

Government of West Bengal

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

No. Labr/405/(LC-IR)/

Date: 23/05/2023

ORDER

WHEREAS an industrial dispute existed between M/s. Dasarath Gorain, Village – Poradih, P.O. – Bogra, Dist. – Purulia, Pin – 723161 and General Manager, WBPDC, Santhaldih Thermal Power Station, P.O. – Santhaldih Thermal Plant, Dist. – Purulia, Pin – 723146 and Sri Radhesyam Mahato, S/o. Late Piru Mahato, Vill. & P.o. – Khairipihira, P.S. – Hura, Dist. – Purulia, Pin – 723101 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 Ninth Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Ninth 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 Ninth Industrial Tribunal has submitted to the State Government its Award dated 20/04/2023 under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. 62- I.T. dated 27/04/2023.

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,

Sd/-

Assistant Secretary
to the Government of West Bengal

:2:

No. Labr/405/.1/(6)/(LC-IR)

Date: 23/05/2023

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

1. M/s. Dasarath Gorain, Village – Poradih, P.O. – Bogra, Dist. – Purulia, Pin – 723161.
2. General Manager, WBPDC, Santhaldih Thermal Power Station, P.O. - Santhaldih Thermal Plant, Dist. – Purulia, Pin – 723146.
3. Sri Radhesyam Mahato, S/o. Late Piru Mahato, Vill. & P.o. – Khairipihira, P.S. – Hura, Dist. – Purulia, Pin - 723101.
4. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 6. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Assistant Secretary

No. Labr/405/.2/(2)/(LC-IR)

Date: 23/05/2023

Copy forwarded for information to:-

1. The Judge, Ninth Industrial Tribunal West Bengal, Durgapur, Administrative Building, City Centre, Pin – 713216 with respect to his Memo No. 62 - I.T. dated 27/04/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.


Assistant Secretary



In the matter of Industrial Disputes between Mr. Radheshyam mahato, Son of Late Piru Mahato, Resident of Vill & P.O - Khairipihira, P.S - Hura, Dist - Purulia, Pin - 723101 and M/S. Dasarath Ghorain, of Vill - Poradih, P.O - Bogra, Dist - Purulia, Pin - 723161 and West Bengal Power Development Corporation Ltd., represented by its General Manager, Santaldihi Thermal Power Station, P.O - Santaldihi Thermal Plant, Dist - Purulia, Pin - 723146.

Case No. X-02/2018 U/s 10(1B) (d) of Industrial Disputes Act, 1947.

BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL, DURGAPUR.

PRESENT

SRI SUJIT KUMAR MEHROTRA,

JUDGE, 9TH INDUSTRIAL TRIBUNAL, DURGAPUR.

Ld. Advocates for the work applicant/workman/- Mr.S. K.Panda & Smt.Anima Maji

Ld. Advocate for the Contractor Mr. Dasarath Ghorain - Expate.

Ld. Advocates for the employer of the Industrial Establishment -Mr. Ganesh Roy, Bibhas Banerjee & Sajal Saha.

Date of Award : 20.04.2023

At the very outset of my discussion it is mention herein that the petitioner workman is arrayed as applicant, contractor Mr. Dasarath Ghorain as O.P. 1 and WBPDCCL as O.P. 2 for the convenience of discussion of materials in the later part of this judgement/award.

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The instant case has been registered as a case U/S 10 (1B)(d) of the Industrial Disputes Act, 1947 ((herein after referred to as the Act, 1947), on the basis of an application filed by terminated/retrrenched workman Mr. Radheshyam Mahato against the employer i.e. O.P.No.1



and principal employer i.e. O.P.No.2 for his reinstatement in service with all benefits.

Before mentioning the factual matrix of the pleading case of the parties it would also be pertinent to mention herein that the above named workman's application is accompanied with another petition praying for condonation of few days delays in filing the instant case on the ground of his illness and the said application is also taken up for disposal alongwith the instant case.

