

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

No. Labr./404/(LC-IR)/22015(16)/5/2019

Date22.11.19

ORDER

WHEREAS an industrial dispute existed between M/s ALPS Exports Pvt. Ltd., 6/2, Moira Street, 3rd Floor, Flat No. 7, Kolkata – 700017 and their workman Sri Pramod Kumar Yadav, 67 B, Sridhar Roy Road, P.S. – Tiljala, Kolkata - 700039 regarding the issues 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 of Section 2A of the Industrial Dispute act, 1947 (14 of 1947) to the Judge, Seventh Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the said Judge, Seventh 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

43619/2019

Labr/404/1(2) (IR-IR)

Date : 22-4-19

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 2270 - LT dated 22.11.18.
2. The Joint Labour Commissioner (Statics), W.B., 6, Church Lane, Kolkata-700001.


Deputy Secretary

Labr/404/2(5) (IR-IR)

Date : 22-4-19

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

- 1.M/s ALPS Exports Pvt. Ltd., 6/2, Moira Street, 3rd Floor, Flat No. 7, Kolkata – 700017.
2. Sri Pramod Kumar Yadav, 67 B, Sridhar Roy Road, P.S. – Tiljala, Kolkata – 700039.
- 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

**In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata**

Present : Sri Avani Pal Singh, Judge,
Seventh Industrial Tribunal, West Bengal

Case No.16/2A(2)/2016

Pramod Kumar Yadav,
67B, Sridhar Roy Road, P.S.-Tiljala, Kolkata-700039. ...Applicant

versus

M/s. ALPS Exports Pvt. Ltd.,
6/2, Moira Street, 3rd Floor, Flat No. 7, Kolkata-700017. ... OP/Company

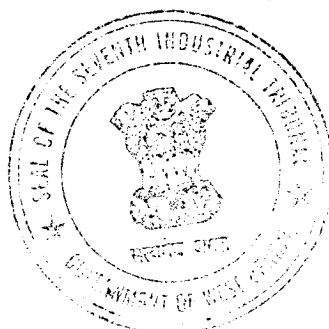
A W A R D

Dated : 05-10-2018

1. The instant case arose when an application was filed by Sri Pramod Kumar Yadav, hereinafter referred to as the applicant, under Section 2A(2) of the Industrial Disputes Act, 1947 against his employer M/s. ALPS Exports Pvt. Ltd., hereinafter referred to as the OP/Company, in connection with termination of his employment by his such employer, with prayers for declaration of such termination as illegal, and for relief(s) by way of reinstatement in service with full back wages and consequential benefits.
2. Upon registration of the instant case on 05.04.2016, notice along with copy of such application were despatched by registered post with A.D. upon the OP/Company at their given address, with a direction upon them to appear and file their written statement, if any. Records reveal that on 12.05.2016, the registered postal article was received back undelivered with a postal endorsement 'unknown', whereupon the applicant was directed to take steps in accordance with law as a consequence whereof notice(s) were freshly issued through the process server on 02.12.2016 with the direction to appear on 29.12.2016 and file written statement, if any.

Judge
Seventh Industrial Tribunal W.B.
Kolkata, W.B.

3. On 29.12.2016, the OP/Company appeared through their Ld. Advocate and thereafter on 07.03.2017, the OP/Company filed their written statement. Records further reveal that the matter came to be fixed on several dates for filing 'list of documents' and copies thereof by the parties, however only the applicant filed his 'list of documents' together with copies thereof, but the OP/Company failed to file either their 'list of documents' or copies of such documents.
4. Records further reveal that on 28.05.2018, taking note of the fact that the OP/Company had been granted numerous opportunities to file their 'list of documents' together with copies thereof, but had not filed either of them, and also taking note of the fact that the OP/Company had stopped appearing in the case, on all dates fixed since 07.12.2017, this Tribunal directed that the matter shall proceed **ex-parte** against the OP/Company, and it has proceeded **as such till date**.
5. The case as made out briefly by the applicant in his application is that he took up employment as a driver of the OP/Company in the year 2001 and that, he had worked as such very sincerely and honestly without any break till December, 2013 and that, his last drawn salary was Rs.9000/- per month. It is his further case that the OP/Company have their office at the given address within the jurisdiction of this Tribunal and that they were 'an employer' coming under the purview of the West Bengal Shops & Establishment Act, 1965. It is the further case of the applicant that on 01.01.2014, when the applicant went to join his duties as usual, he was told by one of the Directors of the OP/Company named Mr. Ashok Kumar Chowdhury that the services of the applicant were no longer required, and that resulted in termination of his employment on and from the said date and that, after his such termination, the applicant had made several requests to the management of the OP/Company to allow him to resume his duties but to no effect and thereafter by his letter dated 17.04.2015,



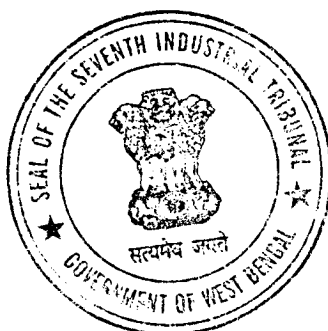
the applicant had again requested the management however, when the OP/Company failed to respond thereto, the applicant had sent a legal notice dated 12.05.2015 but that also failed to yield any result. It is the further case of the applicant that, finding no other alternative, he had brought the matter of his illegal termination of service by the OP/Company to the notice of the conciliatory-authority but the conciliation also failed and, after having waited for 45 days thereafter, the applicant had filed the instant application under Section 2A(2) of the Industrial Disputes Act, 1947 seeking the relief(s) as aforesaid. It is the further case of the applicant that after such illegal termination of his service he was not gainfully employed elsewhere and that he was entitled to reinstatement in his service with full back wages and other consequential benefits, for the period of 'forced idleness' so created by the OP/Company by their illegal act(s).

