

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/ 120 / (LC-IR)/ 22015(15)/63/2018

Date : 24-01-2025

ORDER

WHEREAS under Labour Department's Order No. 30-I. R. / IR/10L-20/2014 dated nil with reference to the Industrial Dispute between M/s. Dey's Electrical Engineering Works, 11/B, Rahim Ostagar Road, Kolkata-700045 and their workman Shri Akhil Bandhu Purkait, Post: Bakultala, via Kashinagar, P.S: Raidighi, South 24 Parganas, PIN- 743349 & 12 others, regarding the issues 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 Fourth Industrial Tribunal, Kolkata.

AND WHEREAS the said Fourth Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 14.01.2025 in Case No. VIII - 08/2015 on the said Industrial Dispute Vide e-mail dated 17.01.2025 in compliance of u/s 10(2A) of the I.D. Act, 1947.

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

No. Labr/ 120 / 1(5)/(LC-IR)/ 22015(15)/63/2018

Date : 24-01-2025

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

1. M/s. Dey's Electrical Engineering Works, 11/B, Rahim Ostagar Road, Kolkata-700045.
2. Shri Akhil Bandhu Purkait, Post: Bakultala, via Kashinagar, P.S: Raidighi, South 24 Parganas, PIN- 743349 & 12 others.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11<sup>th</sup> Floor, 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/ 120 / 2(3)/(LC-IR)/ 22015(15)/63/2018

Date : 24-01-2025

Copy forwarded for information to :

1. The Judge, 4<sup>th</sup> Industrial Tribunal, Kolkata, N.S. Building, 1, K.S. Roy Road, Kolkata-700001 with reference to his E-mail dated 17.01.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.

Assistant Secretary

**In the matter of an Industrial Dispute between M/s. Dey's Electricals Engineering Works and the workmen Shri Akhil Bandhu Purkait and 12 others,**

**(Case No. VIII-08 of 2015)**

**Govt. Order of Reference No: 30-I. R. / IR/10L-20/2014.**

**BEFORE THE FOURTH INDUSTRIAL TRIBUNAL, KOLKATA, WEST BENGAL**

**P R E S E N T**

SHRI NANDAN DEB BARMAN, JUDGE  
FOURTH INDUSTRIAL TRIBUNAL  
KOLKATA.

Shri Akhil Bandhu Purkait & 12 others.....**APPLICANT/WORKMEN**

Address: Post: Bakultala, via Kashinagar

P.S: Raidighi, South 24 Parganas,

PIN- 743349.

M/s. Dey's Electrical Engineering Works.....**OPPOSITE PARTY/COMPANY**

Address: 11/B, Rahim Ostagar Road,

Kolkata-700 045.

**A W A R D**

**Dated: 14<sup>th</sup> January, 2025.**

**ISSUES TO BE ADJUDICATED**

- (1) Whether the refusal of employment of Shri Akhil Bandhu Purkait & 12 others (mentioned in Annexure -1) w.e.f. 13.12.2013 by way of closure of the factory by the management is justified?
- (2) What relief, if any, they are entitled to?

**Written Statement of workmen Shri Akhil Bandhu Purkait & 12 others**

The case of the workmen Shri Akhil Bandhu Purkait & 12 others in brief is as follows: –

- (1) That the applicant / workmen are employees under the OP/Employer M/s. Dey's Medical Engineering Works and had been working there for more than 15 years having last drawn salary around Rs. 10,000/- per month.
- (2) That the applicant/workmen neither had any coverage of ESI or provident fund nor did they have any respective code number thereof.
- (3) That apprehending the intention of the management of the OP/Company to transfer its ownership of land, factory, trade etc. situated at 74/D/2 Rahim Ostagar Road, under Lake P.S. the applicant workmen raised protest to the District Registrar, Alipore and other

authorities, but the management of the OP/Company ultimately by way of closure of their establishment refused the employment of the said Shri Akhil Bandhu Purkait and 12 other workmen w.e.f. 13.12.2013 without maintaining the pre-requisite conditions as per provision of Industrial Dispute Act, 1947 and without paying any compensation in accordance with the provision of section 25F of Industrial Dispute Act, 1947.

