

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

N.S.Buildings, 12th Floor, 1, K.S. Roy Road, Kolkata - 700001

No. Labr./1945/(LC-IR)/22015(16)/541/2018 Date: 27/10/2021

ORDER

WHEREAS an industrial dispute existed between 1) M/s Tata Consultancy Services Ltd., Infospace Building, United Hi-tech Structures Ltd. IT/ITES SEZ, Block-A, 5th, 6th, 7th Floor, Tower-AI, Tower-AII & Tower AIII, Plot No. DH-1, DH-2, DH-3 & DH-3/1, Action Area-1, New Town, Kolkata-700156 ; 2) Sri Ranjan Bandopadhyay, V.P. Human Resources, M/s Tata Consultancy Services Ltd., Infospace Building, United Hi-tech Structures Ltd. IT/ITES SEZ, Block-A, 5th, 6th, 7th Floor, Tower-AI, Tower-AII & Tower AIII, Plot No. DH-1, DH-2, DH-3 & DH-3/1, Action Area-1, New Town, Kolkata-700156 and its workman Sri Ujjwaldeep Sen, 73, Anandapur, Mundra Para, Kolkata-700107 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 First Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the said First Industrial Tribunal has submitted to the State Government its Award dated 15.09.2021 on the said Dispute vide Memo No. 1118 - L.T. dated 20.09.2021.

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,

Sd/-
Joint Secretary

to the Government of West Bengal
Date : 27/10/2021

No. Labr/1945/1(2) - IR

Copy forwarded for information to :

1. The Judge, First Industrial Tribunal with reference to his Memo No. 1118 - L.T. dated 20.09.2021.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Sd/-
Joint Secretary

Date : 27/10/2021

No. Labr/1945/2(6) - IR

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

1. M/s Tata Consultancy Services Ltd., Infospace Building, United Hi-tech Structures Ltd. IT/ITES SEZ, Block-A, 5th, 6th, 7th Floor, Tower-AI, Tower-AII & Tower AIII, Plot No. DH-1, DH-2, DH-3 & DH-3/1, Action Area-1, New Town, Kolkata-700156.
2. Sri Ranjan Bandopadhyay, V.P. Human Resources, M/s Tata Consultancy Services Ltd., Infospace Building, United Hi-tech Structures Ltd. IT/ITES SEZ, Block-A, 5th, 6th, 7th Floor, Tower-AI, Tower-AII & Tower AIII, Plot No. DH-1, DH-2, DH-3 & DH-3/1, Action Area-1, New Town, Kolkata-700156.
3. Sri Ujjwaldeep Sen, 73, Anandapur, Mundra Para, Kolkata-700107.

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4. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
5. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 6. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Joint Secretary

In the matter of an industrial dispute between Shri Ujjwaldeep Sen, 73, Anandapur, Mundra Para, Kolkata – 700 107 against 1) M/S Tata Consultancy Services Ltd., Infospace Building, Unitech Hi-tech Structures Ltd. IT/ITES SEZ, Block – A, 5th, 6th & 7th Floor, Tower-AI, Tower-AII & Tower-AIII, Plot No. DH-1, DH-2, DH-3 & DH-3/1, Action Area-1, New Town, Kolkata – 700 156 and 2) Sri Ranjan Bandopadhyay, V. P. Human Resources, M/S Tata Consultancy Services Ltd., Infospace Building, Unitech Hi-tech Structures Ltd. IT/ITES SEZ, Block – A, 5th, 6th & 7th Floor, Tower-AI, Tower-AII & Tower-AIII, Plot No. DH-1, DH-2, DH-3 & DH-3/1, Action Area-1, New Town, Kolkata – 700 156.

Case No. 05/2016 U/S 2A (2) of the Industrial Dispute Act 1947

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order : 15.09.2021

Case No.: 05/2016 U/S 2A (2)

This is an application for passing appropriate order out of Repealing and Amending Act, 2016 and the Industrial Dispute (Amended) Act, 2010.

It is mentioned by the application dated 06.01.2020 to the effect that the Workman Sri Ujjwaldeep Sen residing 73, Anandapur, Mundra Para, Kolkata – 700 107 has filed an application u/s 2A(2) of the Industrial Disputes Act, 1947 challenging his alleged dismissal / termination of service by way of refusal to employment on 16.03.2016 and thereby praying for his reinstatement in service with full back wages and other consequential benefits.

Thereafter, the opposite party filed its written statement and the parties to the case filed their documents and that have been exchanged between them.

Thereafter, the applicant, Workman filed a petition for interim relief against which the evidence was taken up and the case was fixed for hearing of arguments on the point of interim relief. At this stage the present petition has been filed by the Company, drawing the attention of the Repealing and Amending Act, 2016 and the Industrial Disputes (Amended) Act, 2010 for passing appropriate order to dismiss the instant case.

During this procedure being continued the Repealing and Amending Act, 2016, the whole of the Industrial (Amended) Act, 2010 has been repealed and after the ascent of the President being received on 06.05.2016. It is further stated that Section 2A(2) had been inserted in the Industrial Dispute Acts, 1947 w.e.f. 15.09.2010.



