

File No.LABR-22015(14)/37/2019-IR SEC-Dept. of LABOUR
1/40935/2019

Government of West Bengal
Labour Department
I. R. Branch
N.S.Buildings,12th floor,
Kolkata – 1

No.Labr./273/(LC-IR)/22015(14)/37/2019

Dated.11.03.19.

ORDER

WHEREAS an industrial dispute existed between M/S. Green Rich Tea Estate, Vill.- Dangapara, P.O.-Fatapukur, P.S.-Rajganj, Dist.-Jalpaiguri and Sri Kamal Roy. s/o. – Ashinath Roy, Dangapara under Sukhani G.P., P.O. & P.S. Rajganj, Dist.-Jalpaiguri regarding the issue, being a matter specified in the Second Schedule to the Industrial Disputes Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947(14 of 1947) to the Judge, Sixth Industrial Tribunal, Jalpaiguri specified for this purpose under this Deptt.'s Notification No.1085-IR/12L-9/95 dtd.25.07.97.


And whereas, the Judge of the said Sixth Industrial Tribunal, Jalpaiguri heard the parties under section 10(1B)(d) of the Industrial Disputes Act, 1947 (14 of 1947).

AND WHEREAS the said Judge Sixth Industrial Tribunal, Jalpaiguri has submitted to the State Government its Award under section 10(1B)(d) of the I.D.Act, 1947(14 of 1947) on the said Industrial Dispute.

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


Deputy Secretary to the
Government of West Bengal.

No.Labr./273/1(5)(LC-I.R)

Dated, 11.03.19.

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

1. M/s Green Rich Tea Estate, Vill. – Dangapara, P.O.-Fatapukur, P.S.-Rajganj, Dist.-Jalpaiguri.
2. Sri Kamal Roy, S/o – Ashinath Roy, Dangapara under Sukhani G.P., P.O. & P.S. Rajganj, Dist. -Jalpaiguri.
3. The Assistant Labour Commissioner, West Bengal In-Charge, Labour Gazettee.
4. The Labour Commissioner, West Bengal, New Secretariat Buildings, (11th floor), 1, K. S. Roy Road, Kolkata-700 001.
- ✓ 5. The OSD, IT Cell, Labour Deptt., with the request to cast the Award in the Department's website.


Deputy Secretary

No.Labr./273/2(2)(LC-I.R)

Dated, 11.03.19.

Copy forwarded for information to :-

1. The Judge, Sixth Industrial Tribunal, Jalpaiguri, with respect to his Memo No. 80-I.T. dtd. 12.12.2018.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata-700 001.

JNT/ORDER

Deputy Secretary

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JNT*

Before the Judge, Sixth Industrial Tribunal
North Bengal Region at Jalpaiguri
Nawab Bari Judicial Complex
Jalpaiguri.

Case No. VIII-01/2011 (VI)

Present: Sri B. N. Bhaduri, Judge,
Sixth Industrial Tribunal, North Bengal Region at Jalpaiguri
Nawab Bari Judicial Complex, Jalpaiguri.

Sri Kamal Roy S/o Ashinath Roy
Reident of Dangapara under Sukhani G.P.,
P.O. & P.S. Rajganj, Dist. Jalpaiguri.
..... Applicant/ Workman.

-VS-

The Manager, Green Rich Tea Estate,
Vill.Dangapara, P.O. Fatapukur,
P.S. Rajganj, Dist. Jalpaiguri.
..... Employer/Opposite Party

Order No.30 dt. 11/12/2018

This case is filed by the workman, Sri Kamal Roy, against the Manager, Green Rich Tea Estate, Dangapara, P.O. & P.S. Rajganj, Dist. Jalpaiguri, with a prayer for setting aside the order of dismissal along with a prayer for reinstatement and fringe benefits.

