

I/176594/2022

Government of West Bengal
Labour Department, I. R. Branch

N.S. Buildings, 12th Floor, 1, K.S. Roy Road, Kolkata - 700001

No. Labr/.138/(LC-IR)/22019/51/2018

Date : ...21/02/2022

ORDER

WHEREAS an industrial dispute existed between M/s A. I. Champdani Industries Limited, Middle Mill, Jagaddal, North 24 Parganas, Pin - 743125 and its workman Sri Arbind Kumar Dixit, 22/2/1/1, West Ghoshpara, Road, P.O. - Authpur, Dist. - North 24 Parganas, Pin- 743128 regarding the issues, 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) of the Industrial Dispute Act, 1947 (14 of 1947) to the First Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997;

AND WHEREAS the said First Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 14.01.2022 under section 10(1B) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide Memo No. 148 - L.T. dated 08.02.2022;

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,

[Signature]

Joint Secretary

to the Government of West Bengal

No. Labr/.138/(LC-IR)

Date : ...21/02/2022

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

1. M/s A. I. Champdani Industries Limited, Middle Mill, Jagaddal, North 24 Parganas, Pin - 743125.
2. Sri Arbind Kumar Dixit, 22/2/1/1, West Ghoshpara, Road, P.O. - Authpur, Dist. - North 24 Parganas, Pin- 743128.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Buildings, (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.

[Signature]
Joint Secretary

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

Date :2022

Copy forwarded for information to :-

1. The Judge, First Industrial Tribunal, Kolkata, with respect to his Memo No. 148 - L.T. dated 08.02.2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Joint Secretary

In the matter of an Industrial Disputes exists between Sri Arbind Kumar Dixit, 22/2/1/1, West Ghoshpara Road, P.O. – Authpur, District – North 24 Parganas, Pin – 743 128 against his employer M/s A. I. Champdani Industries Limited, Middle Mill, Jagaddal, North 24 Parganas, Pin – 743 125.

Case No. 02/2014 under Section 10(1b) of the Industrial Dispute Act 1947

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 14.01.2022

Case No.: 02/2014/10(1b)

The instant case has been initiated on receipt of an application on 24.11.2014 under Section 10(1b) of the Industrial Disputes Act 1947 as amended, from the side of Worker, Sri Arbind Kumar Dixit, 22/2/1/1, West Ghoshpara Road, P.O. – Authpur, District – North 24 Parganas, Pin – 743 128 against his employer M/s A. I. Champdani Industries Limited hereinafter called as O.P. No. -1, Middle Mill, Jagaddal, North 24 Parganas, Pin – 743 125, in connection with termination of his service by his employer seeking order that the same is unjustified, instatement in service with full back wages and consequential benefits.

The O.P. No. – 1 / Company appeared and filed written statement. Thereafter on 28.04.2017 the O.P. No. – 1 filed a petition along with an agreement for sale stating that erstwhile company has transferred the Mill in question to P&A Distilleries Pvt. Ltd. (hereinafter called as O.P. No. – 2).

On 22.06.2017 the Workman has filed a petition for adding of party i.e. O.P. No. – 2 and the same is allowed. On 20.07.2017 the Workman submitted before this Tribunal verbally that after the purchase of the said Jute Mill by O.P. No. – 2 and after taking over the possession of the same, the management has changed the name of the company as Anglo India Jute and Textile Industries Limited.

On 04.09.2017 O.P. No. – 2 was asked for appearance and filing show-cause as to why they should not be brought on record as a party.

Then on 13.10.2017 Anglo India Jute and Textile Industries Limited appeared by filing a Vakalatnama executed by the Director / Authorized

signatory of the company appointing Sri Balai Pal and Smt. Rama Sarkar as it's Ld. Counsels to represent the company in this case.

The Workman and the O.P. No. – 1(A. I. Champdani Industries Limited) were directed to supply to the proposed added party (Anglo India Jute and Textile Industries Pvt. Ltd.) the written statement and documents, if any, filed by them by the next date and the next date i.e., 16.11.2017 was fixed for appearance and to make necessary compliance by the parties.

Since then, Anglo India Jute and Textile Industries Limited did not appear in this Tribunal at any point of time for the reason best known to them. But O.P. No. – 2 i.e., P&A Distilleries Pvt. Ltd. has been added to this case as party i.e O.P. No. – 2 who appeared and filed written statement and also contested the case.