6. Leading **ex-parte evidence**, in support of his aforesaid contentions, the applicant Pramod Kumar Yadav examined himself on oath as PW-1 and tendered his affidavit-in-chief, and during his such testimony PW-1 also identified a copy of a letter of authority issued by OP/Company authorising the applicant to drive car No. WB 02 G 8055 (**Exhibit-1**), copy of R.C. Booklet of the said car (**Exhibit-2**), copies of challans issued by Traffic Department, Howrah Police as well as by the Traffic Department, Kolkata Police, all of which were in respect of the aforesaid car (**Exhibit-3 coll.**). Further, PW-1 also identified a copy of his demand of justice dated 17.04.2015 (**Exhibit-4**), together with original postal receipts (**Exhibit-4/1**), and PW-1 also identified a copy of his legal notice dated 12.05.2015 to the OP/Company (**Exhibit-5**) and lastly, PW-1 identified a copy of his representation dated 15.06.2015 to the office of the Assistant Labour Commissioner, Govt. of West Bengal raising the industrial dispute (**Exhibit-6**).

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7. Having examined the testimony of PW-1, as well as the documents identified by him and marked as evidence in this case, this Tribunal noted that the applicant stated that he was aged around 48 years and that, he was a permanent employee of M/s. ALPS Exports Pvt. Ltd. with its office at 6/2, Moira Street, 3rd Floor, Flat No. 7, Kolkata-700017 [its previous address was Flat – 1C, 1st Floor, Block-C & D, Shyam Kunj, 12C, Lord Sinha Road, Kolkata – 700071] and further he testified that he was in such employment of the OP/Company since 2001 as a car driver. It further came out that generally he used to drive the company car being No. WB 02G 8055 and that the documents he had filed would reveal the said facts. It further came out that PW-1 had served continuously till 31.12.2013 and that, when he went to join his duties as usual on 01.01.2014, one of the directors of the company Sri Ashok Chowdhury had told him that his services were no longer required and that, his employment was thus terminated on the said date illegally by the OP/Company. PW-1 further testified that after his illegal termination, he had been to the office of the OP/Company on several occasions to re-join his duties, but he was not allowed to do so whereupon, by his letter dated 17.04.2015 (*Exhibit-4*) he had submitted written request to the management of the OP/Company to allow him to re-join his duties, however the OP/Company had not paid any heed to such requests. PW-1 further testified that, by his legal notice dated 12.05.2015 (*Exhibit-5*), he had again requested the management to allow him to join his duties but to no effect, whereupon he had made a representation dated 15.06.2015 (*Exhibit-6*) to the office of the Assistant Labour Commissioner, Government of West Bengal seeking their intervention but, when the same did not help and the matter could not be settled by such conciliatory authority, PW-1 stated that he filed the instant application under Section 2A(2) of the Industrial Disputes Act, 1947. PW-1 further testified that he was still unemployed without any income from the date of his illegal termination by the OP/Company and that he was

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entitled to be re-instated in service with full back wages and other consequential benefits.

8. Having gone through the testimony of PW-1, it was noted that Exhibit-1 was a copy of a certificate issued on the letter-head of the OP/Company certifying that the applicant was authorised to handle and to drive Maruti car bearing No. WB 02G 8055, though no date appears to be mentioned in such certificate, and further from Exhibit-2 it appears that the said car was registered in the name of the OP/Company, at its said previous official address, as on 10.03.1998. Further, from the copies of challans (Exhibit-3 coll.) issued by the Traffic Departments of Howrah Police as well as Kolkata Police on various dates, it appears that the car No. WB 02G 8055 was being driven on those dates by Pramod Kumar Yadav, when it was penalised for various traffic offences mentioned therein.
9. From the aforesaid unchallenged testimony of PW-1, duly supported by the said documents, this Tribunal holds that the applicant has established by cogent and consistent ex-parte evidence, that he was a 'workman' working as a driver of the OP/Company, driving the car No. WB02G 8055 which was owned by the OP/Company. That apart, from such testimony of PW-1, and in the absence of any contra evidence, it stands established that the applicant was **employed** as a driver and worked as such under the OP/Company from 2001 till his termination w.e.f. 01.01.2014, and such uninterrupted service of over 12 years would qualify as 'continuous service' as defined under Section 25B of the Industrial Disputes Act, 1947.
10. In the aforesaid backdrop, it also came out from the uncontroverted evidence of PW-1, that neither was the applicant issued any notice of termination nor was he paid any

compensation prior to his such termination w.e.f. 01.01.2014. That apart, it also came out from such evidence that the OP/Company had not initiated or proceeded with any disciplinary action, including domestic enquiry, against the applicant and hence the termination of such employment by the OP/Company would clearly fall within the definition of '**retrenchment**', as under Section 2(oo) of the Industrial Disputes Act, 1947. In such view of the matter, and in light of the fact that the applicant had rendered 'continuous service' of over 12 years to the OP/Company, the services of the applicant could have been retrenched by the OP/Company **only upon compliance with provisions of Section 25F of the said Act of 1947**, which doesn't appear to have been complied with in the instant case.

