

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

No. Labr/ 99 / (LC-IR)/ 22015(16)/19/2025

Date : 21-01-2025

ORDER

WHEREAS an industrial dispute existed between M/s. Shrey Neutraceuticals & Herbal Pvt. Ltd., Head Office : H—2/102, Suneja Chamber, Alakanda , New Delhi – 110019 West Bngal Office : M/s. Bhattacharya Pharmaceuticals & Co., Bagri Market, 1st Floor, Kolkata – 700001 and their workman Seema Das Pal, W/o. Shri Sukanta Das, 'Sagata Complex', 1st Floor, Block – B, 28, Ramnabamitala Lane, Bally, Howrah – 711201, 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 31.12.2024 in Case No. - 25/2015 on the said Industrial Dispute Vide e-mail dated 07.01.2025 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/ 99 /1(5)/(LC-IR)/ 22015(16)/19/2025

Date : 21-01-2025

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

1. M/s. Shrey Neutraceuticals & Herbal Pvt. Ltd., Head Office : H—2/102, Suneja Chamber, Alakanda , New Delhi – 110019 West Bngal Office M/s. Bhattacharya Pharmaceuticals & Co., Bagri Market, 1st Floor, Kolkata – 700001.
2. Seema Das Pal, W/o. Shri Sukanta Das, 'Sagata Complex', 1st Floor, Block – B, 28, Ramnabamitala Lane, Bally, Howrah – 711201.
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/ 99 /2(3)/(LC-IR)/ 22015(16)/19/2025

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 07.01.2025.
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
New Secretariat Buildings, Kolkata

Present: Miss Yogita Gaurisaria, Judge,
Seventh Industrial Tribunal,
Kolkata.

CASE NO. 25/2015

Under Section 10(1B)(d) of the Industrial Disputes Act, 1947

**Seema Das Pal,
W/o. Shri Sukanta Das,
'Sagata Complex', 1st Floor, Block – B,
28, Ramnabamitala Lane, Bally,
Howrah – 711 201**

...Applicant

-Versus-

**M/s. Shrey Neutraceuticals & Herbal Pvt. Ltd.
Head Office : H—2/102, Suneja Chamber, Alakanda , New Delhi – 110019
West Bngal Office : M/s. Bhattacharya Pharmaceuticals & Co., Bagri Market, 1st
Floor, Kolkata – 700 001.**

....OP/Company

This Award delivered on Tuesday, this the 31st day of December, 2024

A W A R D

The applicant after obtaining a pendency certificate in prescribed Form “S” under Rule 12A(3) of the West Bengal Industrial Disputes Rules, 1958 dated March 12, 2015 filed the present application before this Tribunal under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (West Bengal Amendment) challenging the termination of the service of the applicant with prayer for reinstatement with full back wages and consequential benefits.

The applicant’s case, in short, is that she joined the OP/Company on 23.05.2011 as a Field Officer and she was a permanent employee of the O.P./Company till her illegal and unjustified termination of service w.e.f. 31st August, 2014 without facing any chargesheet/disciplinary action from the

employer. The applicant joined the work as Field Officer on probation and for her utmost dedication and exceptional aptitude in discharging her allotted duties, she was confirmed in the service of the OP/Company w.e.f. 01.10.2011. The applicant further stated that she performed all her allotted duties to the best of her abilities for which her pay and potential was reviewed from time to time by the O.P./Company. She further stated that the employer is a company dealing in pharmaceutical products and does its business in abject violation of the law of the land more specially in the labour and industrial sphere and she further stated that her duties were purely akin to a salesman and she had to promote the sales of the products of the O.P./Company with flying colours. She further stated that the O.P./Company, over and above, violated the laws of the land more specially in the labour and industrial sphere and was also oppressive of its workmen and adopted various unfair labour practices which the present workman protested for which she became the eye shore of the O.P./Company and as her cause and the cause of other workmen was espoused by a union namely West Bengal Medical and Sales Representatives Union made her situation further worse and led to her victimization leading to the ultimate termination of her service. The applicant/workman further submitted that she, through her sheer hard work, developed and nurtured her territories to improve the sales of products of the employer but the local level management of the O.P. with an intention to disrupt her work, always made adverse report to the higher management of the O.P./Company

