

I/108739/2020

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

No. Labr/1792/(LC-IR)Date: 15/12/2020**ORDER**

WHEREAS an industrial dispute existed between M/S. Bhandiguri Tea Estate, P.O.. Prasanna Nagar, Dist- Jalpaiguri, W.B. and Sri Ajit Uraon, represented by Jatiya Cha Mazdoor Congress, Jalpaiguri, W.B. regarding the issue, being a matter specified in the 2nd schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(2A) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Sixth I.T. specified for this purpose under this Deptt.'s Notification No. 101-IR/12L-14/11 dated 02.02.2012.

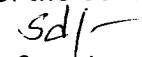
AND WHEREAS the said Judge Sixth I.T. has submitted to the State Government its Award under section 10(2A) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute.

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

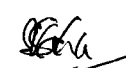
No. Labr/1792/1(5)/(LC-IR) to the Government of West Bengal
 Date 15/12/2020

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

to :-

1. M/s Bhandiguri Tea Estate, P.O.. Prasanna Nagar, Dist- Jalpaiguri.
2. Secretary, by Jatiya Cha Mazdoor Congress, Jalpaiguri, W.B.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Buildings, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 5. The Dy. Secy IT Cell, Labour Department, with the request to cast the Award in the Department's website.

No. Labr/1792/2(2)/(LC-IR)


 Deputy Secretary
 Date 15/12/2020

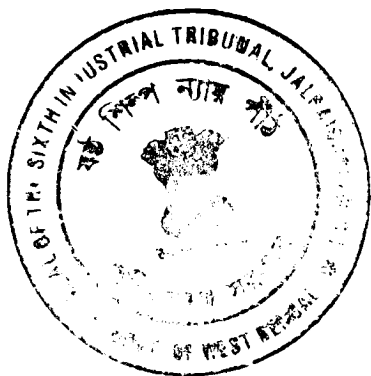
Copy forwarded for information to :-

1. The Judge, Sixth Industrial Tribunal , West Bengal, with respect to his Memo No. 29/IT(J) dated 05/03/2020 .
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the matter of Industrial Dispute between M/s. Bhandiguri Tea Estate , P.O. Prasanna Nagar, Dist. Jalpaiguri and their workman Shri Ajit Uraon, represented by Jatiya Cha Mazdoor Congress, Jalpaiguri(Regd. No.12690) vide Order No. 891-I.R. dated 30/07/1998. IR/9L-04/98

Case No. VIII-03/1998(VI)



BEFORE THE JUDGE, SIXTH INDUSTRIAL TRIBUNAL,

JALPAIGURI

Present

Shri Baidya Nath Bhaduri, Judge

Sixth Industrial Tribunal,

Jalpaiguri

A P P E A R A N C E S

- (1) Shri Sitangshu PhaniAdvocate- For the Workman
- (2) Shri B. K. GhoshAdvocate- For the Employer

A W A R D

This Industrial Dispute between workman Sri Ajit Uraon -VS- M/s. Bhandiguri Tea Estate was referred to this Tribunal by the Government of West Bengal, Labour Department, I.R. Branch, vide Order No. 891-I.R. dated 30/07/1998 and framed the following issues. IR/9L-04/98

I S S U E (S)

- (1) Whether the dismissal of Ajit Uraon w.e.f. 12.07.1997 by the management of M/s. Bhandiguri Tea Estate is justified ?
- (2) To what relief, if any, is he entitled ?

After receiving the said order of the Government this case was started and notices were issued to both parties. The Jatiya Cha Mazdoor Congress representing Sri Ajit Uraon filed written case and documents with lists. The employer, Bhandiguri Tea Estate, also appeared and filed written statement along with list of documents. It appears that the management Bhandiguri Tea Estate dismissed the workman Ajit Uraon w.e.f. 12/07/1997 on the basis of domestic enquiry held by the management. Being aggrieved by the said order of dismissal, the Jatiya Cha Mazdoor Congress raised Industrial Dispute and ultimately the Government of West Bengal, Labour Department, referred the dispute to this Tribunal for decision. It appears from the record that the