11. In the facts and circumstances aforesaid, and in absence of any contra-evidence, it is established by the materials on record that continuous service of the applicant, rendered for over 12 years to the OP/Company, could not have been terminated in the manner as was done, by sudden refusal of employment w.e.f. 01.01.2014, and such termination would be illegal being hit by the provisions of Section 25F of the Industrial Disputes Act, 1947, and it is held that the applicant has established by cogent and consistent evidence that his services were illegally terminated by the OP/Company w.e.f. 01.01.2014 and that such termination was liable to be set aside.

12. In light of the finding that the applicant/workman has established by cogent and consistent evidence that his services were illegally terminated by the OP/Company w.e.f. 01.01.2014, and that such termination was liable to be set aside, it is imperative to examine as to what relief(s) the workman would be entitled to as per law. Law, in this regard, has been laid down in various pronouncements of the Hon'ble Supreme Court, applying to different fact-situations. Discussing the law laid down through such pronouncements, the Hon'ble Supreme Court, while rendering the judgment in ***Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors,***

as reported in (2013) 10 Supreme Court Cases 324, was pleased to hold, inter alia, at para 38 thereof :

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

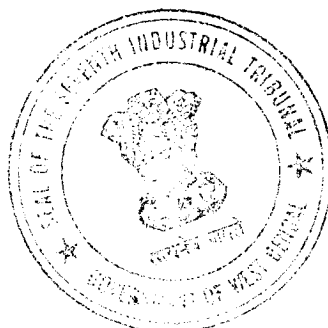
38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] .

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

13. In light of the law laid down, and in light of facts established by the uncontroverted ex-parte evidence of the applicant, this Tribunal has noted that the applicant/workman was 48 years old on the date of his deposition (06.07.2018) who had rendered over 12 years long unblemished service to the OP/Company and had put in the golden years of his life to such long service of the OP/Company and at the age that he was unlawfully terminated from his job, it would be extremely difficult for him to start afresh, and the applicant still has several years of productive age left. That apart, it has also come out from the evidence on record that the applicant/workman had been rendered unemployed, without any income, since his illegal termination of his service and was **still unemployed**. Further, there is nothing in evidence to indicate that the OP/Company was undergoing any financial stringency or suffering any loss or closure of its business, that could be considered to militate against the prayer of re-



instatement of the applicant, or bring out such circumstances under which payment of compensation in lieu of reinstatement would be the appropriate relief.

14. In the circumstances as aforesaid, as well as in the light of the ex-parte evidence on record and in the light of the law laid down as aforesaid, this Tribunal is of the view that the ends of justice would be served if the termination of employment, by refusal thereof, of the applicant/workman by the OP/Company w.e.f. 01.01.2014 be set aside, for being unlawful and unjustified as well as for being violative of specific statutory provisions, with further directions that the applicant be reinstated into his service with the OP/Company, in the same post as well as status onwards of 01.01.2014, with further direction upon the OP/Company to pay full back-wages, from the 01.01.2014 till date, and consequential benefits, as a result of such reinstatement of service of the applicant.

Hence,

IT IS,

ORDERED

- i) That the termination of employment of the applicant Pramod Kumar Yadav by the OP/Company M/s. ALPS Export Pvt. Ltd. w.e.f. 01.01.2014 by way of refusal of employment, be and the same is hereby held to be unjustified and unlawful and violative of Section 25F and such other provisions of the Industrial Disputes Act, 1947, and accordingly such termination is declared to be illegal and void and the same is set-aside;
- ii) That, the services of the applicant Pramod Kumar Yadav are directed to be reinstated with the OP/Company M/s. ALPS

Export Pvt. Ltd. w.e.f. 01.01.2014, with further direction upon the OP/Company to pay full back-wages to the applicant as well as to accord full consequential benefits, in line with such reinstatement of the applicant in their service;

- iii) That, in the facts and circumstances of this case, there shall be no order as to costs.

The aforesaid shall constitute the **Award**, passed ex-parte by this Tribunal in the instant Case No.23/2A(2)/2015, which shall stand disposed of, **ex-parte**.

Copies of the Award be sent to the concerned authorities for information and necessary action.

Dictated & corrected by me

sd/-
Judge
Seventh Industrial Tribunal
Kolkata, W.B.

sd/-
Judge
Seventh Industrial Tribunal
Kolkata
05/10/2018
Judge
Seventh Industrial Tribunal
Kolkata, W.B.

