

I/195235/2022

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

No. Labr/⁵²³...../(LC-IR)/11L-11/09Date ^{25/05}.....2022.ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/1021/IR/11L-11/09 dated 06/11/2009 the Industrial Dispute between M/s. Sen Service Station, 148, Salkia School Road, Salkia, P.S. Golabari, Howrah - 711101 and its workman Sri Tarak Nath Dhara, 8/9/10/1, Sashi Bhushan Sarkar Lane, Salkia, Howrah - 711106 regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Third Industrial Tribunal, West Bengal.

AND WHEREAS the Third Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 18/05/2022 on the said Industrial Dispute vide memo no. 699 - L.T. dated - 18/05/2022.

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,

^{sd/}

Joint Secretary
to the Government of West Bengal

I/195235/2022

No. Labr/523/1(5)/(LC-IR)

Date: 25/05/2022.

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

1. M/s. Sen Service Station, 148, Salkia School Road, Salkia, P.S. Golabari, Howrah - 711101.
2. Sri Tarak Nath Dhara, 8/9/10/1, Sashi Bhushan Sarkar Lane, Salkia, Howrah - 711106.
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, Third Industrial Tribunal, West Bengal with reference to his Memo No. 699 - L.T. dated - 18/05/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

IN THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL

Present - Sanjeev Kumar Sharma,
Judge, 3rd Industrial Tribunal,
Kolkata.

Case No. VIII-40/2009

A W A R D

Date : 18-05-2022

In the matter of an Industrial Dispute between M/s. Sen Service Station, 148, Salkia School Road, Salkia, P.S. Golabari, Howrah-711101 and their workman Sri Tarak Nath Dhara, 8/9/10/1, Sashi Bhushan Sarkar Lane, Salkia, Howrah-711106 referred to this Tribunal vide Reference order No. 1021-I.R./11L-11/09 dated 06.11.2009.

I S S U E S

1. Whether the termination of service of Sri Tarak Nath Dhara by way of refusal of employment w.e.f. 16.10.2007 by the management of M/s Sen Service Station is justified,
2. What relief, if any, he is entitled to ?

Pursuant to the reference the workman filed his statement of claim stating that he was appointed as Cashier-Cum-Salesman w.e.f 01.01.1987 by an appointment letter issued by M/s Sen Service Station, hereinafter referred to as the employer, and he had to perform duty of driver also without any extra remuneration. The business place of the employer was initially at 351, G. T. Road and thereafter it was shifted to 148, Salkia Road, Howrah-711101.

The employer engaged in selling Petrol/Deisel/etc. earned huge profit but exploited it workers and adopted unfair labour practice depriving the workers of their legitimate entitlements. In-spite of such unfair labour practice the workman worked sincerely all along and left no stone unturned to satisfy the employer by rendering best of his service.

On 16.10.2007, all on a sudden, the employer terminated the service of the workman without serving any notice and offering retrenchment

compensation/monetary benefit on the plea that some other person was employed in his place.

Aggrieved by such wrongful termination of his service the workman wrote a protest letter dated 21.10.2007 to the employer demanding his reinstatement but to no effect. The workman then raised the matter with the Dy. Labour Commissioner, Howrah through his representation dated 16.11.2007 seeking intervention in the dispute. Asst. Labour Commissioner, Smt. Tania Dutta, made efforts to settle the dispute by convening joint conference but due to the adamant attitude of the employer nothing could be achieved.

The conciliation officer submitted necessary report to the Government and finally the dispute was referred for adjudication.

The workman further stated that the employer his service in highly illegal, arbitrary and unjust manner without observing the mandatory provisions of Industrial Laws and principles of natural justice.

He prayed for his reinstatement into the service maintaining continuity with full back wages and consequential reliefs.

The employer contested the case by filing written statement. The employer challenged the maintainability of the reference mainly on the grounds that there was no employer-employee relationship, that the reference was made without application of mind, that the conciliation officer did not investigate before assuming jurisdiction vested in him and that the workman did not raise the dispute with the employer before approaching the conciliation officer. It further pleaded that the workman was actually working as personal driver cum domestic servant of one of the partners namely Prasenjit Sen of the firm/employer.

The employer pleaded that they are carrying on business of selling petroleum products at 148, Salkia School Road, Howrah, under an indenture dated 18.10.2001 between them and IBP Co. Ltd. which subsequently merged with Indian Oil Corporation Ltd. (IOC) the entire premises of the petrol pump and all the infrastructure and installations thereon are owned, controlled and supervised by IOC.

Prior to the grant of license under the indenture there was a petrol pump outlet at 351, G. T. Road, Howrah but the same was closed long back as the National Highway Authority decided to construct bridge on the G. T. Road.

The workman was never employed by the employer at any point of time and all the personnel employed for administrative and security purposes were employed through contractors as a system followed in oil marketing companies.

Upon receiving notice of conciliation proceeding they had categorically informed the conciliation officer through a letter that they had never employed the workman.