The applicant further stated that things came to boil in early 2014 and she was all of a sudden allotted new territories and asked to make and submit a survey of doctors via e mail, but she could not access the said e mail at the relevant times but when she was given further e mail by the local management she immediately complied with the O.P.'s directions and prepared the list of doctors as directed and also narrated and intimated the problems of her territory. She further stated

that the local management upon having knowledge that their deeds or misdeeds which plagued the growth of her territory had been reported to the higher management, took strong exception and immediately issued a purported show cause dated March 22, 2014 containing various false and fabricated allegations and as the extent of anger of their wrong doings coming to fore that even the higher management was requested to immediate act against her to issue a most illegal and unjustified 'stop work ' order which the higher management was forced to accept keep management in good humour and the higher management even forwarded her matter to the local management for consideration keeping them in good humour in abject derogation of their rights and duties leaving everything at their hands at the expenses of the diligent workman and ultimately she was given an punitive transfer vide order dated April 05, 2014 and her Union i.e. West Bengal Medical and Sales Representatives Union raised dispute on her behalf with the management of the O.P. with regard to the punitive transfer order dated April 05, 2014 , but they did not revoke the same and she was forced to work in terms of the punitive transfer order. She further stated that her union espousing her cause led to further escalation of victimization and issuance of a further show cause on false and fabricated reasons which was adequately replied by her and upon finding no reasons to proceed against the workman departmentally and internally no further steps was taken in furtherance of show cause, but instead she was transferred to a non existent territory " Malda" which was nothing but an extreme punitive action which was communicated vide e mail dated August, 4 , 2014 and inspite of her reply e mail on August, 05, 2014 the same was not even considered in its right perspective and instead she was issued a termination letter dated August, 11, 2014 which was vindictive, illegal and in violation of the principles of nature justice. She further stated that her Union i.e. West Bengal Medical and Sales Representatives Union raised dispute on her behalf with the management of the O.P. with regard to the termination order dated August, 11, 2014 vide their representation dated 13, 2014 which was not

even replied and thus, rejected the same. She further stated that her services stood terminated from August 29, 2014 upon receipt of which she submitted a further representation dated September 09, 2014 requesting the management to withdraw her most illegal and unjustified termination of service but the same was not even replied. She further stated that finding no other alternative, she by her representation dated September 18, 2014, raised an industrial dispute before the Labour Commissioner, Govt. of West Bengal, Department of Labour relating to her illegal and unjustified termination of service w.e.f. August, 31, 2014 praying to reinstate her in service maintaining previous continuity without any break, with full back wages along with consequential benefits. She further stated that after raising of the said industrial dispute and with an object to cover up their complete illegal and unjustified action, the O.P. by its communication dated September, 29, 2014 issued a purported settlement notice and cheque which included her due wages and expenses to which she was /is otherwise legally entitled hence she encashed the said cheque without prejudice to her rights and contentions which she communicated to the employer vide her letter dated October, 09, 2014. She further stated that the designated Conciliation Officer initiated a conciliation proceedings being No. 118/14 in which the O.P. submitted its comments dated December 08, 2014 wherein it denied the just and genuine grievances of the workman by raising therein several false/manufactured/concocted /baseless pleas which have no legs to stand which were made only with a view to frustrate the just and genuine grievances by the workman by her reply dated December 26, 2014. She further stated that the conciliation proceedings made by the Conciliation Officer could not resolve the just and genuine grievance of the applicant due to the adamant and unjustified attitude of the O.P. and as such, she was forced to invoke the provisions of Section 10(1B)(d) of the Industrial Disputes Act with prayer for certificate certifying the pendency of the industrial dispute by her application in prescribed Form-P4 on March 09, 2015 upon which the Conciliation Officer issued the pendency certificate in prescribed Form-S

dated March 11, 2015 and based on this certificate, she filed the present case before this Tribunal.

She further stated that despite serving the O.P. with utmost diligence and sincerity without any iota of blemish and/or any complaints whatsoever from any quarter is forced to be dependent on the charities of her family as she is without any employment since her illegal and unjustified termination w.e.f. August 31, 2014. She further stated that her last drawn wages was Rs. 11,933/- per month. Her duties were purely and exclusively manual in nature and that she did not hold any administrative, supervisory and managerial post and had no power to sign and submit any statutory return, grant leave to any other workmen and initiate any disciplinary proceedings in respect of any workman of the OP/Company. She did not discharge any duties in any supervisory capacity.