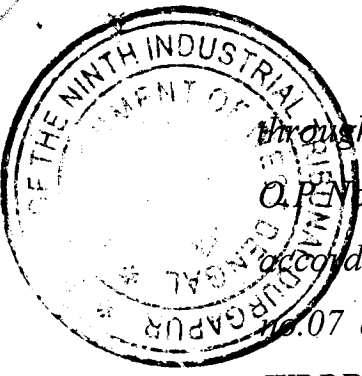
The pith and substance of the workman's pleading case is that he was an employee of the O.P.No.1/contractor and used to perform jobs as technician for the principal employer i.e. WBPDCCL, Santaldih Thermal Power Station since 1987 without any blemish and interruption till the date of his illegal termination on 27.05.2017.

It is further the pleading case of the workman that the contractor at the instance of the principal employer terminated his service on and from 27.05.2017 on the pretext of his attaining the age of superannuation without constitute any medical board for determination of his age. Thereafter, he filed several representations before the contractor as well as the principal employer for his reinstatement but as the same yielded no result, so he raised an industrial dispute before the Asstt. Labour Commissioner (ALC), Raghunathpur by filing a representation on 01.08.2017.

Workman's further pleading case is that due to non-co-operation from the side of the principal employer and the contractor the conciliation proceedings failed to achieve any result and after obtaining requisite pending certificate on 24.11.2017 from the concerned ALC he filed the instant case under the West Bengal Amendment Provisions of Sec.10(1B)(d) of the Act, 1947.

CR reveals that after registration of the instant case summons have been issued upon the O.Ps and in consequence thereof O.Ps did appear

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through their respective ld. lawyer on 12.07.2018 but subsequently the O.P.No.1/contractor stop taking part in hearing of the instant case and accordingly the same has been heard in exparte against him vide order no.07 dated 25.07.2018. CR further reveals that principal employer i.e WBPDCCL contested the instant case by filing its WS wherein it denies the pleading case of the workman. It in its WS simply denies all the averments of the workman's pleading case save and except that the workman employed by the contractor and it has no knowledge regarding the conditions of job of the contractor's worker.

O.P.No.2/WBPDCCL in its WS further stated that it has no knowledge regarding the alleged termination of service of the workman by its contractor i.e. O.P.No.1 and accordingly, prays for dismissal of the instant case against it.

CR further reveals that the ld. Judge of this tribunal vide order no.12 dated 27.11.2018 framed the following issues for proper and effective adjudication of the industrial disputes between the parties :-

- 1) Whether the termination of the petitioner/workman is justified or not?
- 2) To what relief is the petitioner entitled?

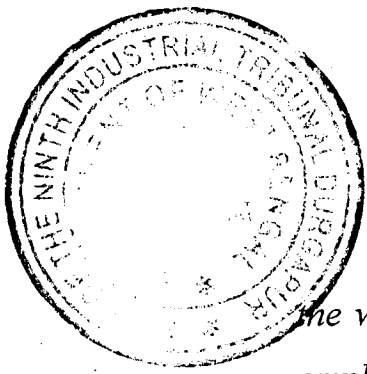
As I have mentioned herein above that the workman's application U/S 10(1B)(d) is accompanied with a petition for condonation of delay under Rule 12A of the West Bengal Industrial Dispute Rules 1958, but no issue has been framed regarding the point of limitation, so the following issue is framed for adjudication on the same :-

- 3) Is the instant case is barred by law of limitation?

Argument of the Parties

During the course of argument it was argued from the side of the workman that from the oral evidence of the workman as well as documentary evidence such as Pay Slip, Gate Pass and P.F. Statement of

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the workman it has been clearly been established that the workman was employed since 1987 and he has been illegally terminated from his service by the O.P.No.1 at the instance of the O.P.No.2 i.e. principal employer.

Ld. Sr. Lawyer further submitted that although it is admitted fact of this case that the Form -S has been issued on 24.11.2017 and instant case has been filed on 28.02.2018 i.e. more than 34 days from the date of stipulated period of limitation, but considering the fact of beneficial nature of legislation of the Act, 1947 the same be condoned.