Now the Government of India under Ministry of Law & Justice (Legislative Department) published a Gazette Notification on 19.05.2016 called as the Repealing and Amendment Act, 2016.

And in view of the said Repealing of the Industrial Dispute Act, 2010, there is no existence of Section 2A(2) any more with effect from 06.05.2016 and since the instant dispute has been filed by the Workman on 22.09.2017 i.e. after the Repealing and Amending Act, 2016, the instant application filed U/s 2A(2) is not maintainable in law and therefore, the instant case No. 2/2A(2) of 2017 being filed on 22.09.2017 cannot survive in law as it has become in-fractious as well as inapplicable of adjudication since the whole of Industrial Dispute (Amended) Act, 2010 has been repealed.

In view of the aforesaid submission, it is prayed that the instant application dated 27.12.2016 is not maintainable in law and should be dismissed.

On the other hand written objection alongwith notes of arguments have been filed on behalf of the Workman in respect of the application filed by the opposite party, Company, dated 06.01.2020.

It is stated by the Ld. Counsel for the Workman that the application of the Company is not maintainable in law and in facts and is filed only to delay the disposal of the case on merit and it is filed with ultrarary motive which is unjust as well as abuse of the process of law because of the fact the purported notification dated 09.05.2016 annexed by the petitioner / Company, has not yet been given effect to by the Government of India and therefore, it is in-effective and are only dead letters within the force of law.

It is further submitted that similar enactments like Act for 46 of

- a) The act 46 of 1982 amending Section 2(j) of the Industrial Dispute Act, 1947.
- b) The Code on Wages, 2019 introducing a single enactment in place of 4 enactments,

which have received the ascent of President of India but yet to be given effect to by the Government of India and as such the said enactments are not yet effective and only the dead letters are in force of law.

Lastly it is submitted that the instant submission filed by the Company / employer has not been properly verified, which is an incurable regularity from the end of opposite party and as such the said application is not maintainable in law and be dismissed with exemplary cost for abusing the due process of law and also for harassing the applicant.



In support of his case Ld. Counsel for the Workman has filed the following citations:

- 1) 1982 LAB.I.C. 275, in a case between Raghunath vs. State of Madhya Pradesh and Others, wherein it is held that the repeal shall not affect the continuance of any such amendment made by enactments so repealed and no operation on the commencement of this act.
- 2) AIR 1973, Kerala, 136, in a case between Raman Sahadevan vs. R. Kesovannair, wherein it is held that the repeal of amending act does not affect the amendments, which have already been brought into the main act.
- 3) AIR, 1980, Allahabad 119, in a case between Municipal Board, Lucknow vs. Ram Autar, wherein it is held that it is a well-known rule of interpretation that if a particular meaning leads to consequences which are manifestly inconvenient and unjust, this meaning should be avoided if it is possible to do so without doing violence to the spirit of the language used in the statute. It is only where the language used is unambiguous and imperative that the court can accept such a meaning. No doubt if the words are not capable of any other meaning, they must be interpreted in that manner even if they lead to a manifest absurdity. But as observed in Salmon by Duncombe (1886) 11 AC 627 at p. 634 where the main object and intention of a statute are clear from the title, preamble, or otherwise it should not be reduced to a nullity by a literal following of language, which may be due to want of skill or knowledge, or the part of a draftsman, unless such language is intractable. To the same effect are the observations of Lord Esher in Re-Brockelbank (1889) 23 QBD 461 at p. 462. Lord Esher observed.
- 4) AIR 1960, Supreme Court 89, in a case between Jethanand Betab vs. State of Delhi (Now Delhi Administration).
- 5) AIR 1954, Calcutta 484, Khuda Bux vs. Manager Caledonis Press.

I have perused the petition and written objection along with the rulings to that effect and considered.

I did not find any such reasons to deny the case of the petitioner.

It is a fact that the present R & A Act has wiped out the provisions under Section 2A(2) of the Act but the right of the Workman to file the case on the ground of illegal termination and refusal of employment cannot be denied for which there is a certain provision in the Act.



So, the Workman may be given liberty to withdraw the case and to file the same according to the provision of the Act other than Section 2A(2) of the Industrial Disputes Act as it is wiped out by Repealing of Industrial Disputes Act with effect from 19.05.2016.

Therefore, the Workman may file the case once again through conciliation proceeding, but in no way he can be allowed this case to continue even under Section 2A(2) of the Industrial Disputes Act, 1947 since, it is wiped out by Repealing of Industrial Dispute Act with effect from 19.05.2016.

Hence it is,

ORDERED

That the petition filed by the Company, dated 06.01.2020, is allowed in terms of my above discussions without cost and thereby the applicant of the instant case named Ujjwaldeep Sen is permitted to withdraw the instant case being filed under Section 2A(2) of the Industrial Disputes Act with a liberty to file a fresh or to sue a fresh in accordance with the existing provision being laid down in the Industrial Disputes Act, 1947 and accordingly the instant case is disposed of.

This is my **AWARD**.

The Award be sent to the Government.

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)
Judge