The OP/Company after service of notice, entered appearance and filed written statement on 20.07.2015 wherein they have denied each and every allegation brought against them. According to the OP/Company, the applicant was engaged by them as a Sales Promotion Employee on good faith and that she joined OP/Company on 23.05.2011 and that she was working at HQ at Kolkata. They further denied that the management of the O.P./Company started unfair behavior with the workman for last few months and that she had protested the same and situation had gone to the extent and she requested trade union number of times. It is stated by the O.P./Company that due to her activities for not follow the rules and regulations of the O.P./Company, she was given show cause notice, but the explanation made by the workmen before the management of the O.P./Company was not satisfied and hence, her employment from the O.P. was withdrawn on 11.08.2014 under the proper process of law and they also sent a cheque no. 439858 dated 29.09.2014 for Rs. 27,521.00 (ICICI Bank) and cheque No. 439858 which was including salary fore the notice period from 11.08.2014 till to 30.09.2014 according to appointment letter terms and conditions and

settlement sheet and in this way management had not done anything wrong in the eyes of law and the workman herself is responsible for termination of her service. The OP/Company further stated that termination was due to applicant's non-joining at Malda HQ which was assigned to her through transfer order dated 04.08.2014 which was a company policy clearly stated in page 2 of appointment letter. The applicant submitted a doctor's list where she had mentioned the doctor Sankha Roy's name twice in the list in serial no. 50 & 64 respectively. In the circumstances, the OP/Company has prayed for an order to reject the instant case.

Considering the pleadings of both the parties, the following issues are framed for proper adjudication of this case :-

I S S U E S

1. Whether the purported complaint raised by the workman is an industrial dispute as defined under Industrial Disputes Act, 1947 ?
2. The alleged termination of service of Smt. Seema Das Pal w.e.f. August 31, 2014 by the management of M/s Shrey Neutraceuticals & Herbal Pvt. Ltd. is justified or not ?
3. To what relief is she entitled to ?

DECISION WITH REASONS

In order to establish his case, the applicant has examined himself as PW-1 and proved some documents, marked as Exhibits-1 to 19 respectively which are as follows :

1. Copy of appointment letter dated 20.05.2011,
2. Copy of Confirmation letter dated 30.09.2011,
3. Copy of letter dated 22.03.2014,
4. Copy of workman's letter dated 30.03.2014,
5. Copy of workman's letter dated 31.03.2014,
6. Copy of Transfer Order dated 05.04.2014,
7. Copy of Union Letter dated 05.04.2014,
8. Copy of Company's letter dated 04.08.2014,
9. Copy of termination letter dated 11.08.2014,
10. Copy of Union representation letter dated 31.08.2014,
11. Copy of workman's letter dated 14.08.2014,
12. Copy of workman's letter dated 09.09.2014,
13. Representation before the Labour Commissioner dated 18.09.2014,
14. Copy of Company's letter dated 29.09.2014,
15. Copy of workman's letter dated 09.10.2014,
16. Copy of comments of Company dated 08.12.2014,
17. Copy of workman's letter dated 26.12.2014,
18. Form P-4,
19. Pay slip of June, 2014.

The OP/Company examined Sri Mukesh Singhal, Manager, HRD of OP/Company as OPW-1 and also examined Sri Rajib Bhattacharya as OPW-2 on behalf of OP/Company. The following documents were marked as Exhibits A to O--

- A. Copy of appointment letter
- B. Email from Apurba Chowdhury
- C. Applicant mail dated 04.08.2014
- D. Confirmation letter

- E. email sent to the applicant dated 22.03.2014
- F. email sent to the applicant dated 05.04.2014
- G. Copy of letter dated 28.04.2014 sent by OP/Company
- H. email sent to the applicant by the OP/Company dated 28.06.2014
- I. email sent by the applicant to the HR section
- J. email sent by the OP/Company to the applicant dated 08.07.2014
- K. Copy of letter dated 04.08.2014
- L. Copy of letter dated 11.08.2014
- M. email sent to the OP/Company by the applicant dated 09.09.2014
- N. Copy of letter dated 29.09.2014
- O. Copy of letter dated 09.10.2014

The Ld. Advocate for the applicant as well as the Ld. Advocate for the OP/Company files their respective written notes of arguments in support of their respective case.

The Ld. Advocate for the applicant relied on the following citations in support of the case of the applicant –

- 1. 2009 LLR 113
- 2. 1981 (14) Lab IC 806
- 3. 2013 Lab IC 4249
- 4. 1964 -1 -LLJ 333
- 5. 2006- II- LLJ 51
- 6. 2013 (1) CHN 504
- 7. 1978 (1) LLJ 322

The Ld. Advocate for the OP/Company relied on the following citations in support of the case of the OP/Company –

1. 2004 LLR 198 :: 2004 SCC (L&S) 453
2. 2001 (1) LLJ 1687 :: 2001 SCC (L&S) 858
3. 1988 (2) LLJ 419
4. 2003 (1) CLR 622 (SC)

Issue No. 1 :

In course of argument, Ld. Advocate of the applicant makes no submission with regard to the maintainability of this case. Moreover, it has not been agitated in the four-corners of the written statement, filed on behalf of the OP/Company, that this case is not maintainable in law. Apart from that, on a close scrutiny of the materials on record including written arguments files by the parties, I do not find anything against this issue.

