

I/352091/2022

Government of West Bengal  
Labour Department, I. R. Branch  
N.S. Building, 12<sup>th</sup> Floor  
1, K.S. Roy Road, Kolkata - 700001

No. Labr/ .<sup>09</sup> . /(LC-IR)/22015/33/2019 Date: 03/01/2023.

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/1035/(LC-IR)/ dated 04/12/2019 the Industrial Dispute between M/s. BKM Industries Ltd., Barjora, Vill. – Birshinghapur, Plot No.-471, P.O.- Borjora Dist.- Bankura-722202, and its workmen represented by 1) Sri Naba Kumar Basu, Secretary, Manaksia Ltd. Shramik Union, Borjora, Vill. – Harirampore, P.O. – Hatasuria, PIN – 722204, 2) Sri Manik Baru, Secretary, Manaksia Ltd. permanent Worker's Union, Vill – Bishanpur, P.O. – Hatasuria, PIN – 722204, & 3) Sri Ajit Ghosh, Secretary, Manaksia Ltd. Employees Union, Vill. – Birshinghapur, P.O.&P.S.- Borjora Dist.- Bankura-722202 regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Ninth Industrial Tribunal, West Bengal.

AND WHEREAS the Ninth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 29/11/2022 on the said Industrial Dispute vide memo no. 111 - I.T. dated – 02/12/2022.

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,

sdt  
Joint Secretary  
to the Government of West Bengal

I/352091/2022

H/m ZTR  
No. Labr/09/1(3)/(LC-IR) Date: 03/01/2023.

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

1. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
2. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
3. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to publish the Award in the Department's website.

Joint Secretary

No. Labr/09/2(2)/(LC-IR) Date: 03/01/2023.

Copy forwarded for information to:

1. The Judge, Ninth Industrial Tribunal, West Bengal, Durgapur, Administrative Building, City Centre, Pin - 713216 with reference to his Memo No. 111- I.T. dated - 02/12/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary



*In the matter of an Industrial dispute between M/S BKM Industries Ltd., Ecospace Business Park, New Town, Rajarhat, Kolkata – 700160 and its plant located at M/S BKM Industries Limited, Barjora, Vill.-Birshingapur, Plot No.-471, P.O-Borjora, Dist.-Bankura– 72220 and their workmen represented by their trade union viz.(1) Naba Kumar Basu, Secretary, Manaksia Ltd.(Packaging Division) Shramik Union, Borjara, Vill-Harirrampore, P.O-Hatasuria,PIN.-722204, (2) Sri Manik Baru, Secretary, Manaksia Ltd.(Packaging Division) permanent workers' union Vill.-Bishanpur, P.O-Hatasuria, PIN-722204 & (3) Sri Ajit Ghosh, Secretary, Manaksia Ltd. Employees Union (Packaging Division), Vill.-Birshingapur, P.O & P.S-Borjora, Dist.- Bankura, PIN-722202 referred to this Tribunal vide G.O.No. Labr./1035/(LC-IR) dated 04.12.2019.*

*Case No. 02/2019 U/s 10 of Industrial Disputes Act,1947.*



*BEFORE THE 9<sup>TH</sup> INDUSTRIAL TRIBUNAL,  
DURGAPUR, WEST BENGAL, KOLKATA.*

*PRESENT :- SHRI SUJIT KUMAR MEHROTRA,  
JUDGE, 9<sup>th</sup> INDUSTRIAL TRIBUNAL,  
DURGAPUR.*

*Ld. Advocate for the Workmen: - Mr.Avijit Banerjee*

*Ld. Advocate for the O.P./Employer :- Exparte.*

*The award dated:-29<sup>th</sup> day of November,2022.*

### **A W A R D**

*The Deputy Secretary to the Govt. of West Bengal Labour Deptt. upon noting an industrial dispute exist between the parties, as mentioned herein above by an order dated 04.12.2019 referred such disputes to this tribunal in exercising of power conferred by Sec.10 of the Industrial Disputes Act,1947 ( herein after referred to as I.D Act) for determination of the following issues :-*