The workman has filed this case as per provision of Section 10(1B)(c) of the Industrial Disputes Act as amended in West Bengal. As per amended provision of Section 10(1B)(c) an individual workman may within a period of 60 days from the receipt of certificate of the Conciliation Officer to the effect that the conciliation proceeding of an Industrial Dispute is pending for more than 60 days, can file a case directly to Industrial Tribunal having jurisdiction and accordingly this case has been filed by the workman and in such situation as per provision of Section 10(1B)(d) of West Bengal Amendment Act, after filing petition before the Tribunal the case is to be proceeded with as if it were an Industrial Dispute referred to it in Sub-Section 1 of Section 10 of the Industrial Disputes Act. Therefore, after filing the petition by the workman this case was registered and notice was sent to the opposite party for appearance and filing written statement. The workman filed written case along with documents. The employer after appearance before this Tribunal took several adjournments, for filing written statement and documents but ultimately the opposite party failed to appear and accordingly the case was heard exparte.

From the application and written case filed by the workman, Kamal Roy, it appears that Kamal Roy was an worker of Green Rich Tea Estate, Dangapara, P.O. & P.S. Rajganj, Dist. Jalpaiguri and on 09/03/2009 the opposite party served one notice upon the workman for showing cause as to why legal action shall not be taken against him as he on 07/03/2009 with a malafide intention deliberately misused and drained a good qauantity of costly chemical to cause loss to the opposite party. It also appears that one domestic enquiry was held on 28/03/2009 and the enquiry report was submitted on 02/04/2009. Thereafter, by letter

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Sixth Industrial Tribunal
Jalpaiguri

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dt. 06/06/2010 the opposite party terminated the workman from his service of Tea Estate with immediate effect on and from 9th day of June, 2010. Being agreed by the order of said termination the workman approached the Conciliation Officer for settlement of the dispute but no settlement could be arrived at within stipulated time and accordingly the case has been filed before this Tribunal.

Therefore, the point for consideration is whether the order of termination of the workman from his service with effect from 09/06/2010 is sustainable in law and in fact and or liable to be set aside. Another point is also to be considered whether the order of termination/dismissal from service was appropriate for the alleged act done by the workman or not.

I have already observed that the opposite party did not contest this proceeding and accordingly the case is heard exparte. The workman has examined himself as PW-1 and the documents on behalf of the workman have been marked as exhibits 1 to 10.

DECISION WITH REASONS

The workman, Kamal Roy, filed this case with a prayer for declaration that the order of dismissal of the workman is illegal, unjustified and motivated one and to direct the employer to reinstate the workman with full back wages along with fringe benefits as if he was in service throughout the period. I have already stated that the employer was served notice for contesting this case but the employer did not contest this case. In such situation the case is heard exparte. The workman has filed examination-in-chief on affidavit and after further examination-in-chief he has been discharged as PW-1. The petitioner/workman has exhibited some documents which have been marked as Exts. 1 to 10. This is a case under Industrial Disputes Act and it appears from the petition of the workman and also from the documents exhibited on behalf of the workman that the concerned workman was asked to spray pesticide in the Tea Garden on 07/03/2009 but it is the allegation against the workman that he poured the said liquid pesticide on the ground with a view to cause loss to the employer. In such situation the employer served a show-cause notice upon the concerned workman on 09/03/2009. In the said show-cause notice it was stated that the concerned workman since long time was trying to create disturbances and on several occasions the concerned workman was warned for such illegal activities. In that notice it was stated that he caused loss to the employer by pouring the liquid pesticide on the ground and for that reason he was directed to show-cause within seventy two hours. The said show-cause notice has been marked as Ext. 1. It also appears from the exhibited documents and the evidence of PW-1 that the concerned workman submitted reply to the said show-cause notice on 21/03/2009 and the copy of said reply has been marked as Ext.3. It appears from Ext.2 that the employer was not satisfied with the said reply and accordingly the concerned workman was informed in writing that one domestic enquiry will be held on 28/03/2009 at