I find that the applicant 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 her application and deposed before this Tribunal that her duties were purely akin to a salesman and she had to promote the sales of products of the O.P./Company. The said nature of job of applicant also reflects from the paragraph 10 of the written statement filed by the OP/Company which states of applicant's highest record of Sales Promotion at Berhampore. This 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 applicant is thus within the definition of workman as above.

Accordingly, this issue no.1 is disposed of in favour of the applicant.

ISSUE no. 2 & 3

Both the issues no.2 & 3 are taken up together for sake of brevity and convenience.

Now, let us see as to how far the applicant has been able to prove his case by adducing evidence. The applicant has been examined as PW-1 and Op/Company adduced two witnesses, OPW-1 & OPW-2, on its behalf.

Applicant (PW-1) has deposed in support of her case. According to her evidence, she was appointed as an employee of the OP/Company as a Field Officer in the year 2011 and worked continuously till her termination of service. She has also deposed that the applicant joined the work as Field Officer on probation and for her utmost dedication and exceptional aptitude in discharging her allotted duties, she was confirmed in the service of the employer w.e.f. October 01 2011. The applicant further stated that she performed all her allotted duties to the best of her abilities for which her pay and potential was reviewed from time to time by the O.P./Company. She further stated that the employer is a company dealing in pharmaceutical products and does its business in abject violation of the law of the land more especially in the labour and industrial sphere and she further stated that her duties were purely akin to a salesman and she had to promote the sales of products of the O.P./Company with flying colours. She further stated that the O.P./Company over and above violated the laws of the land more specially in the labour and industrial sphere was also oppressive of its

workmen and adopted various unfair labour practices which the present workman protested, for which she became the eye shore of the management of the O.P./Company and that as her cause and the cause of other workmen, was espoused by a union namely West Bengal Medical and Sales Representatives Union made her situation further worse and led to applicant's victimization leading to the ultimate termination of her service. The applicant/workman further submitted that she, through her sheer hard work, developed and nurtured her territories to improving of the sales of products of the employer but the local level management of the O.P., with an ill motive, disrupted her work always and made adverse report to the higher management of the O.P.

She further stated that things came to boil in early 2014 and she was all of a sudden allotted new territories and asked to make and submit a survey of doctors via e-mail, but she could not access the said e-mail at the relevant times but when she was given further e-mail by the local management she immediately complied with the O.P.'s directions and prepared the list of doctors as directed and also narrated and intimated the problems of her territory. She further stated that the local management upon having knowledge that their deeds or misdeeds which plagued the growth of her territory had been reported to the higher management, took strong exception and immediately issued a purported show cause dated March, 22 2014 containing various false and fabricated allegations and as the extent of anger of their wrong doings coming to fore that even the higher management was requested to immediately act against her to issue a most illegal and unjustified 'stop work ' order which the higher management was forced to accept to keep the local management in good humour and the higher management even forwarded her matter to the local management for consideration keeping them in good humour in abject derogation of their rights and duties leaving everything at their hands at the expenses of the diligent workman and ultimately the applicant was given a punitive transfer vide order dated April 05, 2014 and

her Union i.e. West Bengal Medical and Sales Representatives Union raised dispute on her behalf with the management of the O.P. with regard to the punitive transfer order dated April 05, 2014 , but they did not revoke the same and she was forced to work in terms of the said punitive transfer order. She further stated that her union espousing her cause led to further escalation of victimization and issuance of a further show cause on false and fabricated reasons which was adequately replied by her and upon finding no reasons to proceed against the workman departmentally and internally, no further step was taken in furtherance of show cause, but instead she was transferred to a non existent territory “Malda” which was nothing but an extreme punitive action which was communicated vide e mail dated August, 4 , 2014 and inspite of her reply e-mail on August, 05, 2014, the same was not even considered in its right perspective and instead she was issued a termination letter dated August, 11, 2014 which was vindictive, illegal and in violation of the principles of nature justice. She further stated that her Union i.e. West Bengal Medical and Sales Representatives Union raised dispute on her behalf with the management of the O.P. with regard to the termination order dated August, 11, 2014 vide their representation dated August 13, 2014 which was not even replied and thus, rejected the same. She further stated that her services stood terminated vide communication dated August 29, 2014 upon receipt of which she submitted a further representation dated September 09, 2014 requesting the management to withdraw her most illegal and unjustified termination of service but the same was not even replied. She further stated that finding no other alternation, she by her representation dated September 18, 2014 raised an industrial dispute before the Labour Commissioner, Govt. of West Bengal, Department of Labour relating to her illegal and unjustified termination of service w.e.f. August, 31 , 2014 praying to reinstate her in the service maintaining previous continuity without any break with full back wages along with consequential benefits. She further stated that after raising of the said industrial dispute and with an object to cover up their complete illegal and

