

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

No. Labr/ 103 / (LC-IR)/ 22015(16)/13/2023

Date : 21-01-2025

ORDER

WHEREAS an industrial dispute existed between M/s. Themis Medicare Limited, having its Head Office at 11/12, Udyognagar, S.V. Road, Goregaon (W), Mumbai- 400104 and its Regional Office at M/s. Shikha Distributor Pvt. Ltd., 2nd Floor, 6/6, Kusthia Road, Kolkata – 700039 and their workman Mrinal Kanti Jana, S/o Binoy Kumar Jana, Bhuvan Bhavan, Homoeopathy Medical College Road, P.O. Midnapur, District- Paschim Medinipore, Pin code – 721101, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);


AND WHEREAS the 7th Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 30.12.2024 in Case No. - 10 of 2020 on the said Industrial Dispute Vide e-mail dated 13.01.2025 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/ 103 /1(5)/(LC-IR)/ 22015(16)/13/2023

Date : 21-01-2025

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

1. M/s. Themis Medicare Limited, having its Head Office at 11/12, Udyognagar, S.V. Road, Goregaon (W), Mumbai- 400104 and its Regional Office at M/s. Shikha Distributor Pvt. Ltd., 2nd Floor, 6/6, Kusthia Road, Kolkata – 700039.
2. Mrinal Kanti Jana, S/o Binoy Kumar Jana, Bhuvan Bhavan, Homoeopathy Medical College Road, P.O. Midnapur, District- Paschim Medinipore, Pin code – 721101.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Assistant Secretary

No. Labr/ 103 /2(3)/(LC-IR)/ 22015(16)/13/2023

Date : 21-01-2025

Copy forwarded for information to :-

1. The Judge, 7th Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 13.01.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary

IN THE SEVENTH INDUSTRIAL TRIBUNAL, WEST BENGAL

Present: Ms. Yogita Gaurisaria , Judge, Seventh Industrial Tribunal.

Case No. 10 of 2020

Under Section 2A(2) of the Industrial Disputes Act, 1947

MRINAL KANTI JANA , S/o Binoy Kumar Jana residing at Bhuvan Bhavan, Homoeopathy Medical College Road, P.O. Midnapur, District- Paschim Medinipore, Pincode – 721101

.....Applicant

-VS-

M/s. Themis Medicare Limited, having its Head Office at 11/12, Udyognagar, S.V. Road, Goregaon (W), Mumbai- 400104 and its Regional Office at M/s. Shikha Distributor Pvt. Ltd., 2nd Floor, 6/6, Kusthia Road, Kolkata – 700 039

.....Opposite Party/Company

This Award delivered on Monday, this the 30th day of December, 2024

A W A R D

The instant case has been initiated by the applicant Mrinal Kanti Jana (hereinafter referred to as the applicant/workman) by filing the application under Section 2A(2) of the Industrial Disputes Act, 1947 against his employer M/s. Themis Medicare Limited (herein referred as O.P/Company) in connection with the illegal termination of his service vide letter dated 10.06.2020 with the prayer to pass an award of his reinstatement with full back wages from the date of illegal retrenchment along with all consequential service benefits and interest setting aside the order of his illegal retrenchment.

The case of the applicant in a nutshell is that the applicant joined the Company with effect from 7th June, 2005 as Probationary Medical Representative Sales Promotion Employee at Midnapore Head Quarter vide letter of appointment dated 15th June, 2005 and the said appointment was on probation for 6 months. His service was confirmed vide letter dated 09.03.2006 with effect from 01.03.2006 maintaining his job profile exactly the same and identical as that of Sales Promotion Employee and his designation was Medical Representative. His primary and essential duty was to promote sales of the different Pharmaceutical/ Medicines products of the Company to the doctors, with the aim of getting prescriptions of those Medicines detailed to the doctors. His job was also to promote company's Pharmaceutical/ Medicines to the Chemists shop to make them keep adequate stocks of the medicine to honour the prescriptions from the doctors and to cater the stocks of the medicines to the chemists shops through distributors/ stockists appointed by the company. He used to discharge his duties of a Sales Promotion Employee quite diligently and prolifically. In the year 2018, the OP/Company revised the salary and other emoluments of the workman with retrospective effect from 01.07.2017. He further stated that thereafter the Covid-19 pandemic engulfed the entire world including India impacting all the aspect of human life, especially social and economic impact of that pandemic has been felt and percolated deep into the body and soul for human civilization and taking into account of severity of pandemic, the company by a undated general circular suspended the sales promotion work in the market till 21.03.2020 and that he like others was directed to work from home using mediums like whatsapp mobiles, SMSs to connect with the key customer and keep managers updated on day's work through whatsapp or e-mail and to think ways and means to improve business. After the total lockdown was imposed by both Central and State Governments, he

started sales promotion job in the market as soon as the unlockdown-1 started after spending the lockdown period of working from home as per the instruction of the company. He further stated that his sincere and diligent effort of sales promotion for the company during lockdown and unlockdown period did not get any recognition from the company because all on a sudden he received a letter of termination of his services dated 10th June, 2020 with immediate effect, which tantamounted to his illegal retrenchment because the company only paid the salary for the month of June, 2020 being a sum of Rs. 9025/- having not followed the condition precedent to retrenchments of workman. He further stated that he submitted representation to the management of the company dated 27th June, 2020 humbly soliciting the management of the company to review the decision of terminating his service from the company and in view his representation, the company by a letter dated 5th August, 2020 informed him that the company would not review the order of his termination of service. He further stated the Company had withheld the expenses for the months of April, 2020 , May, 2020 and June, 2020.