- 1) Whether the suspension of work declared by the management of M/S. B K M Industries Ltd. on 02.07.2018 is justified?*
- 2) What reliefs, if any, are the workmen entitled to?*

*sel- JUDGE  
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*This tribunal entered upon the references, registered references as the instant case put the disputed parties on notice.*

*CR reveals that after received of the notice both the parties make appearance through their ld. lawyers.*

*CR further reveals that although the O.P/employer filed the Vokatnama of its ld. lawyer on 28.01.2020 but subsequently, did not contest the instant case and its such conduct resulted into exparte hearing of the instant case.*

*Subsequent to issuance of the notice the 3(three) workers Union jointly filed their claim statement in the form of WS in the instant case.*

*As per WS of the representative unions O.P M/S B K M Industries Ltd. was formally known as Manaksia Industries Ltd., Manaksia Ltd. (Packaging Division) and prior to that Spark Exports Ltd. but the ownership of the Company remains same since 1999.*

*They further averred that all the workmen employed under the Spark Experts Ltd. continue their service since establishment of the Factory at Borjora till the new nomenclature of the Company as Manaksia Industries Ltd."*

*It is their further case that all the workmen of the Union employed by the O.P used to extend their full co-operation to the management for smooth running of the business and that an agreement was executed between the O.P/employer and the representative unions regarding workers' wages and other service benefits through tri parties settlement on 21.01.2014 and the same was valid till 30.06.2016.*

*That after expiry of the said agreement the unions placed New Charter of Demands before the management through a memorandum on 27.06.2016 with a request to revise the wages and service benefits but the management did not bother to pay any heed to such demand. Due to the management's reluctant attitude the unions were compelled to raise their grievance with the Deputy Labour Commissioner (DLC), Bankura for settlement.*

*And a series of discussion were held from 07.02.2017 to 06.09.2018 by way of tri-parties meeting but no settlement could be arrived at because of rigid attitude of the management. However, during the pendency of the conciliation matter before the DLC, Bankura, the management hanged a notice of "suspension of work" on 21.07.2018 at the Factory Gate on false pretext with an intention to deprive the workers from legitimate demand.*



The Representative Union in their WS further averred that after publication of such notice joint number of meetings were held but the same also yielded no result and accordingly, the DLC, Bankura, sent the failure report U/S 12(4) of the I.D Act to the appropriate Govt. and thereafter the Labour Deptt. referred industrial disputes to this tribunal for adjudication on the referred issues.

From the WS of the Representative Unions it appears that they challenged the suspension of work dated 02.07.2018 as unjustified and illegal on the ground that the same was issued during the pendency of the conciliation proceedings before DLC, Bankura and also on the ground of non compliance of the provisions of Sec.25M of the ID Act by the O.P./employer and accordingly, they prayed that the same be declared as illegal and all the workers be provided with all service benefits under the law.

### **DECISION WITH REASONS**

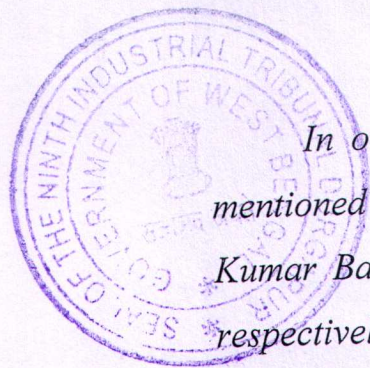
In order to prove heir WS case the 3(three) Representative Unions, as mentioned herein above, examined their respective Secretaries namely, Naba Kumar Baru, Manik Baru & Ajit Ghosh in exparte as P.W-1, P.W-2 & P.W-3 respectively.

As per prayer of the Unions one official from the office of the DLC, Bankura has also been examined as P.W-2 (Ujjal Kumar Layek) in this case.

