

I/60720/2019

Government of West Bengal  
Labour Department, I. R. Branch

N.S. Buildings, 12<sup>th</sup> Floor, 1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 829 / (LC-IR)/22015(15)/13/2018

Date: 16/09/2019

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 953 – IR/10L-73/08 dated 17.09.15 the Industrial Dispute between M/s Titagarh Wagons Ltd., Unit : Titagarh Steels (Formerly Titagarh Industries Ltd.), 1, Abdul Quddus Road, P.O. – Titagarh, Dist. – North 24 Parganas, Pin – 700119 (Corporate Office : Titagarh Towers, 756 Anandapur, E.M. Bypass, Kolkata – 700107), Registered Office : 3, Loudon Street, Flat IB, Kolkata – 700017 and their workman Sri Bibekananda Sinha, Sahid Jahar Ghosh Sarani, P.O. Nimta, Kolkata - 700049 regarding the issues mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Third Industrial Tribunal, Kolkata.

AND WHEREAS the Judge of the said Third Industrial Tribunal, Kolkata, has submitted to the State Government its award 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

Date: 16/09/2019

No. Labr/829/1(5)/(LC-IR)

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

1. M/s Titagarh Wagons Ltd., Unit : Titagarh Steels (Formerly Titagarh Industries Ltd.), 1, Abdul Quddus Road, P.O. – Titagarh, Dist. – North 24 Parganas, Pin – 700119.
2. Sri Bibekananda Sinha, Sahid Jahar Ghosh Sarani, P.O. Nimta, Kolkata – 700049.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Rd 06.9.19.

Deputy Secretary

Date: 16/09/2019

No. Labr/829/2(2)/(LC-IR)

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, Kolkata with reference to his Memo No. 1107 – L.T. dated 16.08.2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

BEFORE THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL

PRESENT: **SRI SUBERTHI SARKAR, JUDGE, THIRD INDUSTRIAL TRIBUNAL.**

**CASE NO. VIII-38 of 2015**

**DATE – 30<sup>th</sup> July, 2019**

Sri Bibekananda Sinha, Sahid Jahar Ghosh Sarani, P.O. Nimta, Kolkata-700 049

.....Applicant

-VS-

M/s. Titagarh Wagons Ltd., Unit: Titagarh Steels [Formerly Titagarh Industries Ltd.] 1, Abdul Quddus Road, P.O. Titagarh, North 24-Parganas, Pin – 700 119, (Corporate Office : Titagarh Towers, 756 Anandapur, E.M. Bypass, Kolkata – 700 107, Registered Office : 3, Loudon Street, Flat IB, Kolkata – 700 017)

.....Opposite Party

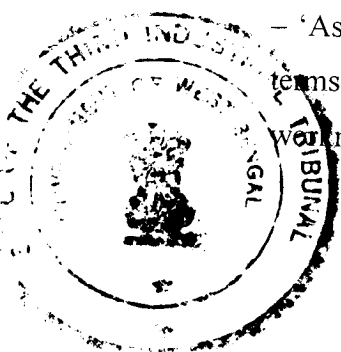
**A W A R D**

This case was referred by the Government of West Bengal, Labour Department vide G.O. No. 953-IR./IR/10L-73/08 dt. 17.9.2015 U/s. 10 relating to an Industrial Dispute between M/s. Titagarh Wagons Ltd., Unit: Titagarh Steels [Formerly Titagarh Industries Ltd.], 1, Abdul Quddus Road, P.O. Titagarh, North 24-Parganas, Pin – 700 119, (Corporate Office : Titagarh Towers, 756 Anandapur, E.M. Bypass, Kolkata – 700 107, Registered Office : 3, Loudon Street, Flat IB, Kolkata – 700 017) and their Workman namely Sri Bibekananda Sinha, Sahid Jahar Ghosh Sarani, P.O. Nimta, Kolkata-700 049 to this Tribunal for adjudication of the following issues :