The case of the applicant as per written statement filed on behalf of him is in short that M/s A. I Champdani Industries Ltd. is a Jute Mill situated at the area of Jagaddal, North 24 Parganas, Pin – 743 125, West Bengal having its head office at 18 No. N. S. Road, Kolkata – 700 001 and the company is engaged in manufacturing of various jute products for the purpose of selling the said jute products in both local and national markets and for that purpose of running the business the company has employed and / or employees, workers regularly.

The applicant was appointed on the basis of his application and personal interviews as Store Assistant of the Opposite Party/company on and from 01.08.2012 vide letter of appointment dated 04.10.2012.

The applicant states that he was a workman under Section 2(s) of the Act, 1947. He was covered under ESI Act 1948 and under the provision of Employees Provident Fund (a miscellaneous provision) Act 1942. He has never work in a Supervisory and/or Managerial capacity having no power to grant leave to any one or any authority to issue any charge-sheet and/or show-cause to any one in any manner whatsoever.

It is further stated by the applicant that on 23.02.2013 during his tenure, one Sri Biswajit Manna, Personnel Manager of the Mill of the O.P. No. - 1 Company called the applicant to his office and forced him to resign from his service when the applicant refused to tender his resignation, Mr. Manna used abusive languages and threatened the applicant with a dire consequence for which the applicant lodged an police complaint on 24.02.2013 and thereafter he was arbitrarily terminated from his service by O.P. Company with effect

from 03.04.2014 without assigning any sufficient and cogent reason vide letter of termination dated 04.03.2014. The applicant further states that he was neither issued any show-cause and/or charge-sheet nor the company initiated any Domestic Enquiry against him.

Thereafter on 28.03.2014 the applicant approached the company in black and white to withdraw the said illegal letter of termination and to reinstate him in duty which was refused by the company.

The applicant sent another letter through registered post on 28.03.2014 but got no result. It is the demand of the applicant that the opposite party No. - 1/company did not comply with the mandatory provision of Section 25F of the Industrial Disputes Act 1947 before terminating the service of the applicant. So, the applicant referred the dispute to the Deputy Labour Commissioner, Government of West Bengal, Barrackpore, vide letter dated 16.04.2014.

It is further submitted by the applicant that since no settlement was arrived at, the applicant was issued a certificate to that effect on 05.09.2014 by the Labour Department, Government of West Bengal and thereafter the applicant has filed the instant case before this Tribunal on several grounds as follows:

Firstly, the action of the management is against the basic tenancy of humanity at large.

Secondly, there was no just cause for terminating the service of the applicant.

Thirdly, the action was contrary to the principle of natural justice.

Fourthly, the action is based on hire and fire policy.

Fifthly, the letter of termination is nothing to retrenchment violating the mandatory provision of the Act 1947.

Sixthly, the termination of the applicant is bad in law because of the fact, the applicant was terminated by the Vice President while he was appointed by the President of the O.P. Company No. - 1.

Seventhly, the action was taken without assigning any reasonable opportunity of being heard and without holding any Domestic Enquiry



and therefore, the action was void-ab-initio meaning the applicant is in continuous service and he is entitled to all service benefits.

And lastly, the applicant states that his last drawn wages was Rs. 8800/- (Rupees eight thousand eight hundred) only per month and after termination from service on and from 04.03.2014 he has been spending his days in real financial hardship being survived on the meager monetary donation made by some well wishers and relatives and thereby, it is prayed that this Tribunal may be pleased to set aside the order of termination of service of the applicant and pass an order of reinstatement of the applicant with full back wages for the period of forced unemployment together with consequential benefits and/or granting any other further relief which may deem fit and proper in this case.

On the other hand, the company, O.P. No. – 1 i.e. A. I Champdani Industries Ltd. Contested the case by filing written statement on 10.08.2016 by denying all allegations made against them by the applicant and stating inter-alia its contentions in 2(two) parts namely Part-1 and Part-2 (respectively).

Part-1 deals with the preliminary points relating to the maintainability of the application which states and reflects that the purported dispute is not maintainable as the application is time barred and beyond the scope and ambit of the provision of Section 10(1b)(d) of the Act 1947 and not of the pre-condition and pre-requisite in filing such application is present and the pendency certificate issued by the Conciliation Officer and Assistant Labour Commissioner, Government of West Bengal, Howrah in Form-S was without conducting any investigation and without recording his satisfaction about the existence of Industrial Disputes between the parties.

