

/377063/2023

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

No. Labr/. 210 . . . /(LC-IR)/ Date: ... 20/03/2023

ORDER

WHEREAS an industrial dispute existed between Themis Medicare Ltd. Plot No. 69 – A, G.I.D.C Industrial State, Valsad – 396 195, Gujarat, P.O. – Chanod, MDBO and Sri Sudip Dey, Emp.502394, C/o – Subodh Dey, Rambandh Para, P.O. – Dulmi, Nadiha, Dist. – Purulia - 723102 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 (14of 1947) to the Second 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 (14of 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 27/02/2023 under section 10(1B) (d) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute vide memo no. 20 - I.T. dated 28/02/2023.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 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/-

Sr. Deputy Secretary
to the Government of West Bengal

/377063/2023

No. Labr/. 210 . 1/(5)/(LC-IR)

Date : 20/03/2023

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

1. Themis Medicare Ltd. Plot No. 69 – A, G.I.D.C Industrial State, Valsad – 396 195, Gujarat, P.O. – Chanod, MDBO.
2. Sri Sudip Dey, Emp. Code 502394, C/o – Subodh Dey, Rambandh Para, P.O. – Dulmi, Nadiha, Dist. – Purulia – 723102.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Sr. Deputy Secretary

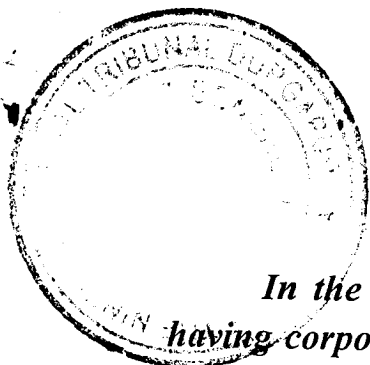
No. Labr/. 210 . 2/(2)/(LC-IR)

Date 20/03/2023

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. 20 - I.T. dated 28/02/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Sr. Deputy Secretary



In the matter of industrial dispute between Themis Medicare Ltd. having corporate office at 11/12, Udyog Nagar, S.V. Road, P.O-Bengur Nagar, Goregaon (West), Mumbai – 400 104 and Registered office at Plot No. 69-A, G.I.D.C Industrial State, Valsad – 396 195, Gujarat, P.O-Chanod, MDBO,

*And
the workman Sri Sudip Dey, Emp. Code 502394, C/O- Subodh Dey, ,
Rambandh Para, P.O- Dulmi, Nadiha ,Dist.-Purulia – 723 102, W.B.*

Case No. 13/2021 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.

APPEARANCE FOR THE PARTIES

Advocate for the applicant/workman :- Sri S.K.Panda & Smt.Anima Maji

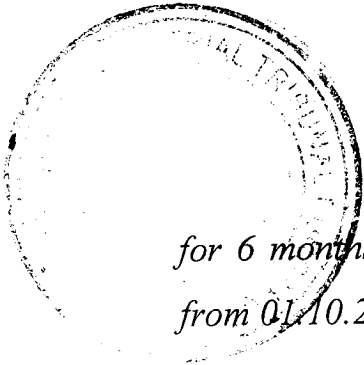
For the O.P/Employer :- Exparte.

Date of Award : 27.02.2023

The instant case is a case U/S 10 (1B)(d) of the of the Industrial Disputes Act, 1947 ((herein after referred to as the Act, 1947) initiated on the basis of an application of the above named workman filed before this tribunal alongwith Form-S issued by the Assistant Labour Commissioner(ALC), Purulia Sadar (East) under the Rule 12A(3) of the Industrial Dispute Rules 1957.

The pith and substance f the workman/employee's application case is that he was appointed on 25.09.2006 by the above named employer under Marketing and Sales Division and after completion of probationary period

*Sd/-
NINTH INDUSTRIAL TRIBUNAL
GOVT. OF WEST BENGAL*



for 6 months he was confirmed in the post of Business Executive on and from 01.10.2007.

Workman's further petition case is that since thereafter he used to discharge his service in unblemished manner for about 14 years and his working place was at Purulia Head Qtr. within West Bengal.

It has further been averred by the workman/employee that although he used to perform his duty satisfactorily but the management of the employer used to ill-behave with him on some trifling matter and accordingly he used to inform his higher authority about such matter. That the management of the employer all of sudden issued termination letter dated 10.06.2020 and thereby terminated his service under his above named employer.

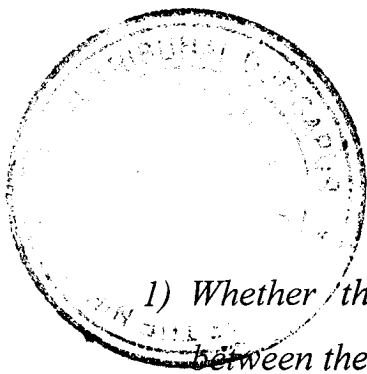
Workman/employee further states in his petition that thereafter he made appeal before the management for reconsideration but as the same yielded no result. Thereafter, he raised an industrial dispute before the ALC, Purulia Sadar(East) against his above mentioned employer. However, as the conciliation proceeding could not reach any result, so he made an application before the ALC, Purulia Sadar(East) for issuance of pendency certificate and after obtaining the said certificate on 24.12.2020 he filed the impugned application before this tribunal praying for order against the management of his employer to reinstate him in his service alongwith all benefits.

CR reveals that after filing of the impugned application this tribunal issued notice upon the employer concern and the same was duly delivered to its both the offices but the employer concern did not appear to contest the instant case and accordingly by virtue of order no.15 dated 29.06.2022 the instant case has been heard in ex-parte against it.

It further transpires from the CR that this tribunal vide order 16 dated 29.07.2022 framed the following issues for proper and effective adjudication of the industrial dispute :-

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- 1) Whether there exists relationship of workman and employer between the parties?
- 2) Whether the termination concerned workman is justified and/or in accordance with the provisions of I.D. Act, 1947?
- 3) What relief, if any, the workman is entitled to get?

In discharge of legal obligation to establish the instant case within the provisions of the Act, 1947, the workman/employee examined himself in ex-parte by submitting his affidavit-in-chief and also by examining himself on oath as P.W-1 and the following documents have been admitted in evidence from his side:

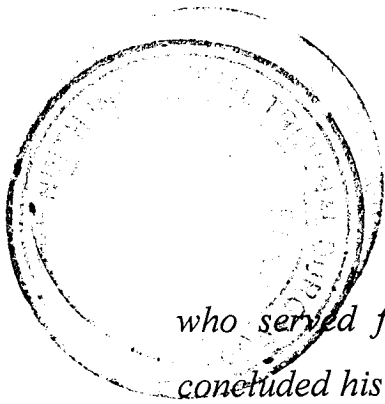
- 1) Appointment letter dated 25.09.2006 ---Exbt.1,
- 2) Confirmation letter dated 25.10.2007--- Exbt.2,
- 3) Termination letter dated 10.06.2020--- Exbt.3,
- 4) Form - S dated 24.12.2020 ---Exbt.4.

Argument from the side of the workman / employee

During the course of argument it was argued by the ld. lawyer that from the termination letter it is clearly evident that the management of the employer concern did not follow the managerial provision of Sec.25-F of the I.D. Act, 1947 as well as did not follow the principles of natural justice but terminated the service of the workman/employee in illegal manner.

He further submitted that as the management of the employer is legally bound to follow the procedure as laid down in the Act, 1947 for termination of the service of a workman/employee under it but as the same has not been followed by it, so it cannot be said that the employer was justified in terminating the service of workman/employee.

To fortify his submission he took me through the termination letter and further submitted that the same does not speak about fulfilment of the requirement of the provisions of Act, 1947 which are mandatory to be followed by the employer while terminating service of its workman/employee,



who served for more than 240 days in continuous service under it and concluded his argument by submitting that the order of termination of service is liable to be set aside and the workman/employee be reinstated in his service with all back wages and benefits.

Decision with reasons

Issue No.1 :-

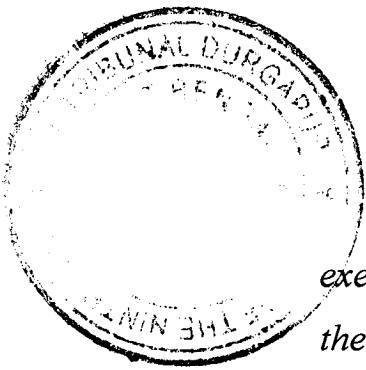
Before initiating discussion regarding the evidence of the workman/employee with respect to the issue, as framed in the instant case, it would be pertinent to discuss about the concerned provisions of law.

Sec.2(s) of the Act, 1947 defines the term "workman" in the following manner :-

"Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1967 (62 of 1957); or
- ii) who is employed in the police service or as an officer or other employee of a prison; or
- iii) who is employed mainly in a managerial or administrative capacity; or
- iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or

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 Ministry of Labour
 Government of India



exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]

From plain reading of the above definition of workman it is evident that in Clause IV excludes a person from the ambit of workman if he is employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Now, let us discuss the unchallenged evidence of the workman/employee in this regard.

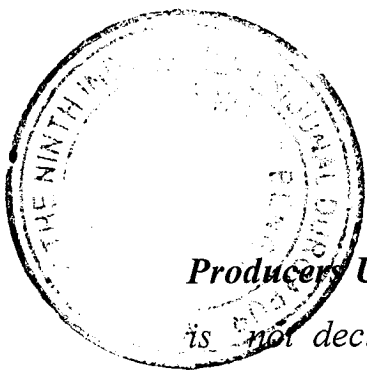
Workman/employee i.e P.W-1 in his affidavit –in-chief stated that he was appointed to work under the Marketing and Sales Division on 25.09.2006 till his probationary period of 6 months and after completion of the probationary period successfully he was confirmed as Business Executive on and from 01.10.2007 and thereafter he used to discharge his service in unblemished manner for about continuous period of 14 years at Purulia Head Qtr., West Bengal.

From his such unchallenged evidence it is evident that he was working in the post of Business Executive of the employer concern at the time of his alleged termination of service.

Appointment letter i.e Exbt.1 speaks about the pay scale and service condition and nature of work under the employer concern. It is evident from the confirmation letter i.e Exbt.2 that the monthly wages of the workman/employee was less than Rs.10,000/- . Not only that, from Clause 2 & 3 of the work norms, as mentioned in Annexure –B of the appointment letter, it is evident that the nature of the work of the workman was to visit chemists and to book as many orders as possible and not to function as managerial nature.

*The Hon'ble Supreme Court in the case of **S.K.Verma Vs. Mahesh Chandra** reported in AIR 1984 SC 1462 and the Hon'ble Gujarat High Court in the case of **Natvarlal U Modi Vs. Ahmedabad Dist. Co-op. Milk***

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MAHESH CHANDRA
2007.10.10



Producers Union reported in 2005 LAB I.C 321 held that mere designation is not decisive but it is the nature of the duty which is important and relevant for determination whether a person is a workman under the Act, 1947 or not.

From my above discussion of the unchallenged evidence of the workman/employee as well as observation of the Hon'ble Apex Court and the Hon'ble Gujarat High Court and the nature of the work discharged by the workman, I am of the view that the applicant does come within the definition of "workman" under the Act, 1947.

Since Exbt-1 & 2 clearly proved about appointment of the applicant as Sales Executive by the O.P/employer on and from 25.09.2006 and the termination letter i.e. Exbt.3 issued by the O.P/employer reveals about termination of his service and from 10.06.2020, so I am of the view that the same clearly established relationship of workman and employer between the parties. Thus, I decide the Issue No.1 in favour of the applicant/workman.

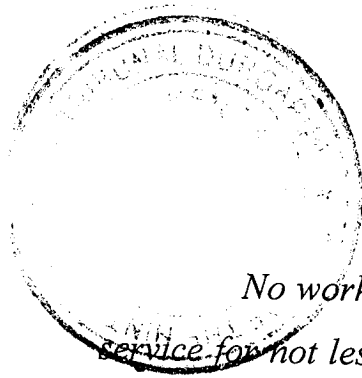
Issue No.2 :

It is further the workman's/employee's petition case that his service was illegally terminated by the O.P/employer as it did not follow the principles of industrial justice and the procedure laid down by the Act, 1947.

He in his unchallenged oral evidence clearly stated that he was in continuous service of 14 years as Sales Executive of and under the O.P establishment and his service was illegally terminated w. e. f 10.06.2020. His such oral evidence has duly been corroborated by the contents of the termination letter dated 10.06.2020 i.e. Exbt. 3, as the same is absolutely silent about following up the principles of natural justice as well as the conditions of retrenchment of a workman under the Act, 1947.

Sec.25-F speaks about the conditions precedent to retrenchment of workman. It provides in the following manner:-

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JUDGE
NINTH INDUSTRIAL TRIBUNAL
GOVT. OF GUJARAT



No workman employed in any industry who has been in continuous service for not less than one year under an employer 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 fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months, and
- c) notice in the prescribed manner is served on the appropriate Government [for such authority as may be specified by the appropriate Government by notification in the Official Gazette].

On plain reading of the above provisions it is clear that no workman who is employed and has been in continuous service for not less than one year shall be retrenched without giving one month notice in writing indicating the reasons for retrenchment as well as fulfilment of other conditions as mentioned in Clause (a) to (c).

At this juncture it is pertinent to mention herein that by virtue of definition of retrenchment as provided in Sec.2(oo) of the Act, 1947 the termination by the employer of the service of a workman for any reason whatsoever, otherwise than a punishment inflicted by way of disciplinary action means termination within the Act, 1947. Thus, termination of service of the workman/employee by virtue of Exbt.3 does amount to retrenchment within the Act, 1947.