Following documents have been produced from the side of the Representative Unions:-

- 1) Memorandum of Charter of Demands dated 27.06.2016 -Exbt...1,
- 2) Agreement dated 21.01.2014 -Exbt..2
- 3) Copy of the Charter of Demands, 2016 submitted by the Unions- Exbt...3,
- 4) Application dated 17.11.2017 of one of the Unions namely, Manaksia Ltd. (Packaging Division) Sramik Union -Exbt..4,
- 5) Minutes of meeting dated 07.12.2017 to 11.09.2018 as held in the office of the DLC, Bankura - Exbt...5(series).
- 6) Notice of suspension of work dated 02.07.2018 - Exbt...6,
- 7) Copy of Letter dated 03.07.2018- Exbt..7.

During the course of hearing of argument in the exparte, it was contended by the Ld. lawyer from the side of the Unions that it has clearly been established from the unchallenged oral evidence of the P.W-1 to P.W-3, that notice of



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suspension of work was published during the pendency of the conciliation proceedings before the DLC, Bankura and the said fact has also been proved from the documentary evidence i.e Exbt.4 to 7, as produced by the P.W-2 from the office of the DLC, Bankura.

Banking upon the Exbt.5 (series) the Ld. lawyer further submitted that the management of the O.P/employer illegally issued the notice of suspension of work on 02.07.2018 as the same violates the provisions of Sec.23 and 25M of the I.D Act, 1947.

Ld. lawyer also submitted that since the notice of suspension of work was issued in contravention of the mandatory provisions of Sec.22-23 of the I.D. Act as well as the provisions of Sec.25, M of the I.D. Act, so such laid-off of entire workmen be declared as illegal from the date of publication of notice of suspension of work and all the benefits be provided to the workers.

On reading of the WS/claims of the Representative Unions and the issues referred by the Govt. for adjudication it is crystal clear that the main ground for declaring the notice of suspension of work dated 02.07.2018 as illegal is that the same was issued during the pendency of the conciliation proceedings before the DLC, Bankura as well as non-compliance of Sec. 25M of the I.D. Act.

To consider the merit of such ground we are firstly discuss the relevant provision of law on that issue.

However, undisputedly all the 3(three) Representative Unions are registered unions.

Since the crux of the referred issue no.1 relates to suspension of work by virtue of notice dated 02.07.2018, so we are look into the definition of suspension of work under the I.D Act, 1947.

The phrase 'suspension of work' has nowhere been defined in the I.D.Act,1947. But the same has been included under the definition of "lock out" as provided in Sec.2(l) of the I.D Act,1947. It provides that "lockout" means the temporary closing of place of employment, or **the suspension of work**, or the refusal by an employer to continue to employ in number of persons employed by him".



On perusal of above definition it is clear that phrase suspension of work does come within the ambit of 'lock-out' under the I.D Act, 1947. The result of such suspension of work in an industry by the employer virtually means the refusal by an employer to continue employment of the workers.

The management in its notice of suspension of work dated 02.07.2018 i.e Exbt.6 declared suspension of work with effect from 8 a.m. on 02.07.2018 till further notice.

It is the specific pleading case of all the 3(three) Representative Unions that there was an agreement between it and the management of the O.P/industry regarding workers' wages and other service benefits through tri-parties settlement on 21.01.2014 and the same was valid till 30.06.2016.

P.W.Nos. 1 to 3 in their unchallenged oral evidence on affidavit-in-chief clearly stated about the same. Their such uncontroverted ocular testimony is corroborated by the Exbt.1 i.e memorandum of settlement dated 21.01.2014 corresponding to Exbt.2 (same and identical) as produced from the office of the DLC, Bankura.

On perusal of those documentary evidence I find that the agreement for workers' wages and their service benefits could be arrived at after having due deliberation between the workers' representative and the management in the tri-party meeting and it was effective till 30.06.2016.

It is further the pleading case of the representative unions that subsequently they submitted charter of demands on 2016 with the management praying for revision of wages and other service benefits but the management did not pay any heed to their such demand and accordingly they approached the DLC, Bankura for a settlement and in consequence thereof tri-party meetings were held on several dates in between 07.02.2017 to 06.09.2018.

P.W. Nos. 1 to 3 in their unchallenged oral evidence on affidavit stated about the same and in support of their such oral evidence records of the conciliation proceedings were produced from the office of the DLC, Bankura in this case.