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Amendments
JUDGE
Sixth Industrial Tribunal
Jalpaiguri

employer demanded decision of this Tribunal regarding the validity of enquiry as preliminary issue and accordingly the employer was given chance for adducing evidence and after hearing both sides, this Tribunal vide order no. 31 dt. 05/03/2001 held that the entire domestic enquiry was illegal and void as there has been violation of natural justice. However, this Tribunal gave liberty to the employer to prove the charges by way of adducing fresh evidence before this Tribunal and fixed 18/04/2001 for examination of witnesses of both the sides. It appears from the record that in spite of giving several chances no fresh evidence was produced by the employer Bhandiguri Tea Estate and subsequently the order of this Tribunal dated 05/03/2001 was challenged before the Hon'ble High Court and the Hon'ble High Court stayed the further proceeding till the disposal of the writ petition. It appears that ultimately the Hon'ble High Court dismissed the writ petition filed by the employer Bhandiguri Tea Estate and as such this Tribunal again fixed 28/03/2014 for appearance and evidence of the witnesses of the employer side. It appears from the record that since thereafter several dates were given to the employer for fresh evidence to prove the charges against the workman Sri Ajit Uraon. By Order No. 81 dated 13/12/2018 this Tribunal called the case for hearing repeatedly but nobody appeared on behalf of the employer. In such situation there was no ground to give any chance to the employer for adducing further fresh evidence and on that day Ld. Advocate for the workman submitted that ~~the~~ the employer failed to produce any evidence. There is no question of adducing evidence by the workman as the enquiry on the basis of which the workman was dismissed was held illegal by this Tribunal. Accordingly, 26/12/2018 was fixed for passing order on reference. But on that day no order could be passed and 26/02/2019 was fixed for passing order. On 26/02/2019 the employer again filed a petition for adjournment and after taking few dates, on 15/01/2020 the employer filed written argument and thereafter 16/01/2020 was fixed for passing order. On 16/01/2020 no step was taken by the workman. Hence 17/02/2020 was fixed for passing order. On 17/02/2020 the employer again filed a petition for adducing evidence by this Tribunal but considering the entire materials in the record the prayer was rejected and fixed today for passing order.

It is clear from fact and documents that the workman Ajit Uraon was dismissed from his service on the basis of domestic enquiry on and from 12/07/1997. This Tribunal vide order No. 31 dated 05/03/2001 held that the domestic enquiry was illegal and void and accordingly fixed date for adducing fresh evidence by the employer. But no evidence has been adduced by the employer in spite of giving several chances for several years and in such situation naturally there is no question of giving any evidence by the employee and the Ld. Advocate for the workman rightly submitted that no evidence will be adduced on behalf of the workman. The written argument submitted is of no use as it is not based on fresh evidence.

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Sixth Industrial Tribunal
Jalpaiguri

As per provision of Section 11A this Tribunal has every right to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions as it thinks fit if the order of discharge or dismissal was not justified. This Tribunal after hearing on the question of validity of enquiry held by the employer came to a conclusion that the enquiry was illegal and void. The Hon'ble High Court also dismissed the writ filed against the said order of this Tribunal. In the case of Neeta Caplish -VS- Presiding Officer reported in AIR 1999 SC 698 Apex Court held that where the Labour Court has already found that the domestic enquiry was not properly and fairly conducted, but management does not lead any fresh evidence on merits, the workman is well within his rights to say that he would not lead any fresh evidence, and his claim cannot be rejected. The Hon'ble Supreme Court also held that he is entitled to be granted the relief then and there. So in this case also when after holding the domestic enquiry as illegal and void by this Tribunal, the employer did not lead any fresh evidence even after giving several chances, there is no other alternative but to hold that the workman Ajit Uraon is entitled to be granted the relief as per provision of Section 11A of Industrial Dispute Act. Hence, it is

O R D E R E D

That the order of dismissal of Sri Ajit Uraon w. e. f. 12/07/1997 is illegal and accordingly the said order of dismissal is hereby set aside. The management Bhandiguri Tea Estate is directed to reinstate the workman Sri Ajit Uraon in his original post along with all back wages, continuity of service, seniority in the service, with immediate effect along with all other service benefits which he used to get before the said order of dismissal was passed against him by the management. Accordingly, this award is passed on this day and the workman Sri Ajit Uraon is at liberty to take steps according to law if the management does not comply the direction of this award. This award shall be enforceable after 30 days from the date of publication of this award in Gazettee notification.

Dictated & corrected by me

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Amrinder Singh
JUDGE
Sixth Industrial Tribunal
Jalpaiguri
(B. N. Bhaduri)
Sdf Judge
Sixth Industrial Tribunal
Jalpaiguri
05/03/2020

(B. N. Bhaduri)
Sdf Judge
Sixth Industrial Tribunal
Jalpaiguri
05/03/2020