

I/189103/2022

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

No. Labr/415/(LC-IR)/22015/19/ 2018.

Date 22/04/2022

ORDER

WHEREAS an industrial dispute existed between M/s Acclaris Business Solutions Pvt. Ltd. 201, Tower-2B, Eco-Space, New Town, Rajarhat, Kolkata - 700156 and their workman Shri Hirak Roy, 17B, Tower-6, Sankalpa-2, New Town, Action Area - 1, Kolkata - 700156 regarding the issues being a matter specified in the Second schedule of the Industrial Dispute act, 1947 (14of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14of 1947) to the First Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

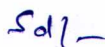
AND WHEREAS the First Industrial Tribunal has submitted to the State Government its Award dated 31.03.2021 vide memo no. 817 - L.T. dated 28/07/2021.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes 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,



Joint Secretary
to the Government of West Bengal

I/189103/2022

(2)

No. Labr. 4/15...../1(2) - IRDated 22/04/2022.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal with reference to his Memo No. 817 - L.T. dated 28/07/2021.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Sd/-
Joint Secretary

No. Labr. 4/15...../2(5) - IRDated 22/04/2022

Copy with a copy of the Award is forwarded for information & necessary action to:

1. M/s Acclaris Business Solutions Pvt. Ltd. 201, Tower-2B, Eco-Space, New Town, Rajarhat, Kolkata - 700156.
2. Shri Hirak Roy, 17B, Tower-6, Sankalpa-2, New Town, Action Area - 1, Kolkata - 700156.
3. The Assistant Labour Commissioner, W.B., In-Charge of 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 Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Sd/-
Joint Secretary

In the matter of an Industrial Dispute existing in between M/S Acclaris Business Solutions Pvt. Ltd., 201, Tower-2B, Eco-Space, new Town, Rajarhat, Kolkata – 700 156 and their Workman Shri Hirak Roy, 17B, Tower-6, Sankalpa-2, New Town Action Area – 1, Kolkata – 700 156.

[Case No. 03/2016 u/s 2A(2)]

Before the First Industrial Tribunal, West Bengal

PRESENT

Shri Uttam Kumar Nandy, Judge
First Industrial Tribunal,
Kolkata

AWARD

Dated : 31.03.2021

In the matter of an industrial disputes under Sub-Section (2) of Section 2A of the Industrial Disputes Act, 1947 filed on 02.12.2015 before this Tribunal for his reinstatement in service with full back wages and other consequential benefits.

The present case being No. 03/2016 u/s 2A(2) of the Industrial Disputes Act, 1947 as amended as stated by the applicant / workman in a nutshell is that the concerned workman joined the opposite party / company as Release Manager with effect from 10.11.2014 vide offer letter, dated 20.10.2014 and subsequent appointment letter, dated 10.11.2014 on probation for six months.

It is further stated that though the concerned workman was appointed as a Release Manager but all along was rendering stereotype job of preparing software and assembling the software after being tasted by the taster along with the others and deployed the software on the servers for utilization by the clients of the Company. The said duties of the concerned workman were purely technical in nature and no managerial or supervisory activities was involved as demanded by the workman.

The concerned workman was illegally terminated by the company with effect from 04.03.2016 vide letter, dated 30.03.2016 without issuing any show-cause notice or chargesheet and without holding any domestic enquiry. The concerned workman protested against the said illegal termination by letter, dated 1.04.2016 to the Company and requested to withdraw the said termination and also send a representation to the Assistant Labour Commissioner by his letter, dated 15.04.2016, against which the Company submitted its comments in the said conciliation proceeding on 10.05.2016 and when 45 days had been passed without any settlement, the concerned workman had filed the instant case for taking cognizance of the application and to pass necessary order or orders in that regard.

On the other hand, the opposite party / Company had appeared through their Ld. Counsel and file written statement on 12.04.2017 denying of material allegations by



stating inter-alia that the application was filed by the workman is not maintainable and same is mischievous, being suppressed, misstated, misrepresented and concealed suffer vital effects and details for which the applicant is liable to be dismissed. It is also claimed that the applicant is not a Workman as defined under the Industrial Disputes Act, 1947.

The employment of the applicant was purely on contractual in nature. The opposite party has in due compliance of the contractual provision paid thirty days salary in lieu of the notice period to the applicant. The termination of the applicant was necessary on action of his continuous failure to improve his performance and since, applicant was hired on probation on six months, he was terminated despite being afford sufficient time to prove his suitability to the assigned work.

The opposite party with the employment confirmation letter, dated 04.12.2016 is a forged one and lastly it is humbly prayed by the company that the application to be dismissed with exemplary cost or to pass any other order or orders. As the Tribunal may deem fit and proper in the interest of justice.