On the other hand, the ld. lawyer for the O.P.No.2/Principal Employer vehemently opposed such condonation from the side of the workman by submitting that provisions of the Act, 1947 do not empowers the tribunal to extend the period of limitation for entertaining an application under amended provisions of 10(1B)(d), so the instant case is not maintainable under the Act, 1947.

It was also argued from the side of the principal employer that since admittedly the workman was employed by the contractor i.e. O.P.No.1 for doing jobs as per the tender order, so the principal employer has no knowledge regarding the service condition of the workman under the O.P.No.1.

Ld. lawyer further contended that the matter of alleged termination/retranchment of the workman is beyond the knowledge of the principal employer and the principal employer is nowhere associated with the same and accordingly, the instant case is liable to be dismissed against the principal employer.

Decision with Reasons

To establish the petition case the workman only examined herself as P.W-1 and the following documents have been admitted in evidence from his side:

- 1) Pay Slips (6 in numbers)----Exbt.1(series),
- 2) Copy of the Order regarding Allotment of Quarter.---- Exbt.2,

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- 3) Receipt copy of letter of the workman received by office of the ALC, Raghunathpur---- Exbt.3,
- 4) Gate Pass of the workman--- Exbt.4,
- 5) Downloaded copy of P.F Statement till 02.303.2020 of the workman ---Exbt.5.

On the other hand, the principal employer / WBPDCCL examined its Manager (HR & A) Mr. Safikul Alam as P.W.1 from its side and Authorisation letter has been marked as Exbt. A from its side.

Issue No.3 :-

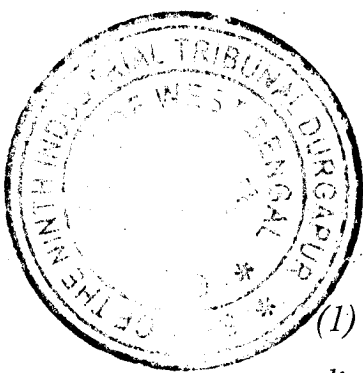
Before initiating discussion regarding evidence of the workman/employee with respect to the issue it would be pertinent to discuss about the concerned provisions of law.

I have meticulously gone through the entire materials as available with the Case Record and it is evident therefrom that Form-S under Rule 12A of the West Bengal Industrial Dispute Rules 1958 has been issued on 24.11.2017 by the ALC, Raghunathpur in favour of the workman and that the workman preferred the instant application U/S 10 (1B)(d) of the amendment provisions of the Act, 1947 on 28.02.2018 before this tribunal.

Now, let us consider the relevant provisions of the Act, 1947 and the West Bengal Rules formulated under the Act, 1947. Rule 12A speaks about settlement of dispute on representation from individual workman and it provides as follows :

[12A. Settlement of dispute on representation from individual workman. – (1) The Conciliation Officer on receipt of a representation relating to an individual workman shall investigate the matter and if he is satisfied that an industrial dispute exists, he shall take all such steps as he thinks fit and proper for the purpose of inducing the parties to come to a speedy, fair and amicable settlement of the dispute.

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(2) If no settlement of the industrial dispute mentioned in sub-rule (1) is arrived at within a period of 60 days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer personally or by registered post with acknowledgement due in Form P-4 for a certificate about the pendency of the conciliation proceedings before such Conciliation Officer.

(3) The Conciliation Officer on receipt of the application referred to in sub-section(1B) of section 10 shall within 7 days from the date of receipt of such application, issue a certificate about the pendency of conciliation proceedings to the applicant in Form S.

(4) The party may, within a period of 80 days from the date of receipt of such certificate or when such certificate has not been issued within 7 days under sub-rule (3), within a period of 60 days commencing from the day immediately after expiry of 7 days as aforesaid, file an application in Form T to such Labour Court or Industrial Tribunal as may be specified by the State Government by notification in the Official Gazette.]