According to the employer the workman was employed by the said Prosenjit Sen for driving his personal car mainly to take his spastic child from his residence to Indian Spastic Society at Taratalla and to bring back. He was employed as personal driver and domestic servant in 2004. When the said partner sold his old car in 2007 and bought new car the workman expressed that due to old age and eye problem he did not want to drive and took two months' salary ie Rs. 6000/- in advance around May 2007 and did not turn up thereafter.

The employer further pleaded that thereafter the workman was seen driving other cars and that Tushar Kanti Sen was a well-known political figure having respect in the society, the workman has filed this case at the instance of some opposition party in order to malign his public image.

The employer states that the workman is not entitled to any relief in this case and his statement of claim is fit to be rejected.

The record shows that on 06.02.2012 an adjournment petition filed by the employer was rejected and exparte award was passed. On 20.02.2012 the employer filed a petition for setting aside the exparte award which was heard in presence of both sides and was allowed on 23.03.2012 and thereafter the parties led their respective evidence.

The workman examined himself as PW1 and brought the following documents on record.

1. Appointment letter as exhibit-1
2. Protest letter dated 21.10.2007 addressed to the employer as exhibit-2,
3. Copy of letter dated 16.11.2007 addressed to Dy. Labour Commissioner, Howrah as exhibit-3,
4. Copy of letter dated 07.04.2008 addressed to Asst. Labour Commissioner, Howrah as exhibit-4,

5. Copy of letter dated 12.02.2008 of the employer addressed to the Asst. Labour Commissioner, Howrah as exhibit-5 and

6. Copy of letter dated 08.09.2008 addressed to the Asst. Labour Commissioner, Howrah as exhibit-6

The employer examined Sri Amitav Banerjee as PW1, Sri Tushar Kanti Sen as PW2, Sri Prasenjit Sen as PW3 and Sri Dipta Narayan Mukhopadhyay as PW4 and brought the following documents on record.

1. Six Photographs as exhibit- A series,
2. Copy of partnership deed as exhibit-B,
3. Copy of trade License issued by H.M.C as exhibit-C,
4. Copy of certificate of extra care pump issued by certifying authority as exhibit-D,
5. Copy of visiting card of Tushar Kanti Sen as exhibit-E
6. Copy of Identity card of Tushar Kanti Sen issued by H.M.C as exhibit-F,
7. Copy of Registration card of vehicle No. WB02X 3185 along with copy of DL of Prosenjit Sen as exhibit-G,
8. Copy of RTI application as exhibit-H,
9. Copies of documents showing employment of contractual employees as exhibit-I,
10. Copy of license granted by IBP as exhibit-J and
11. Conciliation file as exhibit-K.

While the hearing of the case was at the fag end, the workman filed a petition for examination of the signature of OPW1 Tushar Kanti Sen on exhibit-1 by the questioned documents department of CID WB, Bhawanibhawan Kolkata. The tribunal allowed the petition but when the department asked the workman to deposit the amount of Rs. 5000/- towards examination fee, the workman eventually not pressed the petition on the ground of his incapacity to deposit the amount and prayed for examination of the disputed signature by the tribunal itself. The petition was rejected under order No. 141 dated 26.06.2019 by my learned predecessor in chair and posted the case for hearing arguments. On 08.08.2019 the workman filed a petition for reviewing the order No. 141. Before the petition could be heard, the then learned PO of

this tribunal was transferred and thereafter there was onset of Corona Pandemic. The record was put up before the present PO of the tribunal on 01.12.2020 when the petition dated 08.08.2019 was fixed for hearing on 13.01.2019. Since the tribunal was by then functioning on limited dates only as per office roaster due to Covid pandemic, the record was put up on 14.01.2021 and 08.02.2021 was fixed for hearing the petition. On 08.02.2021 the representative of the workman appeared and submitted that the workman was seriously ill, as none for the employer had appeared, 24.02.2021 was fixed for hearing the review petition. On 24.02.2021 none appeared for the workman but the learned advocate for the employer appeared and submitted that she had heard that the workman had expired, therefore 22.03.2021 was fixed for appearance of the workman or for steps by his legal representatives/heirs. On 22.03.2021 the representative of the workman appeared and on asking pleaded his ignorance about the death and took time for inquiring into the matter and submitting report but he did not turn up thereafter. A number of opportunities were given for appearance of the workman or his legal heirs but none appeared. Notices repeatedly sent at the given address of the workman by post returned with postal remark deceased. The employer too stopped appearing and finally on 26.04.2022 this tribunal determined to proceed to dispose of the case on merits as the oral and documentary evidence for both sides was already on record.