He further stated that against his illegal retrenchment, he raised an industrial dispute by filing complaint petition dated 8th July, 2020 before the Assistant Labour Commissioner, Govt. of West Bengal, Regional Labour Office, Midnapore Sadar through e-mail imploring necessary intervention of the conciliatory authority with regard to illegal retrenchment of the workman and the Assistant Labour Commissioner sent notice along with the complaint to the company and fixed dates for conciliation, but no settlement having been arrived, he filed the instant application after the expiry of the statutory period as per the relevant provision as prescribed in the Industrial Dispute Act, 1947. He further stated that the company terminated his service without following the statutory

provision of the prescribed condition precedent of retrenchment as provided under the said Act and the retrenchment is illegal and that since his retrenchment with effect from 10.06.2020, he has not been in any gainful employment elsewhere till date. He prayed before this Tribunal that the order of illegal retrenchment be set aside and the company be directed to reinstate him , to save him from having been reeling under extreme privation, with full back wages and all other consequential benefits as payable to him by the company from the date of illegal retrenchment to the date of reinstatement together with interest as admissible. Hence, this case.

It appears from the order dated 09.03.2021 that the Op/Company appeared and filed Vakalatnama and prayed for time to file Written Statement and next date was fixed as 05.04.2021 for filing Written Statement. But later, the OP/Company chose not to appear before this Tribunal and accordingly, the instant case proceeded exparte against the OP/Company.

On 12.05.2022, the applicant/ Workman filed his Affidavit in Chief .

The applicant/ workman was examined as P.W.1 and some photocopies of documents have been marked as Exhibits 1 to 11. They are as follows-

1. List of documents as filed by the workman dated 12.05.2022 marked as Exbt. 1.
2. Photocopy of appointment letter dated 15.06.2005 marked as Exbt. 2.
3. Photocopy of confirmation letter dated 09.03.2006 marked as Exbt. 3.
4. Photocopy of lockdown information marked as Exbt. 4.
5. Photocopy of pay revision dated 04.06.2018 is marked as Exbt. 5.
6. Photocopy of circular of the company marked as Exbt. 6.
7. Photocopy of termination letter by the company dated 10.06.2020 marked as Exbt. 7.

8. Photocopy of e mail dated 27.08.2020 marked as Exhibit 8.
9. Photocopy of letter to AGM, Sales dated 25.06.2020 marked as Exbt. 9.
10. Photocopy of representation by the workman dated 27.06.2020 marked as Exbt. 10.
11. Photocopy of complaint petition dated 08.07.2020 marked as Exbt. 11.

Heard the Ld. Advocate for the applicant/ workman. The Ld. Advocate for the applicant submitted that the applicant is a workman within the definition of workman under section 2(s) of the Industrial Disputes Act, 1947 read with the West Bengal Amendment Act 33 of 1986 (with effect from 21.08.1984) and West Bengal Act 57 of 1980 (with effect from 30.11.1981). The Ld. Advocate for the applicant/ workman submitted that the Sales Promotion employees are also within definition of workman in view of West Bengal Amendment. The Ld. Advocate for the applicant/ workman further submitted that the termination of the applicant/ workman vide letter dated 10.06.2020 is nothing but retrenchment as defined under section 2(oo) of the Industrial Disputes Act, 1947 and does not fall within the exceptions as provided under section 2(oo) of the said Act and is illegal termination of the service of the applicant/ workman since the OP/Company did not comply the condition precedent to retrenchment as laid down under section 25F of the said Act, 1947 being compulsory obligation on the company and as such the said retrenchment is illegal retrenchment. The Ld. Advocate for the applicant/ workman further submitted that the applicant/ workman has not been in any gainful employment elsewhere since his said illegal retrenchment and therefore is entitled to full back wages with reinstatement with all consequential benefits including interest, costs and prayed for continuity of service.

The Ld. Advocate for the applicant/ workman relied on the following citations in support of his case-

1. Narottam Chopra - VS - P.O. Labour Court 1989 Supp (2) SCC 97
2. Ajay Pal Singh – Vs- Haryana Warehousing Corporation (2015) 6 SCC 321
3. Raj Kumar – vs - Director of Education (2016) 6 SCC 541
4. Ramesh Kumar – vs - State of Haryana 2010(1) CLJ SC 195
5. Devinder Singh –vs- Municipal Council (2011) 3 CLJ SC 58
6. Deepali Gundu Surwasu – vs- K.J.A. Mahavidyalaya (D.Ed.) & Ors
(2013) 10 SCC 324
7. Hari Nandan Prasad – vs – Employer I/ R to Management of FCI & Anr
(2014) 7 SCC 190
8. BSNL – vs – Burumal 2014 Lab I.C. 1093
9. Anoop Sharma – vs – Public Health Division Haryana (2010) 5 SCC 497
10. Harjinder Singh – vs – Punjab State Warehousing Corpn 2010 (1) CLJ (SC)
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Perused the case record alongwith the documents and the evidences, both oral and documentary.