- (4) That the applicant workmen then finding no other alternative brought the matter before the authority concerned for conciliation proceeding but due to non-cooperation of the OP/Company no fruitful result of conciliation arrived at before the Conciliation Officer and ultimately dispute was referred before this Tribunal for adjudication of dispute over the aforesaid issues.

**Written statement of OP/Company Dey's Electrical Engineering Works.**

That the OP/Company contested this case by submitting a Written Statements in three parts contending inter alia:

- (1) That the order of reference being No: 30-I. R. / IR/10L-20/2014 is not maintainable as the issues referred for adjudication before this Industrial Tribunal is a matter related to 2<sup>nd</sup> Schedule of the Industrial Disputes Act, whereas this Tribunal does not have any jurisdiction to deal with any matter relating to 2<sup>nd</sup> schedule of the Industrial Disputes Act.
- (2) That this Industrial Tribunal is not a Labour Court as per Section 7 of Industrial Disputes Act and hence does not have any jurisdiction to adjudicate upon any issues referred for adjudication relating to the matter specified in 2<sup>nd</sup> Schedule of the Industrial Disputes Act.
- (3) That the issues referred for adjudication are not related to the matter as specified in the 3<sup>rd</sup> Schedule of the Industrial Disputes Act and hence this Tribunal has no jurisdiction to adjudicate the same.
- (4) That the OP/Company accordingly submits that the purported dispute is not maintainable since there was no refusal of employment or termination of service, either in writing or verbally. So, the order of reference suffers from nullity.
- (5) That the name of the workman as stated in Annexure-I are not correctly represented as most of them left the job by their own volition but their names have been incorporated in the Order of Reference on the basis of misrepresentation before the Conciliation Officer.
- (6) That the establishment is at present dead due to lack of work order and accordingly the O.P. Company had to undergo closure of establishment.
- (7) That since the workmen was employed on the basis of order of work then the provision of E.S.I. and Provident fund not at all required.
- (8) That denying all other allegation of overtime work and non-payment of requisite remuneration or wages, the O.P/Company further stated that due to non-availability of any work order for last two years the Company had no other alternative but to close down its business and since the order of reference is not maintainable then the instant case is liable to be awarded accordingly against the applicant workman.

- (9) It has been further stated that the names of the workmen in Annexure–I were not in Employment Roll at the relevant period and since the establishment had already been closed, then no further relief as prayed for by the applicant workmen is entitled by them.

### **DECISIONS WITH REASONS**

#### **Evidence of the Applicant/Workmen**

To prove their case the Applicant/Workmen namely Akhil Bandhu Purkait, Swapan Sikhari, Sujit Biswas and Rehana Begum have jointly filed an Affidavit-In-Chief and thereafter individually cross-examined as P.W.-1 to P.W.-4 respectively. Beside their said oral evidences some documents also exhibited from their end by P.W.-1 Sri Akhil Bandhu Purkait as Exhibit-1 to Exhibit-8 respectively which are as follows: -

Exhibit-1	Photocopy of Statement of 13 workmen containing their names, designations, date of appointment and last drawn salary with signatures.
Exhibit-2	Photocopy of Demand letter dated 26.12.2013, address to the employer by the 10 workmen.
Exhibit-3	Photocopy of Demand letter dated 20.01.2014, address to the Labour Commissioner by the 12 workmen.
Exhibit-4	Photocopy of letter dated 03.03.2014, address to Akhil Bandhu Purkait and 07 others by Assistant Labour Commissioner.
Exhibit-5	Photocopy of a letter dated 26.03.2014, address to the employer by the Assistant Labour Commissioner.
Exhibit-6	Photocopy of letter address to District Registrar, Alipore by 10 workmen.
Exhibit-7	Photocopy of the Order of Reference along with Annexure-I.
Exhibit-8	Photocopy of the summons receipt by Akhil Bandhu Purkait from Fourth Industrial Tribunal.