unjustified action, the O.P. by its communication dated September, 29, 2014 issued a purported settlement notice and cheque which included her due wages and expenses to which she was /is otherwise legally entitled hence she encashed the said cheque without prejudice to her rights and contentions which she communicated to the employer vide her letter dated October 09, 2014. She further stated that the designated Conciliation Officer initiated a conciliation proceedings being No. 118/14 in which the O.P. submitted its comments dated December 08, 2014 wherein it denied the just and genuine grievances of the workman by raising therein several false/manufactured/concocted baseless pleas which have no legs to stand which were made only with a view to frustrate the just and genuine grievances by the workman by her reply dated December 26, 2014. She further stated that the conciliation proceedings made by the Conciliation Officer could not resolve the just and genuine grievance of the applicant due to the adamant and unjustified attitude of the O.P. and as such, she was forced to invoke the provisions of Section 10(1B)(d) of the Industrial Disputes Act with prayer for certificate certifying the pendency of the industrial dispute by her application in prescribed Form-P4 on March 09, 2015 upon which the Conciliation Officer issued the pendency certificate in prescribed Form-S dated March 11, 2015 and based on this certificate, the applicant despite serving the O.P. Company with utmost diligence and sincerity without any iota of blemish and/or any complaints whatsoever from any quarter is forced to be dependent on the charities of her family as she is without any employment since her illegal and unjustified termination w.e.f. August 31, 2014, she is forced to file the instant case.

The OPW-1 in chief admitted that the applicant joined the company in May, 2011. It appears from Exhibit-2 that applicant was conformed in service with effect from 01.10.2011. The OPW-1 further stated during cross-examination that the OP/Company withdrew the applicant/ workman as per terms and conditions mentioned in the appointment letter and that they also served the Show Cause

notice and further stated that no domestic enquiry was ever held. OPW-1 further stated that workman was never terminated from her services and that no termination letter was issued and further stated that no letter was issued to the workman that the company suffered loss due to non performance of the workman as well as her transfer. The OPW-1 also stated in cross-examination that the management did not issue any chargesheet to the workman.

It appears from Exhibit-9 dated 11.08.2014 which interalia states as under-

-

“Since you have not been complying with your job, responsibilities and orders from the H.O. as per terms of your employment letter, which is not acceptable.

Hence management decided to withdraw your employment by giving you 20 days notice period with effect from 31st August, 2014 with our organisation.”

It appears from Exhibit-14 dated 29.09.2014 that a cheque of Rs. 27,532 has been given to the applicant stating that the same includes salary for the notice period from 11.08.2014 to 30.09.2014.

The salary structure of the applicant appears from Exhibit-19 being pay slip of June 2014.

It surfaces from Exhibit-N which is the break-up of the payment of Rs. 27,532/- that no compensation as envisaged under section 25N of the said Act has been paid to the applicant/workman.

The discharge and/or dismissal from the service are major punishment(s) under the labour law jurisprudence which cannot be inflicted without the prerequisite disciplinary proceedings. But, in the instant case, no disciplinary

proceedings have been initiated by the OP/Company, as such, the definition of retrenchment under section 2(oo) of the said Act which otherwise excludes the punishment inflicted by way of disciplinary action is not helpful to the OP/Company. The termination of the applicant/workman whether by the nomenclature of discharge or withdrawal of service are within the four corners of the definition of retrenchment.

This Tribunal finds that the OP/company has not conducted any disciplinary proceedings which is reflected from above Exhibits as well as deposition of witnesses. The mandate of Sec. 25F of the said Act has also not been complied with by the OP/Company.