On plain reading of the sub-rule 2 it is evident that if no settlement of industrial dispute is arrived at, initiated on the representation of an individual workman, within the period of 60 days from the date of the raising disputes, the workman is entitled to knock door of Labour Court or Industrial Tribunal constitute under the Act of 1947 within a period of 60 days from the date of raising of pendency certificate in Form-S.

Thus, apparently the workman has to file the case within 60 days from the date of receipt of such certificate as per Rule 12A of 1948. But the Act of 1947 does not speak about any such period of limitation.

The question whether the provisions of the limitation Act or any other limitation period applied in a case U/S 10(1B)(d) of the Act, 1947 has been elaborately discussed by our Hon'ble High Court in the case of

Biswanath, 2003 (1) L.L.N 121.

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The Hon'ble Court in para 8 of its judgement observed that "There can be no doubt with regard to the matter being within the jurisdiction of the Labour Court. The jurisdiction is not ousted merely because the time frame prescribed under S.10 (1B) of the Act were not adhered to by the petitioner -workman. The provisions of S 10(1B) of the Act are beneficial provisions and thereby the procedure for adjudication of an industrial disputes relating to an individual has been simplified. The benefit of provisions is for an individual in his private capacity and does not serve any to public purpose, interest or policy. Non-compliance with the periods prescribed in the provisions would only make it an irregularity and not an illegality".

The fact of the said case is more or less similar to as that of the case in hand.

In view of such dictum of our Hon'ble High Court it cannot be said that the period of limitation as prescribed in Rule 12A Sub-rule 4 is strictly applicable for invoking jurisdiction of this tribunal for adjudication of the industrial dispute at the instant of a workman.

Having regard above settled proposition of law I am of the view that the argument from the side of the principal employer/WBPDCL has got no merit. That apart, this tribunal condoned delay, if any, on the part of the workman to approach this tribunal U/S 10(1B)(d) of the Act, 1947. Consequently, I decide this issue in favour of the workman.

Issue No.1:-

This issue is the crux of industrial dispute between the parties as he workman in his pleading alleged that his service has been illegally terminated by the O.P.No.1/contractor on the plea of his attaining the age of superannuation.

It is the pleading case of the applicant/workman that he was an employee of O.P.No.1/contractor of the principal employer/WBPDCL and he was working continuously since 1987 but he was illegally

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terminated on 27.05.2017 by the O.P.No.1/contractor on the pretext of attaining the age of superannuation without constituting a medical board for determination of his age.

In other words, the only grievance of the workman against his O.P.No.1/contractor is that his service was terminated without the determination of his age by constituting a medical board.

Since O.P.No.1/contractor did not contest the instant case, so this tribunal has no opportunity to hear him on that issue. However, O.P.No.2/WBPDCL in its WS clearly stated that although it has nothing to do with the service condition of the workman under the O.P.No.1/contractor but his service has been terminated on the ground of his attaining age of superannuation.

Considering such pleading case of the workman as well as Sec.101 of the Indian Evidence Act, 1872, I am of the view burden of proof lies upon workman to establish that he did not attain the age of superannuation on 27.05.2017 and the same cannot be shifted upon the principal employer or the employer.

Workman in his evidence –in-chief stated that he was employed by the O.P.No.1/contractor as technician and he continuously worked under him since 1987 till the date of his illegal termination on 27.05.2017.

He further stated that he has been illegally terminated as his age was not determined by any medical board. From his cross-examination by the O.P.No.2/WBPDCL it has further been evident that workman himself admitted about his employment under the O.P.No.1 and not under the O.P.No.2. That apart the payslips i.e. Exbt 1 and downloaded copy of P.F statement of the workman i.e.Exbt.5. also establishes his employment under the O.P.No.1/contractor.