It is further submitted by the company that applicant had been working as Supervisory Staff and as such he is not a Workman under Section 2(s) of the Act 1947 and the applicant never made any demand before raising dispute before the Government of West Bengal, Labour Department regarding the same issue with the management and as such the present dispute could not form of an industrial dispute as decided by the Appex Court and the instant application is not maintainable as per provisions of the West Bengal Industrial Rules 1957 being time barred.



And

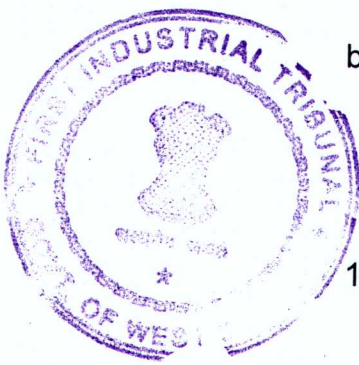
Part-2 deals with the merit of the case wherein the company/O.P. No. – 1 denied and disputed the statement made in paragraphs of the written statements of the applicant by stating inter-alia that the Workman was a Supervisory Staff. He is not a Workman under Section 2(s) of the Industrial Disputes Act but admitted he is covered under the ESI Act, 1948 and under P.F. Act, 1942. It is submitted that his service was terminated as per clause-10 of the appointment letter dated 04.10.2012. Since he is not coming under the purview of the Act 1947, Section 25F of the Industrial Disputes Act 1947 does not attract in his case and therefore, the service of Workman was terminated justifiedly, legally and it is also valid and thereby the Workman is not entitled to any relief as prayed for.

On the other hand O.P. No. – 2 also appeared, contested the case by filing written objection on behalf of them denying all material allegations made against them and stated inter-alia to the effect that the applicant is not a Workman under Section 2(s) of the Act 1947 and this Tribunal has got no jurisdiction to entertain this application and the added party i.e. O.P. No. – 2 is not liable and/or responsible for any claim and/or responsibility of the applicant as the added party i.e. O.P. No. – 2 has/had no nexus with the instant matter and with the applicant and prayed that the Workman is not entitled to get any relief from the added party as he failed to make any prima-facie case against the added party i.e. O.P. No. – 2 and accordingly the O.P. No. – 2 being the added party prayed to be expunged from this proceeding and/or pass any other order/orders may deem fit and proper.

In view of the above facts and circumstances the following issues have been framed.

ISSUES

- 1) Is the instant proceeding is maintainable in law and fact?
- 2) Whether the termination of service of Sri Arbind Kumar Dixit by M/s A. I. Champdani Industries Ltd. w.e.f. 03.04.2014 is justified?
- 3) What are the relief / reliefs the applicant/ Workman is entitled to?




ADDITIONAL ISSUES

- 4) Has the added Opposite Party No. – 2 any nexus and/or responsibility for the alleged claim of the applicant?

Decisions with Reasons

In support of the case Sri Arbind Kumar Dixit, the applicant/Workman has examined himself as PW-1 and filed the following documents to prove his case:

- 1) **Exhibit-1** (2 sheets) Appointment letter of the Workman, dated 04.10.2012.
- 2) **Exhibit-2** G. D. Entry Slip of Jagaddal Police Station dated 24.02.2013.
- 3) **Exhibit-3** Termination letter of Workman, dated 04.03.2014.
- 4) **Exhibit-4** (with objection) Workman's letter to O. P. No. - 1.
- 5) **Exhibit-5** (3 sheets) Workman's letter to the Deputy Labour Commissioner, Barrackpore raising dispute, dated 16.04.2014.
- 6) **Exhibit-6** (4 sheets collectively) Workman's letter to Assistant Labour Commissioner including G.D.



On the other hand, O.P. No. – 1 and O.P. No. – 2 did not adduce any evidence on their behalf but they have crossed PW-1 and that apart O.P. No. – 1 has filed a photocopy of agreement made on 04.05.2016 between A. I Champdani Industries Ltd. having its registered office at 25 Principe Street, P.O. – Park Street, P.S. – Park Street, Kolkata – 700 072 represented by Sri NimalPujara son of Late GirdharilalPujara referred as vendor and P&A Distilleries Pvt. Ltd. having its registered office at premises No. 227 A. J. C. Bose Road, P.O. & P.S. – Bhavanipur, Kolkata – 700 020, represented by one of his Director's named Sri Manish Podder referred as purchaser, wherefrom it is revealed Anglo India Jute Mill (Middle Mill) situated and lying at Jagaddal, West Bengal, North 24 Parganas have been transferred in favour of the purchaser on certain conditions as mentioned in the agreement.