The stand of the OP/Company of discharge of the applicant/ workman or withdrawal of service of the applicant/ workman without any disciplinary proceedings does not hold water in view of sec. 2(oo) of the said Act and the action of the management amounts to retrenchment of the service of the applicant/ workman under section 2(oo) of the said Act.

The termination of services of the applicant/ workman vide letter dated 11.08.2014 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 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 Ld. Advocate for the applicant/ workman relied on the judgment delivered by the Supreme Court report in **2009 LLR 113 (SC) (Novartis India Ltd – vs – State of West Bengal** wherein the Hon’ble Apex Court interalia held-

“16. When an employee does not join at his transferred place, he commits a misconduct. A disciplinary proceeding was, therefore, required to be initiated. The order of discharge is not a substitute for an order of punishment. If an employee is to dismissed from services on the ground that he committed a misconduct, he was entitled to an opportunity of hearing. Had such an opportunity of hearing been given to them, they could have shown that there were compelling reasons for their not joining at the transferred places. Even a minor punishment could have been granted. Appellant precipitated the situation a post haste order of termination of their services.”

The Hon’ble Apex Court in the judgment reported in **1981 LabIC 806 :: AIR 1981 SC 1253 (Mohan Lal vs The Management , Bharat Electronics Ltd)** interalia held-

“7. Niceties and semantics apart, termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment except in cases excepted in the section itself. The excepted or excluded cases are where the termination is way of punishment inflicted by way of disciplinary action, voluntary retirement of the workman, retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, and the termination of the services of a workman on the ground of continued ill health. It is not the case of the respondent that termination in the instant case was

a punishment inflicted by way of disciplinary action. If such a position were adopted, the termination would be ab initio void for violation of principles of natural justice or for not following the procedure prescribed for imposing punishment. It is not even suggested that this was a case of voluntary retirement or retirement on reaching the age of superannuation or absence on account of continued ill health. The case does not fall under any of the excepted categories. There is thus termination of service for a reason other than the excepted category. It would indisputably be retrenchment within the meaning of the word as defined in the Act.”

The Hon’ble Apex Court in the said judgment further held-

“... Therefore, termination of his service would constitute retrenchment. As precondition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative. He must, therefore, be deemed to be in continuous service...”

The Hon’ble Apex Court in the judgment reported in **2003 LabIC 4249 (SC) (Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya D Ed)** interalia held-

“33. The proposition which can be culled out from the aforementioned judgments are – I) in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.....”

The citation relied on by the OP/Company 2004 SCC (L&S) 453 (Pearlite Liners (P) Ltd – vs - Manorma Sirsi) is of no help to the case of the OP/Company in the facts and circumstances of the instant case which calls upon the compliance of the statutory provisions of the Industrial Disputes Act.

The citation relied on by the OP/Company 2001 SCC (L&S) 858 is of no help to the case of the OP/Company in the facts and circumstances of the instant case where there is non compliance of the statutory provisions of the Industrial Disputes Act, the applicant in the instant case being workman under section 2(s) of the Industrial Disputes Act.

The citation relied on by the OP/Company 2008 III CLR 325 (SC) is of no help to the case of the OP/Company in the facts and circumstances of the instant case where there is non compliance of the statutory provisions of the Industrial Disputes Act in case of termination of her service, the applicant in the instant case being workman under section 2(s) of the Industrial Disputes Act. In the said citation, the transfer order was challenged as malafide but in the instant case, the termination of service of the applicant by the OP/Company is the deciding issue whether the said termination is justified or not.

The citations as relied by the OP/Company are of no help to the case of the Op/Company in view of the facts and circumstances of the instant case and the settled position of law as placed by the Ld. Advocate for the applicant/ workman in the citations relied upon by him.

In view of the aforesaid facts and circumstances and the settled position of the law , this Tribunal finds that the applicant/ workman has been able to prove his case by cogent and consistent evidence that her alleged termination vide letter dated 11.08.2014 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.

The Issue no. 2 & 3 stands answered accordingly in favour of the applicant/ workman.

Hence, it is

ORDERED

that the instant case being No. 25/2015 u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 be and the same is allowed on contest with costs of Rs. 75,000 (Rupees Seventy Five Thousand only) against the OP/Company. The letter of termination dated 11.08.2014 (Exhibit-9) 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. 1 Lac (Rupees One 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 aforesaid is the Award of this Tribunal passed in this instant case no. 25/2015/ 10(1B)(d).

The case no. 25/2015/ 10(1B)(d) is allowed on contest.

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
7th Industrial Tribunal
Kolkata
31.12.2024