

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

No. Labr/. 186. ./ (LC-IR)

Date 19-2-19

ORDER

WHEREAS an industrial dispute existed between M/S Best Pack Industries, Vill+ P.O. Nabaghara, Via- Panchla, Dist- Howrah, P.S. - Sankrail and their workman Sri Sujit Majh Vill+ P.O.- Pulgustia, Via- Maju, P.S- Jagatballavpur, Dist- Howrah regarding the issue: being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application directly under Sub-section 2 c Section 33 (c) of the Industrial Dispute act, 1947 (14 of 1947) to the Judge, Second Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the said Judge, Second Industrial Tribunal has submitted to the State Government its Award on the said Dispute.

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,



Deputy Secretary
to the Government of West Bengal

(2)

No. Labr./186/1(2)/(IR-IR)

Dated19-2-19

Copy forwarded for information to :

1. The Judge, Second Industrial Tribunal with reference to his Memo No. 2572-LT dated 28/12/2018.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. Labr./186/2(4)/(IR-IR)

Date: 19-2-19

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

1. M/S: Best Pack Industries, Vill+ P.O.: Nabaghara, Via- Panchla, Dist- Howrah, P.S. - Sankrail .
2. Sri Sujit Majhi, Vill+ P.O.- Pulgustia, Via- Maju, P.S- Jagatballavpur, Dist- Howrah .
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

An application U/s.33(c)(2) of the Industrial Disputes Act, 1947 filed by Sujit Majhi, residing at Village & P.O-Pulgustia,, Via Maju, Dist-Howrah, P.S-Jagatballavepur against M/s. Best Pack Industries, Vill & P.O-Nabaghara, Via Panchla, Dist-Howrah, P.S-Sankrail

(Case No. Comp. 01 of 2015 U/s. 33(c)(2) of Industrial Disputes Act, 1947)

BEFORE THE SECOND LABOUR COURT, WEST BENGAL, KOLKATA

PRESENT: **SRI ARABINDA PANTI**, JUDGE
SECOND LABOUR COURT
KOLKATA.

Date : 28.12.2018

A W A R D

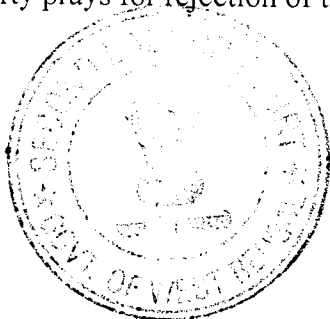
The case of the petitioner in brief is that he was appointed as clerk on 10.11.1998 in the Opposite Party concern. He was dismissed from service on 26.05.2000. He raised an Industrial Dispute and ultimately the said dispute was adjudicated by the Ld. Third Industrial Tribunal on 14.02.2003 in case No. VIII-77/2002 with an award for making payment of full back wages from 26.05.2000, the date of termination from service till reinstatement. In that order Ld. Judge was also pleased to direct the Opposite Party for reinstatement within one month from the date of publication of the award.

It is the further case of the applicant that he approached in writing on 12.06.2003 to the employer for implementation of the said award. But till date the O.P. did not reinstate or make payment of full back wages. It is further mentioned that the Opposite Party has paid only Rs. 70,585/- towards back wages for the period from May, 2000 to July, 2003. The applicant now claims back wages to the tune of Rs. 2,87,160/- towards back wages for the period from August, 2003 till the December, 2014.

The Opposite Party entered appearance in this case and filed written statement contending inter-alia the allegations and claim of the applicant.

According to the case of the Opposite Party, this case suffers from territorial jurisdiction of this court and there is distortion and suppression of fact, for which this case is not maintainable. It is the further case of the Opposite Party that the management of the Opposite Party did never refuse reinstatement. It is the further case of O.P. that the company is non-existent for which question of payment of back wages and other consequential relief do not arise at all.

The Opposite Party further made out a case that the award was passed ex-parte which is not binding upon it. According to the company, the claim in the instant case is fictitious after thought misnomer which do not support the claim of the applicant and for which the Opposite Party prays for rejection of the application.



Upon pleadings of the parties, evidence of the applicant as P.W.1 was taken. The Opposite Party cross examined P.W.1 in part and thereafter did not come for further cross examination. Accordingly, the evidence of P.W.1 was declared closed. Opportunity was given to the Opposite Party for adducing evidence, but it did not avail of the same. Accordingly, argument was heard. Ld. Advocate for the O.P. did not participate in hearing of argument.