PW-1 in his affidavit-in-chief as stated his case and exhibited documents being filed by him and from his cross-examination it is revealed that his letter of appointment was signed by the President of the Company and he joined the company accepting the terms and conditions as mentioned in the letter of appointment i.e., Exhibit-1.

PW-1 admits that he did not make any attempt to refer the dispute to any arbitrator. It is also revealed from his cross-examination that he used to look after the Workmen's Store of the company which was entrusted to him by his superior and nobody used to work under him in the store.

PW-1 admits that he has not filed any paper to show that he ever lodged any complaint in writing before the management of the company regarding forcibly taking of his signature by Sri Biswajit Manna on 23.12.2012 and it was not mentioned in his letter dated 28.03.2014 (Exhibit-4) and addressed to the Vice President (Works) of the Company.

It is revealed that Anglo India Jute Mill was a unit of M/s A. I. Champdani Industries Ltd. and PW-1 used to work in the said Anglo India Jute Mill and the same has been sold out to P&A Distilleries Pvt. Ltd., which is still functioning in the same premises where the said unit namely Anglo India Jute Mill was functioning and its testimony in this regard has not been challenged.

It is revealed that WW-1 did not make any application to make Anglo India Jute Mill and Textile Industries Pvt. Ltd. a party to the proceeding. But facts remain the said company did not appear after filing Vokatnama on behalf of them.

WW-1 admits at the time of cross-examination done by O.P. No.- 2 to the effect that there is no mention in Exhibit-4 i.e., the letter addressed to the Vice President (Works) of the company/O.P. No.-1 that his termination was illegal and he admits that beside the paper which he filed he has produced no other documents showing that the added O.P. No-2 has no responsibility in the matter of instant dispute as raised by him.

At the time of argument Ld. Counsel for the Workman submits that the termination of the applicant by Exhibit-3 dated 04.03.2014 issued by company O.P. No. - 1 is bad in law, unjustified, illegal and invalid as it was against the principle of natural justice and it has violated the provision of Section 25F of the Industrial Disputes Act 1947 and it is also argued that M/s A. I. Champdani Industries Ltd. and Another i.e. O.P. No. - 1 is still in existence as the Anglo India Jute Mill was transferred on 04.05.2016 by A. I. Champdani Industries



Ltd. to P&A Distilleries Pvt. Ltd. i.e O. P. No. – 2. So, A. I. Champdani cannot by-pass his responsibilities towards workman of the instant case, Ld. Counsel for the Workman did not raise any claim against O.P. No. – 2 or Anglo India Jute and Textile Industries Ltd.

Ld. Counsel for the O.P. No. – 1 has argued that the present Workman used to work in a Supervisory capacity and he is not a Workman as per provision under Section 2S of the Act 1947 and according clause 10 of his appointment letter dated 04.10.2012 he was terminated and therefore, he could not come under the purview of Section 25F of the Industrial Disputes Act 1947 but during his argument Ld. Counsel has admitted that A. I. Champdani Industries Ltd. and Another is still in existence and by agreement dated 04.05.2016 only Anglo India Jute Mill (Middle Mill) situated at Jagaddal, North 24 Parganas, West Bengal was transferred to P&A Distilleries i.e. O.P. No. – 2.

Ld. Counsel for O.P. No. – 2 has only stated to the effect that since the Workman was an employee of A. I. Champdani i.e., O. P. No. – 1, which is still in existence, the O.P. No. – 2 could not have any responsibility towards applicant of this case.

Now let us examine the **Exhibit – 1**, the appointment letter dated 04.10.2012, Clause 10 which states that “the company shall act its sole discretion, who is entitled to terminate your service with the company at any time after giving one month’s notice in writing or one month’s salary in lieu of, with / without assigning any reason for such termination or earlier determination. You shall also have the right to leave the organization after giving one month’s notice from your end”.

In this case from **Exhibit-3** it is revealed that one month notice was served to the Workman before his termination though it is fact that no reason was assigned, no show-cause was served before his termination, but it is also revealed from the request for withdrawn of termination letter dated 04.03.2014 i.e. **Exhibit-4** that there is no mention whether the termination was illegal.