The evidence of the applicant/ workman remained uncontroverted.

In light of the aforesaid contentions as well as uncontroverted evidences of the applicant/ workman brought in support thereof by the applicant/ workman, I find that the applicant/ workman falls within the definition of workman as laid under section 2(s) of the Industrial Disputes Act, 1947 read with the West Bengal

Amendment Act 33 of 1986 (with effect from 21.08.1984) and West Bengal Act 57 of 1980 (with effect from 30.11.1981). The applicant categorically averred in his application that his primary and essential duty, as will also reflect from the appointment letter- terms & conditions, was to promote sales of the Pharmaceutical products of the Company by visiting different doctors, chemists, stockiest, etc as per standard room, rules and regulations of the Company. He also deposed the same in his Affidavit-in-chief. The Exhibit-2 (terms & conditions therein) fortifies that the nature of job performed by the applicant was of Sales Promotion employee. The Sales Promotion employees are also within the definition of workman in view of West Bengal Amendment.

The revised pay after Salary Revision of the applicant/ workman is transpiring from letter dated 04.06.2018 (Exhibit-5) stating Gross Salary to be Rs. 10,721/- per month and after LTA amounting to Rs. 128,652/- per annum.

I further find that the OP/Company terminated the services of the applicant/ workman by letter dated 10.06.2020 (Exhibit-7) by paying an amount of Rs. 9025/- vide cheque no. 001622 dated 01.06.2020 as salary for June, 2020. The OP/Company cited the reason as under-

“We regret to inform you that, in view of the business losses incurred by us due to the prevailing pandemic situation in the country, its enormity and uncertainty, we have decided to take the painful decision of reducing our field staff effective from 10th June, 2020.

Therefore, under clause 2(b) of your appointment letter, you will cease to be in the employment of the company from June 10th, 2020. Your salary cheque for the month of June, 2020 is enclosed in lieu of notice.....”

The termination of services of the applicant/ workman vide letter dated 10.06.2020 falls within the definition of retrenchment as laid under section 2(oo) of the said Act, 1947 and does not fall within the exceptions as provided under section 2(oo) of the said Act and is illegal termination of the service of the applicant/ workman since the OP/Company did not comply the statutory conditions precedent to retrenchment as laid down under section 25F and/or 25N of the said Act, 1947 being compulsory obligation on the company and the said retrenchment is illegal retrenchment.

The applicant/ workman has averred and deposed that the applicant/ workman has not been in any gainful employment elsewhere since his said illegal retrenchment and is entitled to full back wages with reinstatement with consequential benefits and prayed for continuity of service. The same also remains unchallenged and uncontroverted.

In view of the aforesaid facts and circumstances and the settled position of the law and unchallenged and uncontroverted evidence of the applicant/ workman, this Tribunal finds that the applicant/ workman has been able to prove his case by cogent and consistent evidence that his alleged termination vide letter dated 10.06.2020 is bad, illegal and unjustified and is liable to be set aside and that the applicant/Workman is entitled to reinstatement with full back wages and consequential reliefs and the services of the applicant/ workman be deemed to be continuous service without any break.

Hence, it is

ORDERED

that the instant case being No. 10/2020 u/s. 2A(2) of the Industrial Disputes Act, 1947 be and the same is allowed exparte with costs of Rs. 1 Lac (Rupees One Lac only) against the OP/Company. The letter of termination dated 10.06.2020 (Exhibit-7) is set aside being bad, illegal and unjustified.

The OP/Company is directed to reinstate the applicant/ workman in service with full back wages alongwith all other consequential benefits thereto arising out of such reinstatement and continuity of service and the service of the applicant/ workman shall be deemed to be continuous service without any break.

The OP/Company is also directed to further pay a sum of Rs. 2 Lacs (Rupees Two Lacs) as compensation to the applicant/ workman for the applicant's mental agony and unnecessary harassment arising out of this litigation.

The OP/Company is also directed to pay all the dues and outstanding as directed by this Tribunal with interest @ 10% per annum within thirty days from the date of this order.

The OP/Company is directed that while calculating the arrears payments and all other consequential benefits thereto and while fixing the present pay of the applicant/ workman, the applicant/ workman shall not be deprived from any such benefits which are paid to the similar workman or equally circumstance workman as per their service is concerned.

The aforesaid is the Award of this Tribunal passed in this instant case no. 10/2020/ 2A(2).

The case no. 10/2020/ 2A(2) stands disposed of ex parte.

Let copy of this Award be sent to the appropriate authority(ies) as envisaged under the law.

Dictated & corrected by me.

Judge

(Yogita Gaurisaria)
Judge
7thIndustrial Tribunal
Kolkata
30.12.2024