**I S S U E(S)**

1. Whether the termination of service of Sri Bibekananda Sinha by way of refusal of employment w.e.f 02.06.2014 by the Management of M/s. Titagarh Wagons Ltd. (TSL) is justified?
  2. To what relief, if any, the workman is entitled?
- 
1. The alleged workman namely Shri Bibekananda Sinha by filing written statement contended that he joined as 'technician' being appointed by the Company vide Appoint letter No. Appoint-TIL/ dt. 01.04.2004. He was a trainee technician from 13.08.96 and since then he had been working with sincerity, diligence and honesty and there was no any black spot against him in his service record. Being satisfied about his work and conduct, the Company revised his salary firstly w.e.f. 06.09.2006 and thereafter w.e.f. 01.07.2010 in Grade B-1. Rank – 'Assistant' in basic pay scale of Rs. 4000-300-5500-413-7563/- and other allowances in terms of Company's letter dt. 26.07.2010. The nature of job was only technical as the workman had trade – 'Fitter', being obtained a certificate from I.T.I. He never did any

Contd....page 2



supervisory job and he was not a supervisor at any point of time. Further case is that, on 29.05.2014 the workman was asked to resign, but he could not understand the reason behind it. However, on 02.06.2014, when the petitioner went to resume his duty, as usual, the security guard as per instruction of the Management prevented him to join his duty and stopped him to enter the premises of the Company. It is contended that at the time of termination, neither retrenchment compensation nor any notice pay was paid to the workman by the Management. Accordingly, the petitioner had no other alternative but to raise a formal dispute by his letter dt. 12.06.2014 and 13.08.2014. As no reply was received the workman raised an Industrial Dispute before the Office of the Deputy Labour Commissioner, Barrackpore by his letter dt. 22.09.2014. The Assistant Labour Commissioner tried his best to settle the matter in a conciliation level but due to the adamant attitude of the Management, there was no fruitful settlement. The workman further contended that the Company had taken a decision to reduce the number of workmen by hook & crook, and for implementing the said unfair labour practice the Management firstly attempted to target the workman with a false plea that he was working a supervisory job and that he has abandoned the service. The workman strongly denied such alleged contention of the Company. As no settlement was arrived at, the Government referred the matter before this Tribunal for adjudication of the dispute. It is contended further that the workman is still unemployed and there is no source of income of the workman, at present. His last drawn wages were Rs.8170/- per month.

Thus, stating the dismissal order by the Company as unlawful and unjustified, the workman has prayed for granting relief, directing the Company to reinstate him in service with full back-wages for the period of forced unemployment together with consequential relief.

2. By filing written statement, the Company denied the contention of the workman, as well as the Company prayed for dismissal of the prayer of the workman. It is specifically contended that after passing of the Central Act 2A (2), Section 10 of the Industrial Disputes Act, 1947 is obsolete in view of the provision of the Law, that the latter Act will prevail. It is specifically contended that the present applicant is not a workman within the meaning of the Act, as he being a technician (Foreman) was doing only supervisory work and he never did any work specifically mentioned U/s. 2(s) of Industrial Disputes Act. It is contended that the Company never terminated his service rather he himself discontinued his job and maliciously raised the issue of termination for his wrongful action. The Company accordingly raised these preliminary issues which go to the very route of the jurisdiction of the matter vis-à-vis jurisdiction of the Tribunal.

It is submitted that the workman Sri Bibekananda Sinha was appointed as technician on probation w.e.f. 01.04.2004. It is specifically contended that he used to do only supervisory job, practically he was a Foreman under whom several workers were working. It is contended that all of a sudden on 12.06.2014, the Management received a letter from the applicant stating therein, his service was terminated on 02.06.2014 and security has stopped him to enter into

the premises of the Company. Such allegation by the workman is false and frivolous. Again on 26.08.2014 the applicant wrote a letter alleging that he was prevented to enter into the premises of the Company. Thereafter, the applicant raised a dispute before the Dy. Labour Commissioner vide his letter dt. 22.09.2014 with false and frivolous stories. It is further contended that the Conciliation Officer, without considering the case of the parties sent reference in a relaxed and casual manner. It is further contended that the written statement filed by the workman are false and baseless. The allegation of asking for submission of resignation is totally false. The Company did not terminate his service and that he himself left/abandoned the job on his own accord.

Thus, denying the case as well as the allegation of the workman, the Company has prayed for refusing the relief as prayed for by the workman.

3. The workman Sri Bibekananda Sinha has examined himself as P.W.-1.

On the other hand, only one witness namely Shri Ashoke Kr. Saha was examined as O.P.W-1 on behalf of the Company.