In view of the aforesaid facts and circumstances the following issues have been framed by this tribunal for adjudication of this case.

ISSUES

- 1) Is the instant application u/s 2A(2) of the Industrial Disputes Act, 1947 as amended is maintainable?
- 2) Is Shri HIRAK ROY a workman within the meaning of Section 2S of the Industrial Disputes Act?
- 3) Whether the termination of service of HIRAK ROY with effect from 04.03.2016 by the management is justified?
- 4) To what are the relief is the workman entitled?

Thereafter, an additional issue has been framed by this Tribunal to the effect that "has this Tribunal any territorial jurisdiction to entertain the present proceeding?"

Be it mention here, the addition of issue was disposed of by this Tribunal at first in favour of the workman and the other issues being interlinked with each other have been ordered by this Tribunal to decided the same on merits on the close of evidence after hearing workman from both sides.

Thereafter the evidence of workman was taken fully and evidence on behalf of the Company cannot be taken due to fault of the Company itself.

Documents filed by the workman have been marked as Exhibit – 1 to 13 respectively.



On the other hand, no documents from the opposite party / Company has been marked or exhibited

In the meantime, during pendency of the above dispute the parties herein discussed for amicable settlement and proposed negotiation. Dispute between the parties is settled and one memorandum of settlement along with Annexure-A has been filed being signed by the parties to the case. That apart a cheque of Rs. 4,50,000/- (Rupees four lakh fifty thousand) only, dated 02.03.2021 drawn on HSBC Bank at 31, B.B.D. Bag, Dalhousi Square, Kolkata – 700 001 being number 154883 has been filed. The applicant Mr. Hirak Roy is examined in full on recall as PW-1 for the settlement and has also crossed in full and discharged.

The settlement agreement along with Annexure-A and the cheque of Rs. 4,50,000/- (Rupees four lakh fifty thousand) only have been marked as Exhibit-14 & 15 respectively. It appears from the facts and stating in the memorandum of settlement that the dispute was regarding the dismissal of Shri Hirak Roy from the Company by their letter, dated 30.03.2016 and his last working day with the Company was on 03.03.2016 for which Mr. Ray raised the instant industrial dispute before the Labour Commissioner, Government of West Bengal and after lapse of 45 days, the applicant filed the instant case before this Tribunal on 17.11.2016, since the conciliation was failure.

However, the bone of contention has been settled in view of the joint petition being filed by the parties to the case to this Tribunal and supported by evidence led by them.

Lastly joint petition on behalf of the parties, dated 31.03.2021 goes to show the account payee cheque as received by the workman was deposited with his S.B. Bank A/c and had duly been encashed.

On perusal of their evidence and the contents of the memorandum of settlement and from the submission of Ld. Counsel for the parties to the case, I am of the opinion that the settlement has been reached in between the contending parties amicably and so their lies no more conflict in between parties.

The settlement has been voluntarily effected that the settlement is genuine one and as per the terms of the settlement Mr. Hirak Roy, the employee has already received an amount INR 1,07,256 (initial payment through bank cheque being number 003641, dated 30.03.2016) which is attached as Annexure-A to the settlement agreement and the employee Mr. Hirak Roy also has received an additional amount of Rs. INR 4,50,000/- through bank cheque being Exhibit-15 as an ex-gratia payment to the employee as gesture of curtsy and goodwill (additional payment) which has also been encashed fully as full and final payment on behalf of the company as a consideration for future and final settlement of the present dispute and on the other hand Mr. Hirak Roy had accepted the order of dismissal imposed



upon him, which was issued to him by the company by letter, dated 03.03.2016 with effect from 04.03.2016.

Mr. Hirak Roy hereby states, declares and confirms that the company's stands discharged from all liabilities and obligations owed to Mr. Roy in relation to and arising out of the aforesaid dispute, whether in present or in future and that he shall not make any claim further against the company in any manner whatsoever.

As the settlement is voluntary one and there remain no more disputes in between parties, this Tribunal is of firm opinion that the memorandum of settlement shall be accepted and accordingly the same is accepted.

Hence it is

AWARDED

That in pursuance of the observations made above, the instant case being No. 03/2016 u/s 2A(2) of the Industrial Disputes Act, 1947 is disposed of on the basis of memorandum of settlement, Exhibit-14 and considering all aspects and having heard the Ld. Counsels for the parties the prayer made in joint petition coupled with settlement agreement is allowed and Award is being passed on the basis of terms and conditions being contended in the memorandum of settlement as prayed for, being jointly filed by the parties to this dispute and the same (settlement of agreement) be made part of this Award.

Thus, the instant case is disposed of.

This is my AWARD.

The Award be sent to the Government.

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)
Judge