In view of such facts and circumstances as well as the above discussed provisions of 25-F of the Act, 1947 it is mandatory on the part of the employer to fulfil the conditions precedent for retrenchment of the workman,

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who is in continuous service for not less than one year under it. But O.P./employer by issuing the termination letter on 10.06.2020 i.e. Exbt.3 terminated the service of the workman / applicant on & from that very date without fulfilling the conditions as mentioned in Clause (a) to (c) of Sec.25-F of the Act, 1947.

Since, it is mandatory on the part of the employer to fulfil those conditions for retrenchment of a workman, so non fulfilment of the same does render the termination as invalid and unjustified in the eye of law.

From my above discussion it is very much clear that O.P./employer neither followed the mandatory principles of natural justice nor fulfilled the conditions precedent as laid down in provisions Sec.25-F of the Act, 1947, so Exbt.3 i.e. termination letter has got no value in the eye of law. In other words, the O.P./employer was not justified in terminating the service of the applicant/workman by virtue of Exbt.3.

Sec.11A of the Act, 1947 empowers the Industrial Tribunal to set aside the order of dismissal or discharge of a workman or his service by passing an award if it is satisfied that the same was not justified. Accordingly, I am of the view that the O.P./employer was not justified in terminating the service of the applicant/workman by virtue of Exbt.3, i.e. the termination letter dated 10.06.2020. Thus, I decide this issue in favour of the applicant/workman.

Issue No.3:-

In view of my findings regarding issue nos.1 & 2 the question arises what sort of relief the applicant/workman is entitled to get under the Act, 1947.

Sec.11A of the Act, 1947 clearly empowers the Industrial Tribunal not only to set aside the order of discharge or dismissal and direct reinstatement of the workman of such terms and conditions as it thinks fit but it also empowers it to give other relief to the workman as dependent upon the circumstances of the case.

sd/-

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To consider the circumstances under which the termination letter was issued, this tribunal has to take into consideration about the unprecedented pandemic situation faced by our country on and from March, 2020 for more or less 2 years.

Considering such unprecedented pandemic situation as well as the fact that it is not the case of the applicant /workman that he is not involved in any other activities of bread earning for his family since date of his termination or that he was not paid for the service rendered by him to the O.P/employer for any period, I am of the view that justice would be done if the applicant/employee be reinstated in is service with 25% of back wages. Thus, the instant issue is disposed of accordingly.

To conclude my discussion, I am of the view that the materials on record justified the reinstatement of the applicant/workman in his service in the post held by him at the time of his termination within one month from the date of publication of the award by the appropriate Govt. alongwith 25% of back wages on and from the date of termination till the date of his actual reinstatement by the O.P/employer.


In the result the instant case succeeds.

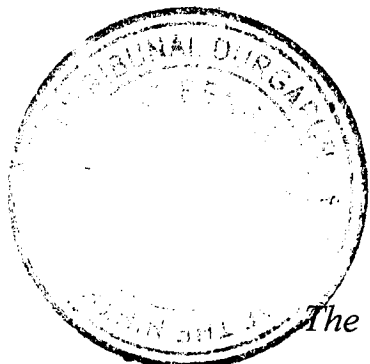
Hence, it is

ORDERED

that the instant case be and same U/S 10 1(B) of the Act, 1947 is allowed in Exparte against the O.P/employer – Themis Medicare Ltd. but without cost.

The termination of service of the workman/employee Mr. Sudip Dey by the employer-Themis Medicare Ltd. vide letter dated 10.06.2020 is hereby declared as illegal and unjustified and he is reinstated alongwith 25% of back wages from the date of his such termination.


GOVT. OF INDIA



The employer- Themis Medicare Ltd. is hereby directed to reinstate the workman Mr. Sudip Dey in the post in which he was holding at the time of his termination alongwith 25% of the back wages within the period of one month from the date of publication of the award by the appropriate Govt.

Send a copy of this award to the Additional Chief Secretary, Labour Department, Govt. of West Bengal for information and necessary action from his end.

D / C by me,

Sd/- Sri Sujit Kumar Mohanta,
Judge, 27.02.2023,

Sd/- Sri Sujit Kumar Mohanta,
Judge, 27.02.2023,

INDUSTRIAL TRIBUNAL, DURGAPUR
GOVT. OF WEST BENGAL

9th Industrial Tribunal, Durgapur

NINTH INDUSTRIAL TRIBUNAL, DURGAPUR
GOVT. OF WEST BENGAL