On the contrary the OP/Company M/s. Dey's Electricals Engineering Works although examined one Swarup Dey by filing Affidavit-In-Chief and although the said witness was cross-examined, but no documents or documentary evidence was adduced by the said witness or by and on behalf of the O.P/Company.

Now, let us discuss the arguments of the concerned parties to this case.

In this regard a Written Notes of Argument has been filed on behalf of the Applicant/workman contending inter-alia, that the appropriate Government has been pleased to refer this case before this Fourth Industrial Tribunal to adjudicate the issues “(1) whether the refusal of employment of Shri Akhil Bandhu Purkait and 12 others as mentioned in Annexure-I w.e.f. 13.12.2013 by way of closure of factory by the management is justified? (2) What relief, if any, they are entitled to?”

Since the O.P./Company declared closure of its establishment without issuing any notice to the Government and the concerned workmen within the requisite period as prescribed in the statute, then the termination of the employment of the workman is liable to be treated as retrenchment and accordingly they are entitled to get the benefit of reinstatement with back wages and the requisite

compensation as per Provision of the Law. In this regard Learned Counsel for the Applicant/workman relied upon the decision as reported in SC 1976 Volume-I-LLJ page 9-478. Learned counsel for the Applicant/workman also relied upon some other decisions as reported in 1985 lab IC 1733, 1996 lab IC 1161, 1993 (67) FLR page III, 2005 IL CLR-279.

On the other hand, Ld. Counsel representing the O.P/Company argued that the appropriate Government referred this case for adjudication of the issues to decide whether termination by closure is justified but the fact remains that issue of termination cannot come into play since the issue of closure is there. Since the establishment is closed down due to non-availability of any work order for a long period, then question of termination benefit cannot arise. With the alleged facts and circumstances only closure benefit can arise and the workman is not entitled to get the benefit if he did not work in the establishment for more than 240 days in any particular year or preceding year.

Having heard the argument of Ld. Counsel of the O.P/Company and on careful perusal of the materials on record, including the oral as well as documentary evidence of the parties, admittedly it appears that the relationship between the parties as Workmen and Employer/Company is not disputed but the number of the days of work and the category of the workman and number of workmen has been disputed by the O.P/Employer.

Admittedly, it also appears from the respective pleadings of the parties and the evidence on record that the undertaking/factory of the O.P/Employer was closed w.e.f. 13.12.2013 by order of closure by the O.P/Employer, causing discontinuation of the employment of workmen in the said undertaking. In this regard it is the case of the Applicant/Workmen that the O.P/Employer terminated the workmen from their employment under the veil of closure of the undertaking. In this aspect the O.P/Employer challenged the maintainability of the order of reference as it has been asked for adjudication, “whether refusal of employment by way of closure of the factory by the management is justified.” When any undertaking or establishment is closed by an order of closure by the Management of the O.P/Company on any ground whatsoever and when there is no pleading that the said employer had any other alternative establishment or undertaking to provide alternative employment to its workmen of the closed undertaking, then the term “termination” cannot come into play. It is nothing but a discontinuation of employment arising out of closure of undertaking or establishment for which a specific provision is there in the concerned Industrial Dispute Act, 1947. There is no pleading from any party that the O.P/Employer had any other alternative establishment to provide alternative employment to the discontinued workmen of the closed undertaking. So, in view of such facts and circumstances prayer for reinstatement with back wages is nothing but a vague prayer.

According to the pleadings of the Applicant/Workman, concerned O.P of this case is a company in accordance with the Provisions of Company’s Act, but according to the evidence of the O.P.W.-1, the undertaking under reference was registered under Shops and Establishments Act, but not under Company’s Act.