In terms of the summons issued by this tribunal for production of documents DLC. Bankura, the same was produced by an authorised



representative of the DLC, Bankura who has been who has been examined on oath as P.W-2 in this case and documents have been marked as Exbt.2 to 7 in this case.

At this juncture, it must be mentioned here that it is settled proposition of law that the provisions of Indian Evidence Act, 1872 and Civil Procedure Code, 1908 are not strictly applicable in a proceeding under the I.D Act, 1947. In this regard, we may refer the case of **Palan Chandra Naskar Vs. Bank of Maharashtra**, LAWS (CAL) 2020 12 30 as decided by our Hon'ble High Court.

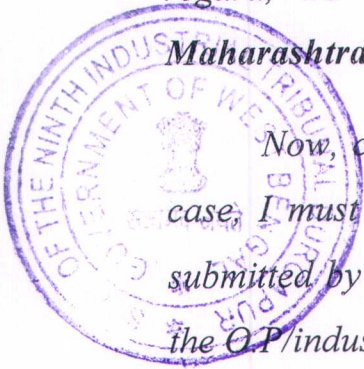
Now, coming back to our discussion with respect to the issue no.1 of this case, I must mention herein that the Exbt.3 i.e. Charter of Demands of 2016 submitted by the 3(three) Representative Unions representing workers unions of the O.P/industry prayed for enhancement of the wages and other service benefits.

It is evident from Exnt.4 i.e. Letter dated 17.11.2017 addressed by the representing union of the workers to the ALC, Bankura that they prayed for early intervention for settlement of the disputes developed for reluctance of the management of O.P/industry to consider their charter of demands, 2016.

After having meticulously gone through the entire Exbt.5 (series) i.e minutes of meetings I find that on received of Exbt.4 i.e. Letters of the representative unions, the ALC, Bankura issued notice to the Managing Director of the O.P/ Industrial establishment to attend the tri-party meeting on 13.02.2018. It is further evident from the Exbt.5(series) that number of the meetings were held till 05.04.2018 between the representative of the workers unions and the authorised representative of the O.P/industrial establishment regarding the charter of demands of 2016.

From Exbt.5/3 i.e Minutes of meeting dated 05.04.2018 it is evident that no agreement could be arrived at between the representative union of the workers and the management of the O.P/ industrial establishment regarding the charter of demands of 2016 and accordingly the ALC, Bankura clearly noted that "there is no further scope of conciliation in this matter. The case will be referred U/S 12 (4) of I.D.Act, 1948".

From such order sheet it is crystal clear the conciliation proceedings with respect to the charter of demands of 2016 has ended on failure on 05.04.2018 and





the ALC, Bankura send his failure report U/S 12(4) of the I.D.Act,1947 to the appropriate Govt. i.e. The Labour Deptt. Govt. of W.B.

It is pertinent to mention herein that the impugned suspension of work notice i.e. Exbt.6 was published on 21.07.2018. Accordingly, it cannot be said that suspension of work notice was published during the pendency of the conciliation proceedings before the DLC/ALC, Bankura, with respect to the workers' charter of demands,2016.

Sec.23 of the I.D.Act,1947 speaks about general prohibition of strikes and lock-outs and it provides as follows:-

No workman who is employed in any industrial establishment shall go on strike in breach of contract and no employer of any such workman shall declare a lock-out ---

(a) during the pendency of conciliation proceedings before a Board and 7 days after the conclusion of such proceedings;

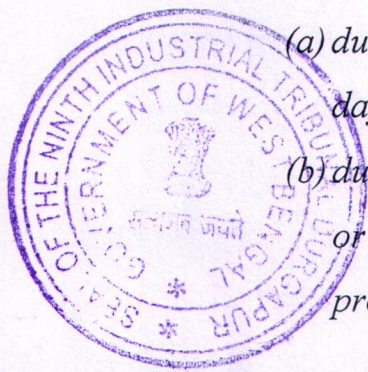
(b) during the pendency of proceedings before [ a Labour Court, Tribunal or National Tribunal] and two months, after the conclusion of such proceedings;

(bb) during the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings, where a notification has been issued under sub-sec.(3-A) of Sec. 10-A; or

(c) during any period in which a settlement or award is in operation, in respect of the matters covered by the settlement or award.