Now let us consider the working days of the Workman in this case. He was appointed on 04.10.2012 and his termination was effected from 03.04.2014, so it is evident that he has worked in the Mill continuously more than one year and there is no allegation against him that he has not completed 240 working days preceding 12 months from his termination.

It is also revealed that O.P. No. – 1 and O.P. No. – 2 denied and disputed to the statement of WW-1 that he is Workman under Section 2(s) of the Act 1947 but could not produce any scrap of paper that applicant was

working in the Mill as Supervisory staff by producing any oral evidence or documentary evidence. If that be so we could safely reach to the conclusion as follows:

- 1) The Workman was appointed in A. I. Champdani Industries Ltd. having its registered office at 25 Principe Street, P.O. – Park Street, P.S. – Park Street, Kolkata – 700 072 on the strength of Exhibit-A.
- 2) O.P. No. – 1 and O.P. No. – 2 always mentioned in the petition about the status of the applicant as the Workman and thereafter they claimed that the instant Workman was working as Supervisory capacity in the Mill but did not prove the same in any manner whatsoever and I also find nothing against about the conclusion that the applicant is a Workman under Section 2(s) of the Industrial Disputes Act, 1947.
- 3) The present dispute is an Industrial Dispute.
- 4) M/s A. I. Champdani Industries Ltd. and Anr. i.e. O. P. No. – 1 is still in existence and therefore O.P. No. - 1 is responsible for any demand or anything like that to be served for the applicant named Arbind Kumar Dixit.

In these circumstances I have to mention the rulings as filed by O.P. No. – 1 in support of the case i.e. (1997) 11 Supreme Court Case Page-52 (the case between Escorts Ltd. vs. Presiding Officer and Another) in which the termination of service was held valid as the temporary appointment for specific period (2 months) was the pre-condition. So, the instant ruling is not applicable to our case.

On the other hand the submission of Ld. Counsel for the Workman is well acceptable being founded on appropriate Law in this respect.

Since the applicant is a Workman under Section 2(s) of the Industrial Disputes Act 1947 and since it is an Industrial Dispute under the provision of Industrial Disputes Act 1947 and since the Workman has completed 240 working days in a year, he should be entitled to get protection under Section 25F of the Industrial Disputes Act read with Section 25B of the Industrial Disputes Act, 1947.

So, in view of the aforesaid discussion with reasons and findings and also accepting the argument as defended by the Ld. Counsel for the Workman the Issues No. 1, 2 & 3 have been decided in favour of the Workman and Issue No. 4 has been decided in favour of the Opposite Party No. 2 who is not nexus and/or responsible for the alleged claim made by the applicant.



Now on careful perusal of the petition and written statements of the Opposite Party No. – 1 and Opposite Party No. – 2 along with documents as filed by the Workman and Opposite Party No. – 1 coupled with provision of law as enumerated in this respect by the Industrial Disputes Act, 1947 it is well founded that the employer company i.e. O. P. No. – 1 cannot be permitted to disobey the mandatory provision of Section 25F read with Section 25B of the Act 1947 and thereby Opposite Party No. – 1 cannot be permitted to take advantage of his own wrong. The provisions of the aforesaid sections afford protection to Workman to safeguard his interest and it is shield against victimization and unfair labour practice by the employer i.e. Opposite Party No. – 1 and thus protection and safeguard to the applicant/workman cannot be taken away and consequence of it is that the employee shall be deemed to be continued in service entitling him to all the benefits available thereto along with all the back wages.

In sum the case of the applicant / workman succeeds.

Hence it is

ORDERED

that the instant case being No. 02/2014 u/s 10(1b) of the Industrial Disputes Act, 1947 filed by the Workman Sri Arbind Kumar Dixit be and the same is allowed on contest but without cost.

Consequently, it is held the termination of service of the applicant is unjustified, bad in law and void-ab-initio meaning the order of termination of service of the applicant is hereby set aside and the applicant is entitled to all the back wages along with consequential benefits thereto to be paid by the Company within 3 (three) months from the date of communication of this Order in default the Workman is at liberty to execute the Award as per provision of law being applicable to this effect

This is my AWARD.

The AWARD be sent to the Government.

Sd/-

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)

Judge

JUDGE

**FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL**

(Uttam Kumar Nandy)
Judge

First Industrial Tribunal
Kolkata

JUDGE

**FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL**