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

Date:2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/1646/I.R dated 07/11/2000 the Industrial Dispute between M/s. India Oil Seals & Synthetic Products, 186, Naskar Hat Road, Kolkata – 700039 and its workman Shri Raj Kumar Manna, C/o. Jitan Bhowmik, 34/1, Jhama Pukur Lane, Kolkata - 700009 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Second Industrial Tribunal, West Bengal.

AND WHEREAS the Second Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 03/05/2021 on the said Industrial Dispute vide memo no. 810 - L. T. dated. 27/07/2021.

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,

SdI-

Joint Secretary to the Government of West Bengal

1/189391/2022

No. Labr/ (LC-IR)

Date: 25/04//2022.

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

- 1. M/s. India Oil Seals & Synthetic Products, 186, Naskar Hat Road, Kolkata 700039.
- 2. Shri Raj Kumar Manna, C/o. Jitan Bhowmik, 34/1, Jhama Pukur Lane, Kolkata 700009.
- 3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
- 4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Joint Secretary

No. Labr/ /(LC-IR)

Date:/2022.

Copy forwarded for information to:

- 1. The Judge, Second Industrial Tribunal, West Bengal with reference to his Memo No. 810 L. T. dated. 27/07/2021.
- 2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

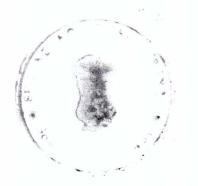
Case No. VIII-154 of 2000

Under Section 10(2A) of The Industrial Disputes Act, 1947

Shri Raj Kumar Manna

-Vs-

M/S. India Oil Seals & Synthetic Products



Dated, 03.05.2021

JUDGEMENT

This case has been referred by the Labour Department, Govt. of West Bengal to this Tribunal for adjudication of industrial dispute and two issues have been framed by the Labour Department, Govt. of West Bengal.

The two issues framed are as follows:-

- Whether the management is justified in terminating the service of Shri Raj Kumar Manna w.e.f. 05.07.1998 by way of refusal of employment.
- 2] To what relief, if any, is the workman entitled?

After reference both parties have appeared before this Tribunal and contested this case by filling written statements.

The case of the petitioner according to his written statement, in short, is that since 12 years he has been working in the O.P. company and receiving Rs. 1550/- as salary per month and on 05.07.1998 he went to join his duties but he was informed that his service was not required and no letter was given to him and no enquiry was held and by his letter dt. 02.05.1999 he asked the O.P. company to give him service with full back wages but the O.P. company remained silent and then the dispute was referred to the Labour Department, Govt. of West Bengal but no settlement was made and then the Labour Department referred the dispute to this Tribunal. Hence, the workman has prayed for reinstatement with full back wages and consequential benefits.

The O.P. company has contested this case by filing a written statement denying therein all the material allegations made by the workman in his written statement.

The O.P. company submits that the workman was appointed in the O.P. company as helper in 1992 and his monthly salary was 1550/- and then he requested for enhancement of his salary but his salary was not enhanced and then after receiving the salary of the month of May, 1998 he did not turn up for duty as his salary was not increased and he did not make any communication with the O.P. company but the O.P. company continued his name in the roll for a long time after 05.07.1998 and finally the petitioner abandoned and left his employment and he himself left the employment because the salary was not increased.

The O.P. company further submits that the petitioner was an insured person with the Employees' State Insurance Corporation and covered under the ESI Act, 1948 and in absence of employer-employee relationship no one can be an insured person with the ESI Corporation and the petitioner was allotted the ESI Code No. and his name was not struck off from the roll and even after direction given by the Tribunal the petitioner did not report for duty continuously though he was given his previous job in the same place of posting. Hence, the O.P. company has prayed for dismissal of the case.

DECISION WITH REASONS

In order to prove the case the petitioner has examined himself and proved some documents and the O.P. company has examined two witnesses and proved some documents.

Admittedly the petitioner is a permanent employee of the O.P. company and the O.P. company has stated that he was appointed in 1992. Though the petitioner has claimed that since last 12 years from the date of filing of this case, he has been working in the O.P. company, he has not produced any document in this respect and he has admitted in his examination that the O.P. company did not issue any appointment letter to him at the time of his appointment and he has also admitted that in his ESI scheme he has mentioned in his application that he joined in 1992 and also he filled up one form before PF Authority stating therein that he joined the company in 1992. So it is proved that the workman joined in the O.P. company in 1992.

Regarding designation of the workman in the O.P. company, the workman has stated that he used to work as the Store Keeper while the O.P. company has stated in its written statement that the petitioner was appointed as a helper and the OPW-I, the managing partner of the O.P. company, has stated that the petitioner was appointed as a helper in the Press Department of the company in 1992. The OPW-2, an employee of the O.P. company, has stated that the petitioner was employed as the Supervisor. But both sides have not produced any document to show that the petitioner was appointed either as the Store Keeper or Helper in the Press Department or the Supervisor. So, it is held that in absence of any document, the above mentioned different types of alleged designations of the petitioner have not been proved by both sides but from the admission of both sides it is proved that in 1992 the petitioner was appointed by the O.P. company as a permanent employee.

Regarding salary of the petitioner, the petitioner as the PW-1 has stated that he used to get Rs. 1550/- p.m. through wage register and another Rs. 1000/- through vouchers by the company as his salary.

The OPW-1 has stated that the monthly salary of the petitioner was from Rs. 1500/to Rs. 1800/- but the OPW-2 has stated that the monthly salary of the petitioner was
about Rs. 2500/-. So, from the admission of the OPW-2, it is held that the monthly
salary of the petitioner was about Rs. 2500/-.

Admittedly according to the order of this Tribunal during pendency of this case the petitioner was directed to join his service in the O.P. company on 31.07.2007 and on perusing the order No. 68 dt. 24.07.2007 passed by this Tribunal, I find that this Tribunal directed the petitioner to join the O.P. company on 31.07.2007 positively and also directed the O.P. company to render all possible access and cooperation in the matter of joining this company on 31.07.2007.

During examination both parties have admitted that according to the said order of this Tribunal the petitioner joined in the O.P. company on 31.07.2007.

Now, the petitioner has stated in his examination that on 31.07.2007 he resumed his duty and he was given work in the store wherein he used to work earlier but on 01.08.2007 the company asked him to work for loading and unloading of goods but he requested the company to give him work in the store and the company did not provide him any job to perform and from 19.06.2008 to 21.08.2008 he was on medical leave and on 22.08.2008 and 25.08.2008 he went to join duty with medical certificate but the O.P. company did not allow him to join and in his crossexamination he has stated that he went to join his duty from 23.08.2008 to 25.08.2008 but the O.P. company did not allow him to join and he did not get any salary since the year 2008.

In this case the petitioner has filed one written statement and the said written statement is concerned with the date 05.07.1998 when the petitioner went to join his duty in the O.P. company but the O.P. company refused him to join, and during pendency of this case the petitioner has not amended his written statement but in his examination he has stated some incidents which took place after 31.07.2007 when he joined in the office of the O.P. company according to the order of this Tribunal and he has stated that on 01.08.2007 the O.P. company asked him to do the work of loading and unloading of goods though on 31.07.2007 he was given work in the store where he used to work earlier and then he requested the O.P. company to give him work in the store and he was not given salary from August, 2007 to November, 2007 and the company gave him Rs. 1550/- p.m. but did not give him Rs. 1000/- more per month and he took medical leave from 19.06.2008 to 21.08.2008 and then he went to join his duty on 22.08.2008 with a medical certificate but the company did not allow him to join and then on 25.08.2008 he again went there with a medical certificate to join his duty but the company did not allow him to join and thereafter on several occasions he went to the company to join his duty but the company refused him to join and he did not get any salary since March, 2008. But all these statements of the petitioner during examination are not mentioned in his written statement and accordingly the said statements are beyond the pleadings of the petitioner and accordingly the above statements cannot be given any legal value, and I have already discussed above that the written statement of the petitioner is concerned with the date 05.07.1998 when the company refused him to give employment.

However, the O.P. company has filed one amendment petitioner praying for amendment of its written statement and the said amendment petition is concerned with the incidents which took place after 31.07.2007 when the petitioner was allowed to join according to the order of this Tribunal and the petitioner has filed one written objection against this amendment petition and then after hearing; the said amendment petition was allowed.

So the evidences of the petitioner regarding the incidents after 31.07.2007 cannot be legally considered and his written statement is concerned with the date 05.07.1998 when the O.P. company refused him to join, and admittedly the O.P. company did not give any letter of termination to the petitioner and this case of the petitioner is concerned with the **refusal of employment** and the issue has also been framed in this respect and the petitioner has not produced and proved any document to show that the O.P. company refused him to join his duty on 05.07.1998 and the petitioner has examined himself on this point but he has not produced any cogent supporting evidence to prove that on 05.07.1998 the O.P. company refused him to join in the company and in this way his service was terminated by the O.P. company. So I hold that the petitioner has failed to prove this allegation as per his written statement.

The OPW-1 has stated in examination that this Tribunal passed an order during pendency of this case directing the petitioner to join in his work and then he joined in the work and he performed his work for a short period and on 31.07.2007 he was provided the same job which he used to work before termination and the petitioner did not produce any medical certificate from ESI on 21.08.2008 and he produced one medical certificate from a private doctor and the medical certificate issued by the private doctor is not applicable in case of the insured person under the ESI and in his crossexamination the OPW-1 has stated that the petitioner has accepted salary when he joined as per direction of the Tribunal and after joining his duty on 31.07.2007 the O.P. company has deducted the contribution of the petitioner in the ESI and the workman was allotted his previous duty which he used to perform earlier.

By the order dt. 24.07.2007 this Tribunal did not direct the O.P. company specifically to allow the petitioner to join in the previous post in the previous place of posting, but the petitioner has alleged that he was not permitted to join in his previous posting while the O.P. company has submitted that he was permitted to join in his previous post.



In his crossexamination the petitioner has admitted that he was not served with any letter of termination by the company and he has no document to show that his service was terminated by the company. The OPW-2 has also stated that the name of the petitioner is still in the register of the O.P. company and he was never terminated or discharged by the O.P. company and the petitioner declared that he would not continue his work if his salary was not enhanced.

In this case the petitioner has prayed for reinstatement with full back wages and by the said order dt. 24.07.2007 this Tribunal already directed the O.P. company to permit the petitioner to join his duty and admittedly on 31.07.2007 the petitioner joined his duty in the O.P. company and the petitioner has admitted that he has received the salary from August, 2007 to November, 2007 but the evidence on record is not clear as to from which date he discontinued his service again.

Considering the fact that the service of the petitioner has not been terminated by the O.P. company till now, I hold that another chance as a finally last chance should be given to the petitioner to join his duty in his previous post without any further unreasonable and illegal alibi and he is directed to join his duty as a disciplined employee on 01.06.2021 and if he visits the O.P. company to join his duty on 01.06.2021 the O.P. company is directed to permit him to join his duty and the O.P. company is also directed to pay him any back wages or consequential benefits remaining due from 31.07.2007 and the O.P. company is directed to see as to whether any back wages along with consequential benefits are pending due from 31.07.2007 but the O.P. company is also directed to take note that if the petitioner was absent unauthorisedly on any date earlier after 31.07.2007 to March, 2008, the O.P. company is directed to deduct his pay for his said unauthorised absence.

If the petitioner does not join the O.P. company on 01.06.2021 or within next two months of 01.06.2021, the O.P. company is directed not to permit him to join his duty thereafter.

As the petitioner has failed to prove by producing cogent evidence that on 05.07.1998 the O.P. company refused him to join his service, I hold that the petitioner intentionally did not join his duty and then on 31.07.2007 he joined his duty as per the order of this Tribunal and then after some days he again discontinued his service. Accordingly the petitioner is not entitled to get any full back wages and consequential benefits from 05.07.1998 to 30.07.2007 and from 31.07.2007 he is entitled to get full back wages or consequential benefits till reinstatement.

There is nothing on record to show that the petitioner used to work elsewhere and earn something after leaving his service in the O.P. company.

In the result the case succeeds.

Hence, it is

ORDERED



that the Case No. VIII-154 of 2000 under Section 10(2A) of The Industrial Disputes Act, 1947 is allowed on contest against the Opposite Party company without cost.

The O.P. company is directed to reinstate the petitioner in his earlier post in his company and the O.P. company is also directed to follow the directions in this respect as mentioned in the body of the judgement.

The O.P. company is directed to pay full back wages and consequential benefits to the petitioner from 31.07.2007 till reinstatement with simple interest of 05% and the O.P. company is also directed to adjust the money already paid to the petitioner from 31.07.2007 till reinstatement in this respect.

Let this judgement and order be treated as an award.

According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.

Judge Judge

(P.S. Mukhopadhyay)

Judge

2nd Industrial Tribunal