From clause(a) it is clear that neither the workman nor any industrial establishment shall go on strike in breach of the contract and no employer of any such contract shall declare a lock-out during pendency of conciliation proceedings before a board and 7 days after the conclusion of such proceedings.

From the evidence as available with the CR of the instant case and discussed herein above it is clear that the conciliation proceedings ended on failure on 05.04.2018 and notice of suspension of work was published on 02.07.2018, so it cannot be said that on the date of publication of notice of suspension of work i.e. Exbt.6 the conciliation proceedings between the parties



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was pending or the notice of suspension of work was published within 7 days after the conclusion of such proceedings.

Accordingly, I find no merit in the argument of the ld. lawyer that the notice of suspension of work dated 02.07.2018 is illegal because the same was published in violation of clause (a) of Sec.23 of the I.D. Act, 1947.

Workers' unions also challenged the notice of suspension of work dated 02.07.2018 on the ground of non-fulfilment of Sec.25M of the I.D.Act,1947 mainly on the ground that by virtue of the impugned notice the workers have been laid-off by the management of the industrial establishments without following the procedure as laid down therein.

Sec.25 M provides that ----

*Prohibition of lay-off – (1) No workman (other than a badli workman or a casual workman) whose name is borne on the muster-rolls of an industrial establishment to which this Chapter applies shall be laid-off by his employer except [with the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official Gazette (hereafter in this section referred to as the specified authority, obtained on an application made in this behalf, unless such lay-off is due to shortage of power or to natural calamity, and in the case of a mine, such lay-off is due also to fire, flood, excess of inflammable gas or explosion].*

*(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.*

*(3) Where the workmen (other than badli workmen or casual workmen) of an industrial establishment being a mine, have been laid-off under sub-section (1) for reasons for fire, flood or excess of inflammable gas or explosion, the employer, in relation to such establishment, shall, within a period of 30 days from the date of commencement of such lay-off, apply, in the prescribed manner to the appropriate Government or the specified authority for permission to continue the lay-off.*



(4) Where an application for permission under sub-section(1) or sub-section(3) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such lay-off, may, having regard to the genuineness and adequacy of the reasons for such lay-off, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

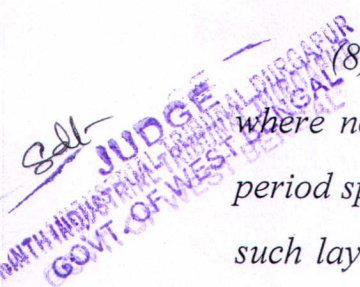
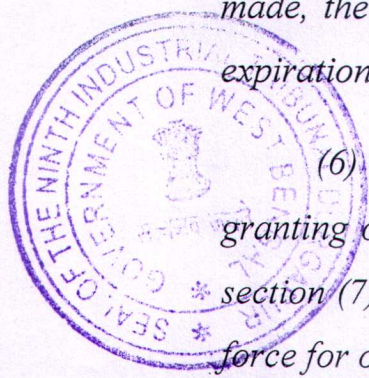
(5) Where an application for permission under sub-section(1) or sub-section(3) has been made, the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(6) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (7), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

(7) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section(4) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication.

Provided that where a reference has been made to a Tribunal under the sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(8) Where an application for permission under sub-section(1) is made, or where no application for permission under sub-section (3) is made within the period specified therein or where the permission for any lay-off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid-off and the workmen shall be entitled to all the benefits under any lay law for the time being in force as if they had been not laid-off.





(9) Notwithstanding anything contained in the foregoing provisions of e section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1), or, as the case may be, sub-section (3) shall not apply in relation to such establishment for such period as may be specified in the order.]

[(10)] The provisions of section 25-C (other than the second proviso thereto) shall apply to cases of lay-off referred to in this section.