The applicant has adduced evidence as P.W.1. Documents from his side have been marked as exhibit as follows:-

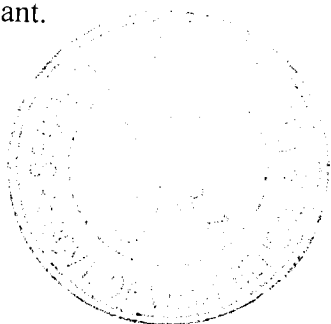
- (1) Exhibit 1, award of case No. VIII/77 passed by Ld. Third Industrial Tribunal on 14.02.2003.
- (2) Exhibit 2, is the order of this court passed on 09.12.2003.
- (3) Exhibit 3, letter of Dy. Labour Commissioner.
- (4) Exhibit 4, statement of dues statement of dues for the period from August, 2003 to December, 2014.
- (5) Exhibit 5, letter of the applicant dated 12.06.2003 addressed to the O.P.
- (6) Exhibit (5/1), another letter of the applicant dated 28.04.2004 addressed to the O.P.
- (7) Exhibit 6, order of Hon'ble Mr. Justice S.P.Talukdar passed in CRR No. 833 of 2006.
- (8) Exhibit 6/1, order passed by Hon'ble Mr. Justice S.K.Gupta in CRR No. 679 of 2007.
- (9) Exhibit 7, order of Hon'ble Mr. Justice Tapen Sen in W.P. 744(W) of 2007 on 30.06.2010.
- (10) Exhibit 8, order passed by Ld. CJM, Howrah in case No. 980(C) of 2005.
- (11) Exhibit 9, order of Hon'ble Mr. Justice Tapen Sen passed in RVM 15 of 2012 in WP 7441(W) of 2007.

Perused the oral testimony of the applicant (PW-1) Sri Sujit Majhi, He has fully corroborated his case made out by him in the application. He has additionally adduced evidence that on the basis of the award (Exbt.1) he preferred a computation case before this court vide computation case No. 12/2003 for the back wages from May, 2000 to July, 2003 and this court was pleased to pass an award for Rs. 70585/-. Exbt.2 is the said order of this court whereby it was directed upon the O.P. for making payment of Rs. 70,585/-. The applicant has admitted that he has received that said awarded amount for Rs. 70,585/-.

It is fact that neither the O.P. has made payment of full back wages for the whole period as claimed in the application nor even reinstated the applicant in service.

Exhibit 1 goes to show that the applicant is entitled to get full back wages on and from 26.05.2000 till his reinstatement in service. The O.P. though did not adduce evidence but in its written statement has time and again claimed that the applicant without serving notice upon the company has managed to get ex-parte award. Exhibit 7 is the order of Hon'ble Mr. Justice Tapen Sen passed on 30.06.2010 in W.P. No. 7441(W) of 2007. It is clear from this order that the O.P. preferred appeal before the Hon'ble Court against the ex-parte award. But the order shows that due to non-taking steps in the Hon'ble High Court the same was dismissed on merit. Even in the order of Hon'ble High Court passed in RVW 15 of 2012 in WP 7441(W) of 2007, it appears that the Opposite Party was all along disinterested in contesting the cases either in the Industrial Tribunal or even in the Hon'ble High Court. Exhibit 7 clearly shows that Hon'ble High Court was pleased to hold that there was no illegality in the award passed by Ld. Third Industrial Tribunal.

The calculation sheet (Exbt.4) is based on monthly salary for the period from August, 2003 to December, 2014. The O.P. did not adduce better and fortified evidence to disprove the case of the applicant, rather it has paid the claim of the applicant towards back wages for the period from May, 2000 to July, 2003 on the basis of the monthly salary claimed by the applicant.



It is evident that the Opposite Party concern did not comply in full, the direction given in the award.

The part payment for the period from May, 2000 to July, 2003 has also been made as per the award passed in computation case No. 12/2003. Even the O.P. did not easily make the payment, but the applicant had to take recourse of law for realisation as it appears from the order of Ld. Chief Judicial Magistrate, Howrah (Exbt.8) and from the order passed by Hon'ble Court, Calcutta in CRR No. 6799 of 2007 on 23.02.2007.

The statement of claim annexed with the application for the period from August, 2003 to December, 2014 is perused by this court and does not find any irregularity in it. The total claim is for Rs. 2,87,160/- is justified.

Therefore, in the considered view of this court, the applicant has successfully proved his case beyond all reasonable shadow of doubt. Accordingly, he is entitled to get an award for full back wages for the period from August, 2003 to December, 2014 for a total sum of Rs. 2,87,160/- along with simple interest @10% p.a. till realisation.

Hence, it is

Ordered

that the instant case U/s. 33(c)(2) of the Industrial Disputes Act, 1947 is hereby allowed on contest but without cost. The Opposite Party is hereby directed to make payment of Rs. 2,87,160/- to the applicant towards his back wages for period from August, 2003 to December, 2014 within 30 days from this day along with simple interest @ 9% till realisation in full satisfaction, i.d. the applicant shall be at liberty to realize by suitable proceedings.

This is the Award.

Dictated and corrected by me

sd / -
Judge



sd / -
(Arabinda Panti)
Judge, 2nd Labour Court
Kolkata

Judge
Second Labour Court W.B.