The most astonishing conduct on the part of the workman is that he challenged his termination by stating that he did not attain the age of superannuation on the date of his termination but he did not produced any

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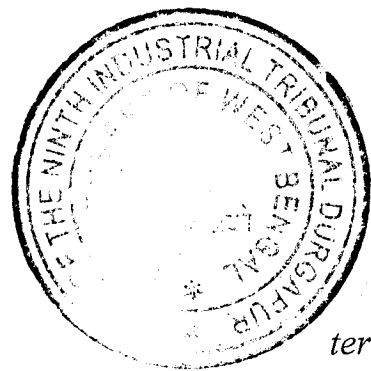
documents to establish the same. Had it been a fact that the workman did not attain the age of superannuation as claimed by him, so he could have easily proved the same by producing any other form of evidence either oral or documentary evidence. But instead of choosing the straight path he tied to fire gun by putting the same on the shoulder of his employer, which law does not permit.

From the materials of this case it is the undisputed fact of this case that the workman was in service for about 30 years under the O.P.No.1 and he was also allowed to reside in a quarter allotted by the principal employer being an employee of its contractor i.e O.P.No.1. Considering such length of service and workman's failure to prove that he did not attain the age of superannuation on the date of his termination of service, renders this tribunal to draw an adverse presumption U/S 114(g) of the Indian Evidence Act, 1872 against him.

At this juncture it must be mentioned herein that the workman neither in his pleading nor in his evidence on oath states about the actual age of superannuation in terms of his service condition. The said aspect is important, as because the age of superannuation of a workman of any establishment varies as per service condition, rules or by laws of the establishment concern as well as on terms of the contract.

Non-disclosure of the same by the workman also keeps this tribunal in dark about the actual age of the superannuation of the workers of the O.P.No.1. It is also pertinent to be mentioned herein that it is not the case of the workman that his service is governed under any service rules of either O.P.No.1 or O.P.No.2. At the same time workman failed to produce his appointment letter for the reason best known to him. He could have easily produced his appointment letter and this tribunal could have easily find out there from about the date of birth of the workman and actual age of superannuation of service under O.P.No.1. Workman's such unwarranted and undesired conduct is more relevant especially when burden of proof lies upon him.

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So far as the grievance of the workman for alleging that his such termination is unjustified because he was not examined by the medical board by his employer is concern, I find that the same has got no merit as because there is no such provision of law or service condition in our country that a workman can only be declared as retired only after determination of his age by a competent medial board.

Taking into consideration of the above discussed facts, circumstances and evidence of this case I am of the view that the workman miserably failed to discharge his legal obligation to prove that although he did not attain the age of superannuation but his service was terminated on 27.05.2017 by his O.P/ employer. Consequently, he failed to prove that his service has been terminated illegally under the Act, 1923. Accordingly, the workman fails to prove the issue no.1 in his favour.

Issue No.2:-

In view of findings regarding Issue No.1 there remains nothing for discussion on this issue.

To conclude my discussion I am of the view that the applicant / workman miserably failed to prove that his service has been illegally terminated on and from 27.05.2017 by the O.P.No.1 being the contractor of the O.P.No.2.

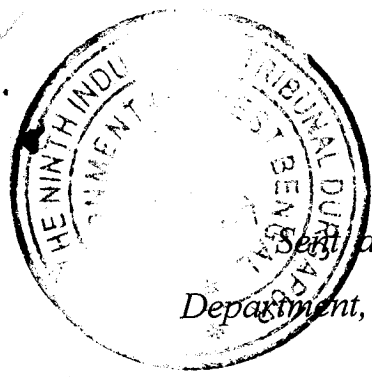
In the result, I find no merit in the workman's impugned petition U/S 10(1B)(d) of the Act of 1947. Thus, the instant case fails on merit.

Hence, it is

ORDERED

That the instant case U/S 10(1B)(d) of the Act of 1947 be and the is dismissed aginsnst the O.P.No.1 M/S Dasarath Goraion in' exparte and on contest against the O.P.No.2/ WBPDCCL, Santhaldihi Thermal Power Station but without cost.

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Send a copy of this award to the Addl. Chief Secretary, Labour
Department, Government of West Bengal for his doing the needful.

D/C by me

Judge

Sd/- Sri Sujit Kumar Chakrabarti
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Sd/- Sri Sujit Kumar Chakrabarti
Judge 20-4-2023

9th Industrial Tribunal

Durgapur

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