8.30 A.M. and the said enquiry will be conducted by Sri Somenath Pal, an independent outsider. By the said letter of enquiry (Exhibit-2) the concerned workman was asked to be present on the date of enquiry and he will be given full opportunity to defend his case by examining his witnesses and also by cross-examining the employer's witnesses. It appears from Exhibit-5 that the Enquiry Officer, Somenath Pal, held enquiry on 28/03/2009 at the office of the concerned Tea Garden within the premises of Green Rich Tea Estate. It appears from Exhibit-5 the Enquiry Officer submitted report on 02/04/2009 holding inter alia that the management side has been able to prove the charges conclusively against the workman Sri Kamal Roy and accordingly the charges against the concerned workman have been proved beyond any shadow of doubt. It also appears from Exhibit-6 that on 06/06/2010 the O.P./employer informed the workman, Sri Kamal Roy, as per enquiry report the charges has been proved against him but before giving any punishment a chance was given to the workman for making a representation by letter dt. 14/12/2009. It further appears from Exhibit-6 that ultimately the employer dismissed the workman, Sri Kamal Roy, from his service with immediate effect i.e. on and from 9th day of June, 2010 and the workman was asked to collect his dues from the office during working hours on 15/06/2010. Being agreed by the said order of dismissal the concerned workman has filed this case.

According to the provision of Section 11A of the Industrial Disputes Act where an Industrial Dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and in course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct the reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or gives such other reliefs to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter. So this Tribunal has to consider whether the order of dismissal of the concerned workman was unjustified or not. It is settled position of law that if any workman has been dismissed from his service on the basis of the domestic enquiry then the Tribunal has to consider whether the said domestic enquiry was properly held. It is to be considered whether at the time of domestic enquiry the principles of natural justice were followed or not. It is also to be considered whether the concerned workman was given adequate opportunity to cross-examine the witnesses of the employer and also sufficient opportunity to the workman to lead his evidence for his defence. It is established position of law that if the Labour Court, Tribunal or National Tribunal finds that the domestic enquiry was properly held then the Labour Court, Tribunal or National Tribunal has no jurisdiction at all

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to interfere with the findings of the enquiry. It is also settled position of law that if the issue regarding validity of the domestic enquiry is heard as preliminary issue and if it is held by the Tribunal that the domestic enquiry was not proper then chance is to be given to the employer and also to the employee to adduce their evidence before the Tribunal for arriving at a decision on merit. Here in this case the employer did not appear to contest the claim of the workman and as such no preliminary issue regarding validity of the domestic enquiry was heard. In such situation the concerned workman was given opportunity to give his evidence before the Tribunal in support of his case and accordingly the concerned workman was examined as PW-1 and his documents have been marked as Exhibits 1 to 10. The PW-1 has categorically stated in his examination-in-chief on affidavit that the allegation made against him in the show-cause notice dt. 09/03/2009 is false and he was chargesheeted with malafied intention. According to PW-1 the Enquiry Officer conducted the enquiry in a most biased manner and refused to accept evidence of any witness on his behalf. According to PW-1 he was not given proper opportunity to prove his case in the domestic enquiry and as such the enquiry proceeding was illegal. According to PW-1 though the Enquiry Officer submitted report on 02/04/2009, no action was taken by the employer at that time and he was allowed to work regularly and suddenly on 06/06/2010 the letter regarding his dismissal was served.

Considered the evidence adduced by PW-1 and exhibited documents. The Enquiry Report submitted by the Enquiry Officer, Sri Somenath Pal, has been marked as Exhibit-5 and on careful perusal of the said report it appears that the Enquiry Officer has not disclosed as to what was actually stated by the management witnesses. The Enquiry Officer has simply stated in the enquiry report that the witnesses of the management side supported the case of the employer. So from the enquiry report it is not possible to know actually what were said by the management witnesses and in such situation this Tribunal has no opportunity to consider whether the decision arrived at by the Enquiry Officer is based on the evidence or not. It is also to be mentioned here that the copies of the evidence adduced by the witnesses of the employer side at the domestic enquiry were not supplied to the concerned workman and as such he could not file the same before this Tribunal. I have already observed that notice was served upon the employer regarding this case and the employer filed written statement but did not file the evidence of the witnesses taken during domestic enquiry. In such circumstances it can be safely held that the enquiry was not properly held by observing the principles of natural justice. It is also to be mentioned here that adverse presumption can also be taken against the employer for not producing the enquiry report and the evidence adduced by the witnesses during enquiry proceeding as per provision of Section 114, explanation (g) of the Indian Evidence Act. In such situation it can be presumed that the enquiry proceeding was not properly held and the copies of evidence adduced by the witnesses of the employer side at the time of domestic enquiry are