Explanation :- For the purposes of this section, a workman shall not be deemed to be laid-off by an employer if such employer offers any alternative employment (which in the opinion of the employer does not call for any special skill or previous experience and can be done by the workman) in the same establishment from which he has been laid-off or any other establishment belonging to the same employer, situate in the same town or village, or situate within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the workman having regard to the facts and circumstances of his case, provided that the wages which would normally have been paid to the workman are offered for the alternative appointment also.

[**West Bengal**] – In its application to the State of West Bengal, in sub-S.(4) of S.25-M, for the words “two months” substitute “three months”. –W.B. Act 57 of 1980,S.17.

On perusal of the above provisions of law and especially sub-sec.(1) and (2) it is evident that some mandatory procedures are to be followed for laying off a workman whose name is borne on the muster rolls of an industrial establishment and the industrial establishment is not authorised to lay off any workman as per its whims and desire. Sub-sec.(2) clearly provides that an application for permission U/Sub-sec.(1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay -off and copy of the same shall be sent to the concerned workman. Other provisions of Sec.25M speak about grounds to be considered by the appropriate Govt. for consideration of such application and time limit.

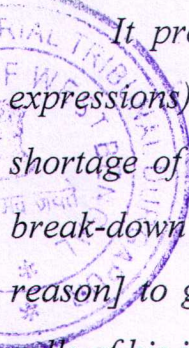
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Sub-sec.(8) clearly speaks about consequences for laying off of any such workman in contravention of sub-sec.(1) or (2) or (3) and the workers' entitlement of such illegal lay-off.

From my above discussion regarding Sec.25M of the I.D.Act,1947, it is crystal clear that the famous of the legislatures have laid down such provisions to control the hire and fire policy of workman by the industrialist.

Now, the question arises whether the impugned suspension of work notice of the industrial establishments does amount to lay-off of its workmen or not. But, to consider the same we are to go through the definition of "lay-off" as provided in Sec.2 (kkk) of the I.D.Act,1947.



It provides that "lay-off (with its grammatical variations and cognate expressions) means the failure, refusal or inability of an employer on account of shortage of coal, power or raw materials or the accumulation of stocks or the break-down of machinery [or natural calamity or for any other connected reason] to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Explanation : Every workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is not given employment by the employer within two hours of his so presenting himself shall be deemed to have been laid-off for that day within the meaning of his clause:

Provided that if the workman, instead of being given employment at the commencement of any shift for any day is asked to preset himself for the purpose during the second half of the shift for the day and is given employment then, he shall be deemed to have been laid-off only for one- half of that day:

Provided further that if he is not given any such employment even after so presenting himself, he shall not be deemed to have been laid-off for the second half of the shift for the day and shall be entitled to full basic wages and dearness allowance for that part of the day.

The said definition has been expanded by virtue of W.B. amendment of Explanation of Sec.2 (kkk) in the following manner :



"No workman whose name is borne on the muster rolls of the industrial establishment and who presents himself for work at the establishment at the time appointed for the purpose during normal working hours on any day and is given employment by the employer can be laid-off for that day but if any such workman is not given employment by the employer within two hours of his so presenting himself, he" – W.B Act, 37 of 1974, S.3 (w.e.f. 26.8.1974).

From the above discussed provision of law it is clear that refusal of employment by an employer on account of h reason as specified therein virtually means lay-off of workman.

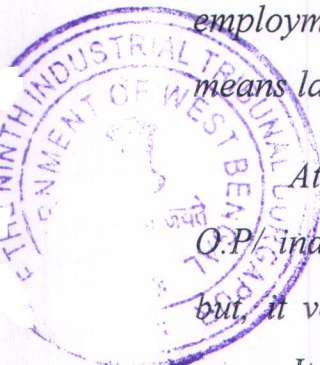
At this juncture, it must be mentioned that burden of proof lies upon the O.P./ industrial establishment to justify suspension of work in its establishment but, it voluntarily chooses not to prove the same by not contesting the instant case. In other words, there is nothing before this tribunal to hold that the O.P./employer has any of the reason, as provided in Sec.2(kkk) of the ID Act, to refuse or failure or inability to provide employment to its worker.