The following documents were produced and proved on behalf of the Company :

**On Merit**

S.L No.	Exhibit	Name of Documents	Documents Date	Exhibit Date
01	A	Requisition slip issued by the applicant/workman for and on behalf of the company, M/s. Titagarh Wagons Ltd.	08.06.2013	07.09.2018
02	A/1	Requisition slip issued by the applicant/workman for and on behalf of the company, M/s. Titagarh Wagons Ltd.	03.06.2013	07.09.2018
03	A/2	Requisition slip issued by the applicant/workman for and on behalf of the company, M/s. Titagarh Wagons Ltd.	21.06.2013	07.09.2018
04	B	Letter of authorisation	15.11.2018	20.11.2018
05	C	Copy of letter addressed to the Assistant Labour Commissioner, Barrackpore, North 24 Parganas by the company.	13.12.2014	20.11.2018
06	D	Copy of letter addressed to the Assistant Labour Commissioner, Barrackpore, North 24 Parganas by the company	23.10.2014	20.11.2018

The following documents were produced and proved on behalf of the Workman :

**On Merit**

S.L No.	Exhibit	Name of Documents	Documents Date	Exhibit Date
1.	1 (2 pages)	Letter of appointment	01-04-2004	18-04-2018
2.	2	Letter, issued by the management for raising pay scale	06-09-2006	18-04-2018

Contd.....page 4

S.L No.	Exhibit	Name of Documents	Documents Date	Exhibit Date
3.	3 (2 pages)	Letter along with break-up of the salary	26-07-2010	18-04-2018
4.	4	Pay slip for the month of April, 2014		18-04-2018
5.	5	Letter, addressed to the General Manager of the Company	12-06-2014	18-04-2018
6.	5/1	Letter, addressed to the General Manager of the Company	13-08-2014	18-04-2018
7.	6	Letter, addressed to the Dy. Labour Commissioner	22-09-2014	18-04-2018
8.	7	Letter, addressed to the Asst. Labour Commissioner, Barrackpore, North 24 Parganas	28-10-1014	18-04-2018
9.	7/1	Letter, addressed to the Asst. Labour Commissioner, Barrackpore, North 24 Parganas.	13-12-2014	18-04-2018
10.	8	Conciliation Memo.	28-11-2014	18-04-2018
11.	8/1	Conciliation Memo	17-12-2014	18-04-2018
12.	8/2	Conciliation Memo	14-01-2015	18-04-2018

#### 4. **Decision with reason**

The moot question to be determined as per the issues under reference is that, Whether the termination of service of Sri Bibekananda Sinha by way of refusal of employment w.e.f 02.06.2014 by the Management of M/s. Titagarh Wagons Ltd. (TSL) is justified or not. In order to find out the reply of such question, let us go through the case and the counter case of the parties in the instant matter. The case of the petitioner is challenged by the O.P./Company on following 3(three) points:

- i) The petitioner is not 'Workman' at all as defined U/s. 2(s) of the Industrial Disputes Act, 1947.
- ii) After passing of the Central Act Section 2A(2), the reference of individual workman U/s. 10 of Industrial Disputes Act, 1947 is obsolete, and thus the reference is bad in law.
- iii) The Company never terminated the service of said Shri Bibekananda Sinha.

Now, let us discuss the aforesaid three points one by one so as to reach to the conclusion to answer the issues under reference.

5. In order to determine whether the petitioner Shri Bibekananda Sinha is a workman or not, let us consider the contention of both the sides. During the course of argument, the Ld. Advocate for the Company argued that the applicant is not a workman, as he being a technician (Foreman) was doing only supervisory work and never did any work, specifically mentioned U/s. 2(s) of the Act. In support of his contention, the Ld. Advocate relied upon the decision

reported in - II LLJ 1955 228 S.C. (Burmah Shell Oil Storage and Distributing Company of India Ltd. Vs Their Workmen). He also referred the decision reported in 1961-I LLJ 18 S.C. (Lloyds Bank Ltd. -Vs- Pannalal Gupta & Ors.)

On the contrary Ld. Advocate for the workman submitted that the said petitioner Shri Bibekananda Sinha is a workman in terms of Section 2(s) of the Industrial Disputes Act and that he is not supervisor. By referring **Exhibit, 'A, A/1 & A/2'** he submitted that issuance of requisition slip does not mean and prove that he was a supervisor, as, such work is casual in nature. By referring the contention in Para 12 of the written statement of the applicant, he submitted that the scale of pay of the workman also proves that he was a workman and no supervisor or foreman. In support of his contention the Ld. Advocate for the applicant referred the decision reported in **1982 LAB I.C. 307 (Titaghur Paper Mills Co. Ltd. -Vs.-1<sup>st</sup> Industrial Tribunal, West Bengal and others).**

6. After considering the respective submissions of the Ld. Counsels appearing for the parties, it appears to me that the concept of 'workman' is central to the concept of an industrial dispute as an industrial dispute can be raised either by a 'workman' or an 'employer'. Since the Industrial Disputes Act, 1947 ("ID Act") is a piece of beneficial legislation, the courts have enlarged the scope and applicability of this Act by giving wide interpretation to the term "workman." Section 2(s) defines workman as the person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment by express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison, or
- (iii) who is employed mainly in a managerial or administrative capacity, or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding Ten thousand per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The factors which should be considered to know whether a person is a workman or not, are:

- (a) whether there is a Master-Servant relationship;
- (b) when a person is performing various functions, which overlap in their characteristics, the nature of main function for which the claimant is employed should be considered;

(c) work is either manual, skilled, unskilled, technical, operational, clerical or supervisory in nature, the mere fact that it does not fall within the exception would not render a person to be workman; and

(d) that the exceptions are not applicable.

Now, let us consider whether the applicant Shri Bibekananda Sinha is a workman or not as defined U/s. 2(s) of Industrial Disputes Act, 1947. The Applicant Shri Bibekananda Sinha was examined as P.W.-1. He deposed that he joined in the O.P./Company as 'Technician' in the Maintenance Department. '**Exhibit 1**' i.e. the letter of appointment corroborates the said statement of P.W.-1. '**Exhibit 1**' further shows that his basic salary was Rs.2,112/- and that he was appointed as a technician on probation by appointment letter dt. 01.04.2004. '**Exhibit 2**' shows that on 06.09.2006 his salary was revised by the Management from Rs.2,112/- to Rs.2,796/-. By issuing letter dt. 26.07.2010 (**Exhibit 3**) the Management revised his basic pay as Rs. 4,000/- per month and his grade was revised as B-1, w.e.f 01.07.2010. '**Exhibit 4**' is the pay slip for the month of April,2014. P.W.-1 deposed that he obtained certificate from ITI having trade 'Fitter' and he was a workman and his nature of job was technical. He stated that he had never worked as supervisor and no appointment letter to the fact was issued. He had no power of command and power of issuing cheque etc., on behalf of the Company. In cross examination he denied the fact that he was a 'Foreman' or 'Supervisor' of the Company. He denied the fact that he used to allot work to the employees of the Maintenance Deptt. He identified the requisition slip (**Exhibit – A, A/1 and A/2**) and admitted that he used to make requisition for supply of goods to the Maintenance Department, but stated that he used to do so as per the instruction of the Management of the Company. In cross-examination by the Company, no suggestion was put to P.W.-1 that he is not a workman. Now coming to the evidence of the Company, it appears that Shri Ashoke Kumar Saha who is the Manager of the Company was examined as O.P.W.-1. He admitted that Shri Bibekananda Sinha joined the Company as 'technician'. However, he deposed that Shri Bibekananda Sinha had the power and authority to give requisition for materials and received the said materials from the store for production and also supervised the work of employees working under him. The power to make requisition for issuance of materials and receiving the same can only be done by the Manager and / or by the supervisor and no workman has such power. In cross-examination he deposed that he is ignorant that whether the service of Shri Bibekananda Sinha was ultimately confirmed or not. He deposed that no document has been filed to show that said Shri Bibekananda Sinha used to do only supervisory job and practically he was foreman of managerial category. He had not filed any such document to substantiate such version as made in the written statement of the Company. They have not filed any document to substantiate such version that the applicant used to do only supervisory job. Except 3(three) documents, O.P.W-1 could not file any further document to show that the nature of job was supervisory. There is no written document to prove that his function was to distribute job to the workers.

He admitted that the applicant had no cheque sanctioning authority. He failed to file any document to show that the applicant had leave sanctioning authority.

7. **In 1955 II LLJ 228 S.C.** as referred by the Ld. Advocate of the Company, it was held that the Depot Superintendent and Assistant Depot Superintendent are not "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. But in this case, the applicant is not the Depot Superintendent or Asst. Depot Superintendent. Moreover, there is no sufficient evidence adduced from the side of the Company to prove that the applicant is not a workman. Accordingly, the case law is not applicable in the present case. **In 1961 I L.L.J. 18 S.C.** – the Hon'ble Apex Court was pleased to hold that the supervisor or officer should occupy a position of command or decision and should be authorised to act in certain matters within the limits of his authority without the sanction of manager or other supervisors. But in the present case no such evidence is adduced from the Company to prove that the applicant occupies a position of command or decision and acted independently without the sanction of the manager or other supervisors. Thus, the company is also not able to take the benefit of the reported case laws.

The applicant being P.W.-1 deposed that he was a workman and his nature of job was technical. I have already found **Exhibit '1'** appointing the workman as 'technician'. Now the onus is shifted upon the company to prove that the applicant was a supervisor or that his function was managerial or administrative capacity. Section 2(s) excludes the employee from the definition of workman who are engaged in a managerial or administrative capacity. It also excludes the employee in a supervisory capacity drawing wages exceeding Rupees Ten thousand per annum. From the appointment letter and the pay slip issued by the Company, it appears that the Company failed to prove that the applicant was drawing monthly salary more than Rupees Ten thousand. Accordingly, Exception '4' of Section 2(s) is not applicable in the present case. Now let us find out whether the Company was able to prove that the applicant was employed **mainly** in managerial or administrative capacity or not. The managerial work includes powers and duties related to hiring and firing of new employees, grant of leave to employees and actual participation in the policy of the business. Managerial function may not be performed as a consequence of a written contract but may be implied from the powers vested in a person or the nature of his duties. The administrative function means to run the administration of the Company and includes the powers to conduct enquiry by issuing show-cause and charge-sheet to the other employees. The Company in this case failed to show by adducing any document that the applicant was manager or administrator. However, the nomenclature of the post has least importance to determine as to whether the person is a manager or administrator, but the Company also failed to prove by adducing evidence that the applicant was exercising supervisory works to control the men and not the machine. O.P.W.-1 admitted in cross-examination that he was not able to prove by adducing document to show that the nature of job of the applicant was supervisory and that his function was to distribute job of the workers. It is apparent from his cross-examination that the applicant has no cheque



sanctioning authority and leave sanctioning authority. Thus, by mere issuing requisition slip (**Exhibit A, A/1, and A/2**) for supply of goods of the Maintenance Deptt., for a few occasions does not prove that the main work of the applicant was administrative or managerial by nature, specially when the applicant honestly admitted that he used to do such job as per instruction of the management of the Company.

Accordingly, considering all the materials on record, I am inclined to hold that the applicant was a workman as defined U/s. 2(s) of the Industrial Dispute Act, 1947.

8. Now so far as the 2nd point of dispute is concerned, it is argued on behalf of the Company that reference made by the Government is bad in law and accordingly it is not maintainable. It is submitted that after passing of the Central Act 2A(2), Section 10 of the Industrial Disputes Act, 1947 is obsolete in view of the provision of law that the later will prevail. As the present case is referred U/s. 10 of the Industrial Act, 1947 and accordingly it is not maintainable. In support of his contention Ld. Advocate for the Company referred decision reported in **1975-II-LLN-168 Cal – (Deepak Industries Ltd. And another – Vs – State of West Bengal and others)**.

On the contrary Ld. Advocate for the applicant submitted that the amended provision of Section 2A(2) and 3 of the Act does not repeal Section 10 of the Act and accordingly does not take away the remedy available U/s. 10 of the Act. He further argued that after the amendment of Section 2A, an individual dispute can also be a special matter of the industrial dispute under the Act and can be validly referred U/s. 10. Thus, in his view the referral order is not bad in law.

I have gone through the relevant provisions and the case laws. The amended provision of Section 2A(2) and (3) of the Act does not repeal Section 10 of the Act and thereby even after the said amendment also, Section 10 remains in the statute book and Section 10 is not struck-off by the framer/ author of the statute from the statute book. Now after the amendment, the employee can directly approach the Labour Court/ Industrial Tribunal by submitting an application and the later should deal with the said industrial dispute. Thus, compulsion to avail the remedy U/s. 10 has been now made voluntary and it is for the suitor to select either to avail the remedy U/s. 10 of the Act or to avail the remedy under the amended provision of 2A(2) of the Act. Thus, by way of an amendment, two remedies have been available to the workman for raising the industrial dispute. Accordingly, such amended provision of the Act is providing an additional concurrent remedy to the workman and does not take away the remedy of the Section 10 of the Act.

At this stage it will be convenient to refer Section 10 of the Industrial Disputes Act, 1947 which is as follows:

**Section 10 - Reference of disputes to Boards, Courts or Tribunals. –**

(1) *[Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing, --*

*(a) refer the dispute to a Board for promoting a settlement thereof; or*

*(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or*

*(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or*

*(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified, in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:*

*Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]*

*[Provided further that] where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:*

*[Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government;]*

**Section 2k** of the Act defines - *"industrial dispute" means any, dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.*

So, the existence of industrial dispute is a condition precedent of exercising jurisdiction by the appropriate Government U/s. 10 for making an order of reference. Now, let us consider the provision of Section 2A of the Industrial Disputes Act, 1947 which was incorporated in the Act by the Industrial Disputes (Amendment) Act, 1965 - (35 of 1965) w.e.f. 01.12.1985.

**Section 2A** - (1) *Dismissal, etc., of an individual workman to be deemed to be an industrial dispute - Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*

*(2) Notwithstanding anything contained in Section 10, any such workman as is specified in Sub Section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*

The case law as referred by the Ld. Advocate of the Company is itself the answer of the question made on behalf of the Company. In Para 8 of the decision under reference **(1975-II LLN-168 Cal)** , it has been observed by the Hon'ble High Court, Calcutta - *the said amendment was made by the Parliament solely with a view to modify the law established by the judicial decisions holding that an industrial dispute under the Act did not include an individual dispute which was not sponsored by other workmen or union of workmen. Therefore, after the amendment an individual dispute can be a subject matter of industrial dispute and can be referred U/s. 10 of the Act by an order in writing of the appropriate Government to the Tribunal for adjudication.*

Thus, I find that the order of reference in the instant case is not bad in law. In the case under reference, the Hon'ble Court was please to hold further - *If it is an industrial dispute, that is a dispute raised by an individual, it must be raised by him and reference may be made in due course for adjudication under the said Act. On the other hand, if a group of workmen raised a dispute that can also constitute an industrial dispute within the meaning of the Act which may be referred to the Tribunal in due course. But when the dispute is espoused or sponsored by a union judicial decisions have uniformly held that when the authority of the union is challenged by the employer it must be proved by production of material evidence before the Tribunal, to which such a dispute has been referred, that the union has been duly authorized either by a resolution of its members or otherwise that it has the authority to represent the workmen whose cause it is espousing.* - Thus, the case referred by the Company will be no help to justify the submission of the Company that the order of reference is bad in law.

Considering the submission of both the parties and going through the order of reference it appears that by Memo No. 953-I.R./IR/10L-73/08 dt. 17.09.2015, the Government has referred the said dispute to this Tribunal U/s. 10 of the Industrial Disputes Act, 1947 to submit its awards in terms of Section 10 of the Industrial Disputes Act subject to other provision or provisions of the said Act.

Considering all the aspects I am inclined to hold that the submission made on behalf of the Company that the order of reference is bad in law, is not sustainable. In the instant case an industrial dispute as defined U/s. 2k and after coming into force of Section 2A(Amendment Act)1965, exists, which is validly referred by the Government U/s. 10 of the Act.

9. Coming to the 3rd point of the disputes between the parties, the argument was made from the side of the Company that the Company has never terminated the service of the applicant, rather he himself discontinued his job with an improper motive to raise issue of termination for his wrongful action. By referring decision reported in **2006 (108) FLR 201 (U.P. State Brassware Corporation Ltd. And Another – vs- Udai Narain Pandey)**, the Ld. Advocate for the Company submitted that the applicant is not entitled to full back wages.

On the contrary the LD. Advocate for the applicant submitted that the workman was illegally terminated by way of refusal of employment. No. domestic enquiry was held. Neither any retrenchment compensation nor any notice pay was paid to the workman. He submitted that the Company could not prove that the workman has been gainfully employed elsewhere. He prayed for necessary relief of reinstatement along with full back wages. He referred decision reported in **2009 LAB. IC 3198 Cal ( Jagadamba Motor and Another – Vs.- State of West Bengal and Others)**.

Having heard submission of both the parties and going through the materials on record, it appears to me that the applicant in this case namely Shri Bibekananda Sinha has already been decided by the Tribunal to be a ' Workman' as defined U/s. 2(s) of Act. From '**Exhibit 1**' it appears that his appointment letter was issued by the Company as 'Technician' and from the other documents on record it further appears that his salary, grade and rank were revised from time to time. His last drawn wages were Rs.8170/- per month. (**Exhibit 4**). Now from the evidence of P.W.-1 i.e. the workman, it appears that he deposed that on 29.05.2014 he was asked to resign. He further deposed that he raised objection vehemently, but the Management did not allow him to join in his duties by applying their security guard on 2<sup>nd</sup> June,2014 and such conduct amounts to refusal of employment by the Company. On the contrary OPW-1 Ashoke Kumar Saha, the Manager of the Company deposed that said Bibekananda Sinha was never refused employment but he abandoned his service on his own accord by not attending his duties since 02.06.2014. '**Exhibit 5**' is the letter dt. 12.06.2014 written by the workman Shri Bibekananda Sinha to the General Manager of the O.P./Company stating therein that he was asked to resign from his job in the Company. Because of his financial stringency he did not resign and worked in the Company till 01.06.2014. It is also contended therein by the workman that on 02.06.2014 he went to participate in the job in the Company, but the security at the gate stopped him to enter into the premises of the Company. By filing such letter ('**Exhibit 5**') the workman prayed for allowing him to continue his job. On 13.08.2014 another letter was issued by the workman Shri Bibekananda Sinha to the General Manager of

the O.P./Company, the contents being the same in nature, with the same prayer, like a reminder. In Para '6' and '7' of their written statement, the Company acknowledged those two letters. From 'Exhibit 6' it appears that the workman informed the matter of refusal of service "by Company" to the Deputy Labour Commissioner, Barrackpore. From 'Exhibit 7/1' it appears that the Company informed the Asstt. Labour Commissioner, Barrackpore that said Bibekananda Sinha was employed in supervisory capacity and accordingly the claim to be considered as a workman does not sustain.

Thus, considering all the documents in record it appears that there exists an industrial dispute between the present workman and the Company. Although, O.P.W-1 deposed that said Shri Bibekananda Sinha is gainfully employed elsewhere, no evidence is adduced on his behalf in the Court to prove the said fact. In **2009 LAB.IC 3198 Cal ( Jagadamba Motor and Another - Vs.- State of West Bengal and Others)**, the claim of the workman was that the employer has refused to employ him after he returned, whereas the employer's stand was different and did not agree to take him back. The Hon'ble High Court, Calcutta was pleased to hold that between the two which version is correct, would require adjudication by the Tribunal upon reception of evidence. Further, the Hon'ble was pleased to observe that, "*at this stage it can safely be conducted that the Government crystalised the dispute and what has been referred is indeed an industrial dispute within the meaning of the Act.*" Now, in the present case, I have already found that said Bibekananda Sinha was a workman whose grade, salary and rank was revised by the O.P./Company for several times. He was an employee of the O.P./Company for more than 10 years. As per version of the workman, he was asked to resign from his job and since 02.06.2014 he was not allowed by the security guard to enter into the company premises. Such fact was informed by him to the O.P./Company by writing several letters. Accordingly, said workman, Shri Bibekananda Sinha raised a formal dispute by the letter dt. 12.06.2014 and 13.08.2014 informing the company Management that he was not allowed to enter into the premises of the company. Such letters are marked as **Exhibit 5 and 5/1** respectively in this case. As the Company did not respond, the said workman raised industrial dispute before the Deputy Labour Commissioner, Barrackpore and during the conciliation period the matter was not settled and accordingly the instant matter has been referred by the Government. Accordingly, I have already held that there exists an industrial dispute in the instant case. It is surprised to observe that the company admitted their knowledge about the contents of those letters written by the workman. Had the workman abandoned the service since 02.06.2014 without any information, he had no occasion to write those letters dt. 12.06.2014 and 13.08.2014 with the prayer to allow him to resume his duties. Thus the circumstances show 'refusal of employment' from the side of the company, which amounts to termination of service.

In the instant case O.P.W-1 in his cross-examination said that he could not recollect whether they submitted charge-sheet against the applicant or not. The O.P./Company did not adduce



any evidence regarding any enquiry held against the workman by them. The Ld. Advocate for the workman relied upon a decision reported in **1998 I CLR 1205 [Mahamadsha Ganishah Patel & Anr. – vs – Mastanbaug Consumer's Cooperative Wholesale And Retail Stores Ltd. & Anr.]** wherein the Hon'ble High Court, Bombay was pleased to hold - *that even in case of abandonment of service, enquiry was necessary and in the absence of the same it is held that the employer failed to establish abandonment of service and as such there was termination of service.*

Accordingly, I am inclined to hold that the termination of service of said Shri Bibekananda Sinha by way of refusal of employment w.e.f. 02.06.2014 by the Management of M/s. Titagarh Wagons Ltd. (TSL) is not justified.

10. It has already been held that said Bibekananda Sinha was a workman of the O.P./Company and that there exists an industrial dispute. It has already been held that the reference by the Government is not bad in law. The issue no. '1' casted by the Government in order of reference is already held in favour of the workman. It has already been held by me that termination of service of said Shri Bibekananda Sinha by way of refusal of employment w.e.f. 02.06.2014 by the Management of M/s. Titagarh Wagons Ltd. (TSL) is not justified.

Accordingly, I am inclined to hold that he is entitled to some relief. Let us consider the entitlement of the workman namely Shri Bibekananda Sinha consequent to his illegal termination of service. In this regard the Ld. Advocate for the Company referred decision reported in **2006 (108) FLR 201(SC) ( U.P. State Brassware Corporation LTd. And another and Udai Narain Pandey)** wherein the Hon'ble Apex Court was pleased to observe "*No precise formula can be laid down as to under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would however, not be correct to contend that it is automatic.*"

On the contrary, Ld. Advocate for the workman submitted that the workman was not gainfully employed. Accordingly he is entitled to reinstatement with full back wages, due to his wrongfully termination by the Company.

Considering submission of both the sides and on going through the evidence and materials on record, I find that termination of service of the workman by the Company is illegal. He was not paid any notice pay or compensation. Now, it appears from Para 12 of the written statement filed by the workman that he had taken the plea that he is still unemployed and there is no source of income. Accordingly, in his evidence-in-chief he prayed for reinstatement along with full back wages for the period of forced unemployment. On the contrary, the Company could not show by adducing evidence that the said workman is gainfully employed in other service since the date of termination. On perusal of the evidence and materials on record I find nothing reliable to hold that the said workman Shri Bibekananda Sinha is

gainfully employed. Accordingly, I am inclined to hold that he is not gainfully employed since the date of termination of service.

The Hon'ble Supreme Court in **2014 LAB. I.C. 4486 (Tapash Kumar Paul Vs. BSNL & Anr.)** has laid down conditions which are required to be complied with to convert an order of reinstatement into one for payment of monetary compensation, viz, (i) where the industry is closed; (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated in service; (iv) when he has lost confidence of the management to discharge duties. Now, I find in the instant case that the Company has failed to prove any of the aforesaid grounds so as to convert an order of reinstatement into one for payment of monetary compensation.

Considering all the evidence and materials on record, I am of the view that the workman, Shri Bibekananda Sinha being able to prove his case, is entitled to be reinstated in his service. However, I am inclined to allow a portion of back wages and not the full back wages, which will be 50% of the back wages and not the full back wages.

All these issues are thus disposed of.

Hence it is -

### Ordered

That the written statement filed by the workman is allowed on contest, but without cost. The workman Shri Bibekananda Sinha is entitled to get reinstatement with 50% of the back wages since the termination of service dt. 02.06.2014. The O.P./Company is hereby directed to pay 50% of the back wages to the applicant within a period of 90 (Ninety) days from the date of passing of this award, in default the workman is entitled to put the award in execution.

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.

Judge



( Suberthi Sarkar )  
Judge  
3<sup>rd</sup> Industrial Tribunal  
Kolkata  
30.07.2019