

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. Labn./10081 (LC-IR)

Date .....24.12.18

ORDER

WHEREAS an industrial dispute existed between M/S: Silk Inspection Agency, 227, A.J.C. Bose Road, Kolkata-700020 and their workman Sri Monoj Kumar Shaw, 15B, Hossain Shah Road, Kolkata-700023 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 Judge of the said Industrial Tribunal heard the Parties and framed the following issues as the "Issue" of the said dispute;

ISSUES

1. Whether the present adjudication is maintainable in both facts and law ?
2. Whether the alleged termination of service of Sri Monoj Kr. Shaw under the alleged refusal of employment is Justified or not ?
3. To what relief the workman is legally entitled to get ?

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,



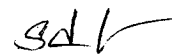
Deputy Secretary  
to the Government of West Bengal

No. 1008/1(2) - IR

Dated 24.12.18

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 2158 dated 02/11/2018.
2. The Joint Labour Commissioner (Statics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. 1008/2(5) - IR

Dated 24.12.18

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

1. M/s Silk Inspection Agency, 227, A.J.C. Bose Road, Kolkata-700020 .
2. Sri Monoj Kumar Shaw, 15B, Hossain Shah Road, Kolkata-700023 .
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Building (11<sup>th</sup> 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.63/2A(2)/2015**

**Sri Monoj Kumar Shaw**  
15/B, Hossain Shah Road, Kolkata-700023

... Applicant

*Versus*

**M/s. Silk Inspection Agency**  
227, A.J.C. Bose Road, Kolkata-700020

... OP/Company

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**A W A R D**

**Dated : 29-10-2018**

1. The instant case arose when Sri Monoj Kumar Shaw of 15/B, Hossain Shah Road, Kolkata-700023, hereinafter referred to as the applicant, filed an application purportedly under Section 2A(2) of the Industrial Disputes Act, 1947 on 02.02.2015 against M/s. Silk Inspection Agency of 227, A.J.C. Bose Road, Kolkata-700020, hereinafter referred to as the OP/Company alleging therein, inter alia, that he was a long serving workman under the OP/Company and that his such employment had been unlawfully terminated/retrenched by them and that he was entitled to a declaration to the effect that such termination of his service by way of refusal of employment by the OP/Company was unjustified, uncalled for and illegal, with further prayers for reinstatement in his service of the OP/Company with full back-wages and other consequential benefits.
2. Upon registration of the instant case on 02.02.2015, copies of the application together with notice of the proceedings were despatched by registered post with A.D. to the OP/Company at their given address with the direction upon them to appear on 25.01.2016 and file written statement in reply, if any. Records further reveal that on

*sd/-*  
Judge  
Seventh Industrial Tribunal



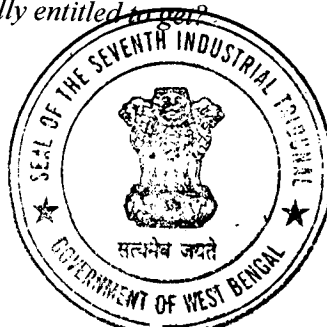
such date fixed, the OP/Company appeared through their Ld. Advocates, however they filed their written statement on the extended date 26.02.2016.

3. The case of the applicant briefly is that he came to be employed under the OP/Company on 10.04.1999, on the basis of a letter of appointment issued by them on 01.04.1999 and that he had discharged uninterrupted, continuous service without an iota of blemish, though the applicant has claimed that the OP/Company administered the office-discipline arbitrarily and vindictively and, though the OP/Company was an employer coming under the purview of the West Bengal Shops & Establishment Act 1965, but they did not follow the statutory-provisions as well as the obligations prescribed therein with a view to victimise the poor employees by adopting 'hire and fire' policy and that, the OP/Company did not even extend the benefits of ESIC and provident fund to its employees, in violation of the statutory mandate. It is the further case of the applicant that he had gone to his office as usual on 16.09.2015, however, he was refused employment despite his repeated requests as well as written representation, in respect thereof. It is the further case that while refusing him employment, the OP/Company had not initiated any disciplinary action nor issued any show-cause notice or charge-sheet and neither did they conduct any domestic enquiry against him, to provide him an opportunity to defend himself, and as such, his termination of service by way of refusal of employment w.e.f. 16.09.2015, was a case of retrenchment and since the OP/Company had not paid him any retrenchment compensation nor followed the provisions of Section 25F of the Industrial Disputes Act, 1947, such termination/retrenchment of his services were illegal and void ab initio and was liable to be set-aside and the applicant was entitled to be reinstated in his service with full back wages and other consequential benefits for the period of forced idleness, so created by the OP/Company by violating the laws of the land.

4. With a view to rebut the aforesaid contentions of the applicant, the OP/Company by their written statement filed on 26.02.2016 stated that except the contents of paragraphs Nos. 1 and 2, which were true and admitted by them, the contents of remaining paragraphs Nos. 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 were false, concocted and frivolous in nature and were based on afterthought, as the employment of the applicant was terminated as per the terms and conditions of the appointment letter and that the applicant was given notice well in time and further the applicant was also granted full and final settlement by way of a cheque and that, the applicant had resigned on his own personal decision without any force or coercion upon him and that, for some ulterior motive the applicant, after having received and encashed the full and final settlement cheque, had initiated the present proceedings to harass the OP/Company for his own material gain by wrongful means. Further, the OP/Company disputed the baseless contents and averments of the applicant by putting him to strict proof thereof, and further claimed that the applicant had never approached the Labour Commissioner, Govt. of West Bengal, as claimed in para. 14 of his statement, as the OP/Company did not receive any intimation from the office of the Labour Commissioner or the conciliatory authority, and hence the OP/Company claimed that they were entitled to be discharged from the instant case and the prayers of the applicant deserved to be refused.

5. On the basis of the pleadings of the parties, this Tribunal framed 3 (three) Issues on 06.06.2016 and posted the matter on 11.08.2016 for hearing of the case on merit, directing the applicant to lead evidence, if any, and those 3 (three) Issues are as follows:-

1. *Whether the present adjudication is maintainable in both facts and law?*
2. *Whether the alleged termination of service of Sri Monoj Kr. Shaw under the alleged refusal of employment is justified or not?*
3. *To what relief the workman is legally entitled to get?*



6. Leading evidence in support of his contentions in the application, the applicant examined himself as PW-1 on 22.12.2016, 11.03.2017 and on 07.06.2017, on which date PW-1 was also cross-examined in part, and thereafter PW-1 was cross-examined in full and discharged on 20.07.2017, and during such examination the documents relied upon by the applicant were taken into evidence and marked **Exhibit-1 to 1/3 series**.
7. In support of their contentions, as well as to rebut the contentions of the applicant, the OP/Company examined Santanu Samaddar, one of their employees, as OPW-1 on 16.11.2017 and upon his identification the documents relied upon by the OP/Company were taken into evidence and marked **Exhibit-A to A/2 series**, and thereafter OPW-1 was cross-examined in part on that date and further cross-examined on 17.05.2018 and 28.06.2018, on which date OPW-1 was discharged and further, on the prayer of the OP/Company, their evidence came to a close.
8. The arguments of both parties were heard on various dates and lastly on 06.09.2018, and both parties have submitted their respective written notes of arguments which have been incorporated with the records.
9. The point of determination therefore is to examine if the applicant has complied with the statutory mandate and has been able to establish his case by cogent and consistent evidence in the light of various provisions of the Industrial Disputes Act, 1947 and to further examine if the applicant is entitled to any relief(s), as prayed for or otherwise, in the light of the facts of this case and the laws of the land.

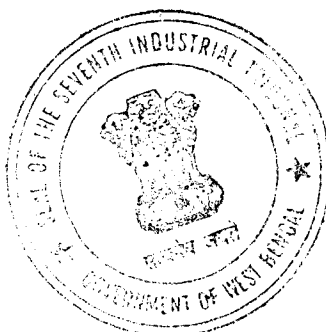


**Decision with Reasons**

**Issue No. 1 : Whether the present adjudication is maintainable in both facts and law?**

10. As was noted earlier, the applicant had preferred the instant application purportedly under **Section 2A(2)** of the Industrial Disputes Act, 1947 and had alleged, inter alia, violation of provisions of Section 25F of the said Act by the OP/Company, while terminating his employment, by refusal thereof w.e.f. 16.09.2015, and on the basis thereof the applicant had prayed for relief of reinstatement in the services of the OP/Company, with direction upon them to pay full back-wages and consequential benefits. On the other hand, rebutting the claims made in the application, the OP/Company in their written statement had stated, inter alia, that **the instant case was not maintainable in the eyes of law** for the reason that the applicant had never lodged any complaint/representation with the Labour Commissioner, Govt. of West Bengal, as he had claimed in para. 14 of his application, and further the OP/Company had never received any intimation and/or letter or other documents in connection with any such complaint/representation/conciliation from the office of the Labour Commissioner, and further the OP/Company also stated (*at para. 13*) that the applicant had suppressed such material facts before this Tribunal as he had never approached the office of the Labour Commissioner, even though the applicant had tried to make-out a ground that he was approaching this Tribunal under Section 2A(2) of the Industrial Disputes Act, 1947, as he did not get effective response from the said office.

11. In view of such specific pleadings on the point, it would be helpful to revisit the provision of Section 2A(2) of the Industrial Disputes Act, 1947 as amended by Industrial Disputes (Amendment) Act, 2010 [No.24 of 2010 w.e.f. 15.9.2010], with a view to ascertain the scheme prescribed therein, and the provisions are as follows :-



**2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-** (1) 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;

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

12. From the provisions aforesaid, more particularly of **sub-Section 2 of Section 2A**, as introduced by the aforesaid amendment, it is clear that a Labour Court or a Tribunal **would derive** its powers and jurisdiction to adjudicate upon a dispute **only if** it receives an application which has been made by an individual workman (*as specified in sub-Section 1*) **after expiry of forty-five days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute**. Needless to state, while ushering in the amendments the legislative wisdom introduced the aforesaid **pre-condition**, and to ensure that the process of '**conciliation**' **between the parties would not be bypassed** it was specified that the very power and jurisdiction of the Labour Court or the Tribunal to entertain and/or adjudicate such alleged dispute, would **not exist** if such application to the conciliation officer was not made.

13. In light of the provisions of Section 2A(2) of the Industrial Disputes Act, 1947, as aforesaid, this Tribunal examined the **Annexure-A** to the application, that was mentioned at para. 14 thereof, and found that it was a demand of justice addressed to

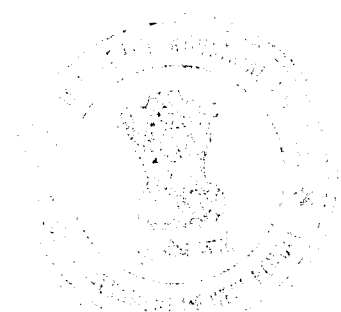




M/s. Silk Inspection Agency of **17V, Dover Terrace, Kolkata**, a copy whereof appears to have been received on 05.10.2015 by the office of the Labour Directorate, West Bengal. This Tribunal also noted that another address '**7C, Kiran Sankar Roy Road, Kolkata-700001**' had been apparently inserted in black-ink, by the side of the earlier address of M/s. Silk Inspection Agency, even though the signature of the applicant appears in blue ink and apparently in a different hand-writing, and there is nothing else to indicate whether such second address was inserted before or after the receipt stamp had been put by the office of the Labour Directorate, as aforesaid, on 05.10.2015. In this context, this Tribunal also noted that the instant application filed by the applicant on 02.12.2015 is directed against 'M/s. Silk Inspection Agency' of **227, A.J.C. Bose Road, Kolkata-700020**.

14. In light of the aforesaid facts, as appear from the application as well as Annexure-A thereto, both of which are documents **authored and submitted by the applicant**, it is clear that the applicant had submitted representation/demand of justice/prayer for conciliation against **one entity**, while he had **filed the instant case against another entity**. There is no explanation anywhere in the application as to why such discrepancy/variation appears in the application as well as Annexure-A thereto. This Tribunal also looked for any such explanation in the affidavit-in-chief of the applicant (as PW-1) but failed to find any testimonial to that effect.

15. Considering the gravity of the consequences of such discrepancy, and its outcome on the jurisdiction and powers of this Tribunal, and also considering that the letter and spirit of the Industrial Disputes Act, 1947 requires the Labour Courts/Tribunals functioning thereunder to be mindful that the relief-seekers before them are mostly uneducated labourers/workmen, from whom clear and sound understanding of law should not be expected and who may also not have recourse to good legal assistance



before coming to such adjudicatory authorities, this Tribunal traversed further and noted that the letter of appointment (*Exhibit-1*) brought on record by the applicant himself shows that it was issued to him by 'M/s. Silk Inspection Agency (Props : Saxon Properties & Investments Pvt. Ltd.) of 7-C, **Kiran Sankar Roy Road, Calcutta-700001**' on 01.04.1999, however this Tribunal also noted that the letter of termination dated 16.09.2015 relied upon by the applicant (*Exhibit-1/1*) reflects that the address of the employer therein is '**227, A.J.C. Bose Road, Kolkata-700 020**', which is the same address as appears in the cause-title of the instant application. On that score, this Tribunal also noted that the said addresses of the employer, as were mentioned in the letter submitted before the conciliatory authority, do not appear to be mentioned (as **alternate or additional** address) in the cause-title of the application filed before this Tribunal.

16. In the aforesaid backdrop, and in light of facts as appear from the materials on record, this Tribunal finds substance in the contention of the OP/Company to the effect that they never got any notice of 'conciliation' from the concerned authority of the State Government, and it reflects from the materials on record that there has not been any statutory conciliation between the applicant and the OP/Company, as named and described in the application's cause-title, and hence there has been a failure to comply with the statutory mandate of Section 2A of the Industrial Disputes Act, on part of the applicant, and such non-compliance is found to be fatal to the instant case.

17. In light of the aforesaid facts, as well as in light of the evidence and materials before this Tribunal, it is held that the applicant has failed to establish that he has complied with the statutory mandate of Section 2A(2) of the Industrial Disputes Act, 1947 and hence, it is further held that this Tribunal **lacks jurisdiction and powers to enter any further in the alleged industrial dispute**, or at all, and accordingly, the instant

application is found to be not maintainable, in the facts as well as in the eyes of law, and is hence liable to be rejected on such ground.

**The Issue No.1 is accordingly answered.**

**Issue Nos. 2 & 3 :**

In view of the findings recorded above in respect of Issue No. 1, on the point of maintainability of the instant application, there is no scope to travel any further in the matter.

Hence,

IT IS,

**ORDERED**

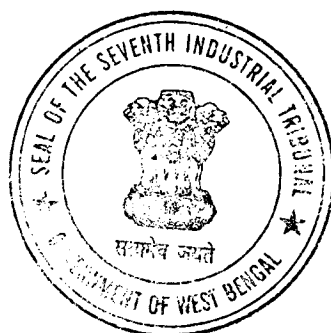
The instant case being No.63/2A(2)/2015, in its facts and circumstances, is found and held to be not maintainable, for lack of statutory compliance, and is accordingly dismissed.

In the circumstances of the matter, however there shall be no order as to costs.

The aforesaid shall constitute the **Award** passed in the instant case No.63/2A(2)/2015, which shall stand disposed of, **on contest**.

Dictated & corrected by me

*sd/-*  
Judge  
Seventh Industrial Tribunal



*sd/-*  
Judge  
Seventh Industrial Tribunal  
29/10/2018  
Judge  
Seventh Industrial Tribunal

*sd/-*  
Judge, 7<sup>th</sup> Industrial Tribunal, W.B.  
Judge  
Seventh Industrial Tribunal