The applicant workman in their pleadings claimed that they were working in that undertaking for more than 15 years and their last drawn salary was about Rs. 10,000/- per month but

to establish the same no reliable document could be adduced from their end. Although they are trying to establish the same by producing a photocopy of the statement of the particulars of 13 workmen as Exhibit-1 but the authenticity of the same was challenged from the end of the O.P/Employer during the evidence in cross-examination of P.W.-1, workman Shri Akhil Bandhu Purkait and it was admitted by the said P.W.-1, that there is no seal of the company on this document. It was also admitted by the said P.W.-1 that they have not filed any such copy of Salary Register bearing seal of the Company. In this regard a suggestion was put to him from the end of the Learned Counsel of O.P/Employer that the said Exhibit-1 is a manufactured document which was answered by him in negative but having perusal of the said document, admittedly it appear that at first it is not original and although it is a photocopy but it is a hand written document with name and particulars of 13 persons bearing some photocopy of signatures, but it does not bear any seal or signature of the O.P/Company or any person related to the O.P/Company. So, considering the nature of this document in handwritten photocopy there is sufficient ground to cast a doubt on the authenticity of the said document.

It was admitted by the applicant workman that they were not under the coverage of the Provision of ESI and Provident Fund and in this regard it was the reply of the O.P/Employer that since the workman were engaged in employment on availability of work order then they were not entitled to come under the Provision of said ESI and Provident Fund.

However, admittedly it appears from the evidence of O.P.W.-1 i.e. the witness as well as one of the partners of the OP/Company deposed from the end of the OP/Company that he has been admitted that they did not give any notice to the workmen prior to the closure of their establishment/factory. It was also admitted by him that they did not pay any compensation to any of the workman who lost their job due to such closure of their undertaking. It was further stated by him that they cleared all the dues about salary of the workmen. The concerned workmen also have no complaint that they did not get the dues about their salary.

Admittedly, it is a settled Principle of Law that a Tribunal cannot travel beyond the issue in adjudication in respect of any issue under Reference. In this context and considering the above discussed facts and circumstances it can reasonably be held that the issue as asked for adjudication under the Order of Reference to decide whether termination of employment of the workman by way of closure is justified or not was not properly framed for proper adjudication of the dispute between the workman and the employer.

The evidence adduced from the end of the OP/Company admittedly goes to show that the OP/Employer closed down the undertaking of this case under reference without serving any notice upon the appropriate Government stating clearly the reasons for intended closer of the undertaking as provided in section 25FFA of Industrial Dispute Act, 1947. So, in view of such facts and circumstances it is clear that the undertaking of this case under reference was closed down by the OP/Employer without maintaining proper procedure of law. As such in short it can be said that it was not properly closed down, for which certain remedies are available to the workmen lost their employment due to such improper close down of the undertaking. Even then some other remedies

are also available to the workmen who lost their employment due to such close down of the undertaking.

So, keeping in mind the nature of the legislation that the Industrial Disputes Act, 1947 is a beneficial legislation to provide relief to the weaker section of the society alternatively for the interest of justice this Tribunal is taking up the matter of discontinuation of employment of the concerned workman into consideration for adjudication with regard to the reliefs as they are entitled to arising out of their such discontinuation from employment due to closure of the undertaking under reference.

Hence, keeping in view of the dispute between the parties under reference and the facts and circumstances arising out of closure of the establishment under reference and according to the provision of section 25 FFF, it can reasonably be treated the discontinuation of the employment of the said workmen 'as retrenchment'.

Let us now to discuss about the provision of section 25FFF of the Industrial Disputes Act, 1947, which is reproduced below:

Section 25FFF (1) "where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than 1 year in that undertaking before such closure shall, subject to the provision of sub section (2), be entitled to notice and compensation in accordance with the provisions of section 25F, as if the workman have been retrenched:

Provided that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the employer the compensation to be paid to the workman under clause (b) of section 25F, shall not exceed his average pay for 3 months."

