04.2023

Judge
3rd Industrial Tribunal
Govt. of West Bengal