Dealing first with the point of legality and validity of the reference raised by the employer we find that it is now well settled that the tribunal cannot look into the validity of the reference but the Hon'ble High Court only can examine the validity of the reference exercising writ jurisdiction. In *National Engineering Industries Ltd. Vs. State of Rajasthan* reported in (2000) 1 SCC 371 the Hon'ble Supreme Court held that High Court can entertain a writ petition impugning a reference on the ground of non-existence of an actual or apprehended industrial dispute but the industrial tribunal, a creation of statute which gets jurisdiction on the basis of reference cannot go into the question of validity of reference. We find from the conciliation file (exhibit-K) that the conciliation officer submitted failure report to the Govt. after considering the contentions of both the sides. In their letter to the conciliation officer (exhibit-5) the employer categorically stated that they had no master-servant relationship with the workman while it was the consistent case of the workman that the employer had appointed him and he had been continuously working under the employer. Thus,

industrial dispute very much existed between the parties. Therefore, the challenge to the validity of the reference before this tribunal on the ground that the same was made without application of mind as there existed no employer-employee relationship between the parties and also that there existed no industrial dispute cannot be entertained.

Exhibit-1 is the appointment letter issued by the employer in favour of the workman showing that the workman was appointed by the employer w.e.f. 01.01.1987 as cashier cum salesman. The appointment letter is purportedly issued by OPW2 Tushar Kanti Sen. Much hue and cry has been raised centering the appointment letter as it appears from the record but as a matter of fact I find that except the evasive denial of OPW1 during his cross-examination no concrete challenge has been posed to the signature of OPW1 appearing in the appointment letter (exhibit-1). In his examination-in-chief on affidavit OPW1 has narrated different stories about previous and subsequent employment of the workman but there is no whisper that his signature on the appointment letter (exhibit-1) was forged. When the witness was confronted with exhibit-1 in his cross-examination he admitted that the signature appearing thereon had some similarity with his signature but normally he did not sign in such fashion. The witness did not categorically state that the signature on the appointment letter was not his signature and the same was forged and fabricated. In the circumstances there was no obligation on the part of the workman to seek examination of the signature of OPW1 on the appointment letter by expert. Looking the signature of OPW1 on exhibit-1 and comparing the same with his signatures on his deposition in tribunal with naked eyes itself it is found that there is a marked resemblance between the two. In view of the facts and circumstances and the evidence on record I find nothing to hold that the appointment letter (exhibit-1) filed by the workman is a forged and fabricated document. In that view of the matter the employer-employee relationship between the parties stands established. The case of the workman is that the employer shifted his business from the old address to the present address. Evidently, there was no change in the name and nature of business of the employer due to the change of address. The employer attempted to make out a case as if they started new business in 2001 only. It cannot be contemplated that prior to shifting the petrol pump to 148, Salkia School Road, Howrah, the business of petrol pump was being run at 351, G. T. Road, Howrah without any license from the concerned oil company. In view of the appointment letter

(exhibit-1), exhibits-I filed by the employer to show hiring of workers from certain agency is of no consequence. Exhibit-A series (Photographs) filed by the employer to show that the workman was driving vehicles of others after the alleged termination of his service is hardly sufficient to establish that he got regular employment elsewhere. Exhibits-B, C, D, E, F, G, H and J also appear to be irrelevant to the present controversy.

Now, looking at the oral evidence of the workman PW-1 we find that he had been working under the employer as cashier cum salesman as well as driver. It is further found from his evidence that two dates of birth of the workman have been disclosed one as 21.03.1947 and other as 21.03.1943. Even if the latest date of birth of the workman ie 21.03.1947, as disclosed by him, is taken into consideration he was more than 60 years old on the date of alleged refusal of employment / termination of his service ie 16.10.2007. No pay slip or other documentary or oral evidence has been adduced by the workman to show that he continued to work under the employer even after attaining the age of retirement in order to raise a presumption that the employer had extended his service beyond the age of retirement.

In absence of any certified standing order or any contract between the parties as to the age of retirement, the model standing orders under Bengal Industrial Employment (Standing Orders) Rules 1946 Bengal Industrial Employment (Standing Orders) Rules 1946 has to be applied.

According to clause-5 of the model standing orders under the Bengal Industrial Employment (Standing Orders) Rules 1946 the normal age of superannuation is 58 years. No question in this regard has been raised. It is therefore evident that the workman attained the age of retirement in the year 2005. Thus, there is no scope of reinstatement of the workman in service. Since the workman had attained the age of superannuation much before the alleged termination of service there arises no question of granting back wages to him. No case of deprivation of service benefits having been made out, I am constrained to hold that the workman is not entitled to get any relief in this case. When the work man had already attained age of retirement as on the date of alleged refusal of employment, he cannot claim employment as a matter of right and therefore such refusal cannot be said to be unjustified.

Thus, issue No. 1 is answered in affirmative and issue No. 2 is answered in negative.

In result, the claim statement of the workman merits dismissal.

The reference stands answered accordingly.

This is my award.

Let, the copies of the award be sent to the Labour Department, Government of West Bengal in accordance with the usual rules and norms.

Dictated and corrected by me

sd/-

Judge

sd/-

(Sanjeev Kumar Sharma)

Judge

3rd Industrial Tribunal

Kolkata

18.05.2022