In my considered view, since the management of the Industrial establishment/O.P by publishing the impugned notice of suspension of work i.e. Exbt.6 on 02.07.2018 declared suspension of work without assigning the reasons as provided in Sec.2(KKK) of the I.D.Act,1947 with effect from that day till further notice, so it amounts to laid-off of its entire workforce.

I must mention herein that to come to such findings this tribunal has duly considered the intention of the management of the industrial establishment/O.P, as evident from the Minutes of meeting i.e Exbt.5 (series) as well as from the contents of the impugned notice suspension of work i.e. Exbt.6.

This apart, it is evident from Exbt.5/4,5/5 and 5/6 i.e Minutes of meeting dated 04.07.2018, 10.07.2018, 14.08.2018, 29.08.2018 & 06.09.2018 that process of settlement of dispute between the representatives of the workers' unions and the management of the industrial establishment/O.P with respect to the impugned notice suspension of work dated 02.07.2018 were again taken up by the DLC, Bankura for settlement but the same also yielded no result.

As I have mentioned herein above that the DLC, Bankura in the Minutes of meeting dated 05.04.2018 clearly observed that there is no scope of further conciliation with respect to the Charter of demands of 2016, so his action



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in taking up the matter for settlement with respect to impugned notice of suspension of work cannot be said as continuation of the conciliation proceedings initiated vide Exbt.4.

However, from my above discussion concerning the provisions of law regarding Sec.25M and Sec.2(kkk) of the I.D.Act.1947, I am of the view that the evidence from the side of the representative workers' unions are cogent and reliable to come to the findings that the workmen have been laid-off illegally by virtue of impugned notice of suspension of work. Consequently, the industrial management of O.P was/is not justified in declaring suspension of work by virtue of its notice dated 02.07.2018 i.e Exbt.6. Accordingly, I decide the issue no.1 in favour of the representative unions.

**Issue No.2 :-**

The instant issue speaks about the entitlement of reliefs to the workman,

To consider the same we are to go back our discussion of Sub-sec.(8) of Sec.25M of the Act of 1947, as the same speaks about the same.

The said provision provides that in case of illegal lay-off of the workman, the workman shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

This tribunal while deciding the referred issue no.1 has already come to the finding that the impugned suspension of work declared by the management is actually laid-off and the same was declared without following the mandatory procedure as laid down in above discussed sub-section(1), (2) & (3) of the sec. 25 M of the I D Act. Accordingly, by virtue of sub-section (8) & sec.25M of the Act of 1947 all the workmen represented by the 3 representative workers' unions shall be entitled to all legitimate claims/benefits from the date of actual laid-off i.e. 02.07.2018. Thus, the referred Issue No.2 is disposed of accordingly.

Thus, both the referred issues are disposed of accordingly.

The instant proceeding succeeds on exparte.

Hence, it is

*sd/-*  
JUDGE  
NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL



**ORDERED**

that proceeding U/S 10 of the I.D.Act, 1947 succeeds in exparte against the O.P/ M/S BKM Industries Limited , but without cost and the notice of suspension of work dated 02.07.2018 is hereby declared as unjustified and the workers represented by all the 3 (three) representative unions are entitled to all legal benefits under the prevailing law from 02.07.2018. Accordingly, an award is passed to that effect.

Sent a copy of this award to the Principal Secretary, Labour Department, Government of West Bengal for his doing the needful.

D/C by me

*Sd/- Sujit Kumar Mehra*  
Judge. 29.11.22.

**JUDGE**  
**NINTH INDUSTRIAL TRIBUNAL DURGAPUR**  
**GOVT. OF WEST BENGAL**

*Sd/- Sujit Kumar Mehra*  
Judge 29.11.22.

9<sup>th</sup> Industrial Tribunal

Durgapur  
**JUDGE**  
**NINTH INDUSTRIAL TRIBUNAL DURGAPUR**  
**GOVT. OF WEST BENGAL**