not produced as because if the said documents would be produced it would be clear that the decision of the Enquiry Officer was not on the basis of the evidence taken during enquiry proceeding. It is also to be mentioned here that in the domestic enquiry the charge is to be framed properly so that the concerned workman can know what he has to counter at the domestic enquiry. Here in this case, it appears from the charge framed that it has been simply stated that the workman pour down huge amount of liquid medicine. In the charge the name of the medicine and the value of the medicine lost by the alleged act of the workman have not been mentioned at all. In such situation it was not at all possible for the workman to know regarding gravity of the charge brought against him. So in my considered view the charge as framed by the employer was also defective. So it can be safely held that the domestic enquiry held by the Enquiry Officer was not proper and principles of natural justice were not followed. In such situation it is to be held that order of dismissal passed by the employer is liable to be set aside as it is not based on proper and valid domestic enquiry. Before parting with this order I like to mention that there is no obligation on the Tribunal to indicate its mind about the infirmities in the enquiry before giving its findings and award and then to call upon the employer to adduce additional or independent evidence even if no such opportunity is sought by the employer. In this case, the employer did not appear to contest this case and accordingly there is also no scope for this Tribunal to give any opportunity to the employer to adduce additional evidence. In the decision reported in (1979)II LLJ 194(SC) in the case of Shankar Chakraborty -VS- Britinia Biscuit Company Ltd. the Hon' ble Supreme Court held that " Therefore, it is crystal clear that the rights which the employer has in law to adduce additional evidence in a proceeding before the Labour Court or Industrial Tribunal either under section 10 or section 33 of the Act questioning the legality of the order terminating service must be availed of by the employer by making a proper request at the time when it files its statement of claim or written statement or makes an application seeking either permission to take a certain action or seeking approval of the action taken by it. If such a request is made in the statement of claim, application or the written statement, the Labour Court or Industrial Tribunal must give such an opportunity. If the request is made before the proceedings are concluded, the Labour Court or the Industrial Tribunal should ordinarily grant the opportunity to adduce evidence. But if no such request is made, at any stage of the proceedings, there is no duty in law cast on the Labour Court or the Industrial Tribunal to give such an opportunity and if there is no such obligatory duty in law, failure to give any such an opportunity cannot and would not vitiate the proceedings ". Here in this case the employer did not file any written statement or statement of case or any application seeking permission to take certain action or seeking proper approval of the action taken by it. So in view of the facts and circumstances of the case there is no law to give further notice to the employer to adduce additional evidence after holding the domestic enquiry as invalid by this Tribunal.

Signature
JUDGE
Sixth Industrial Tribunal
Jalpaiguri

In view of my above discussions, the order of dismissal dt. 06/06/2010 against the workman, Kamal Roy, is liable to be set aside. The case succeeds exparte accordingly. Hence, it is

ORDERED

That the order of dismissal dt. 06/06/2010 passed against the workman Sri Kamal Roy is set aside and the employer is directed to reinstate the workman, Sri Kamal Roy, with full back wages along with fringe benefits as if he was in service throughout the period from the termination of service. This award will be inforceable after expiry of one month from the date of Gazette Notification of the award as per law.

Let a copy of this order be given to the Ld. Advocate for workman, free of cost, and another copy of this order be sent to the O.P./Employer the Manager, Green Rich Tea Estate, for their information and taking necessary action.

Dictated & corrected by me

(B.N.Bhaduri)
Judge
Sixth Industrial Tribunal
Jalpaiguri

(B.N.Bhaduri)
Judge
Sixth Industrial Tribunal
Jalpaiguri

B.N.Bhaduri
JUDGE
Sixth Industrial Tribunal
Jalpaiguri