So considering the facts and circumstances and in view of the aforesaid provision of law under section 25FFF of Industrial Disputes Act, 1947, it can easily be held that the workmen of this case under reference had been retrenched and accordingly as per provision of clause (b) of section 25F they were entitled to notice and compensation as they had been retrenched.

The provision of section 25F i.e. 'condition precedent retrenchment of workmen' is hereby reproduced below:

Section 25F : No workman employed in any industry who was in continuous service for not less than 1 year shall be retrenched by that employer until-

- (a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) The workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 month's; and

- (c) Notice in the prescribed manner is part on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the official gazette.

It has already been discussed earlier that admittedly the deposition of OPW-1 Shri Swarup Dey, who deposed on behalf of the OP/Employer in his evidence during cross-examination admitted that he and his elder brother are the only two partners of the OP/Company and their factory i.e. undertaking was closed sometime in the year 2013. It was also admitted by him that they did not seek any permission of the Government for the closure of their Company. He also admitted in his evidence that they did not give any notice to the workman about the closure prior to the closure of their undertaking and they did not pay any compensation to any of the workman who lost their job due to such closure. This OPW-1 being an employer as well as partner of the OP/Company under reference also clarified in his evidence during cross-examination that although he stated in para 3 of his affidavit-in-chief as well as his earlier pleadings that no worker has rendered their service for more than 240 days in their Company but to prove the same he has no attendance register or salary register or any such document in this regard in their office. To justify his said claim he further stated that “they maintained all those documents; rather the workmen themselves use to maintain it for the Company. Now, I am not finding anything (kichui khuje pacchi na).” In this regard it was also clarified by him that he did not inform about the alleged missing of documents from his office either to the Labour Department or to the Police Station. So, from his aforesaid evidence had it been believed that the workmen themselves used to maintain all those documents for the Company then the document exhibited by the applicant workmen as Exhibit-1 should also be relied upon to believe the case of the Applicant/Workmen.

So, considering all such facts and circumstances, coupled with the evidence on record and keeping in view the fact that the OP/Company has not been able to establish their pleadings through any cogent or corroborative evidence, it can reasonably be held that all the workmen under reference were bonafide workmen under the OP/Employer and they were employed under the said OP/Employer for more than 1 year period and due to admitted closure of the undertaking/establishment of the OP/Company without maintaining pre cautioned measurement i.e. without giving any notice and compensation within stipulated period caused ‘retrenchment’ of the workmen and accordingly the workmen are entitled to get the remedy by way of compensation for such faulty act on the part of the OP/Company.

However, I have gone through the decisions as cited by the parties and found that the same are not exactly relevant with regard to the facts, circumstance and nature of dispute of this case.

So, keeping in mind all the above discussed factors, I am of the reasonable view that causing retrenchment of the concerned workmen by way of closer of the undertaking without maintaining the prescribed provision of law by the OP/Company was not justified, for which the OP/Company is liable to pay requisite compensation to the Applicant/Workmen.

All the issues are adjudicated accordingly in favour of the Applicant/Workmen.

Hence, it is

### **ORDERED**

That causing retrenchment of the concerned workmen by way of closer of the undertaking without maintaining the prescribed provision of law by the OP/Company was not justified.

The OP/Company is accordingly directed to pay the requisite compensation to all these retrenched workmen as prescribed in the provision of law within 60 days from this day.

The heirs of the workmen who have already died during the pendency of this reference and adjudication are also entitled to receive the said compensation.

This is my award.

Let a copy of this order be sent on line in PDF form to the Secretary, Labour Department, Government of West Bengal, N.S. Buildings through the dedicated e-mail for information and doing subsequent action as per provision of law.

Dictated & corrected by me.

**Sd/-**

Judge, Fourth Industrial Tribunal  
Kolkata.  
14.01.2025.

**Sd/-**

Judge  
Fourth Industrial Tribunal  
Kolkata.  
14.01.2025.