

I/139228/2021

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/1203/( LC-IR ) /22015 ( 16 ) /12/2021

Date : 16/07/2021

**ORDER**

WHEREAS an industrial dispute existed between M/s Aditya Birla Nuvo Ltd., Unit Jayashree Textiles, Rishra, P. O.-Pravashnagar, P.S.-Serampore, Dist. Hooghly, Pin-712249. and Sri Thakurjee, S/o. Late Rajgiri Thakur, 19/8, N. S. Road, Rishra, Hooghly, Pin-712249 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Third Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Judge of the said Third Industrial Tribunal, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS the said Judge Third Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) 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,

sdt  
Deputy Secretary

to the Government of West Bengal

I/139228/2021

: 2 :

No. Labr/ <sup>1203/1(4)</sup> /.../(LC-IR)Date : <sup>16/07</sup> /2021

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

1. M/s. Aditya Birla Nuvo Ltd., Unit Jayashree Textiles, Rishra, P. O.-Pravashnagar, P.S.-Serampore, Dist. Hooghly, Pin-712249
2. Sri Thakurjee, S/o. Late Rajgiri Thakur, 19/8, N. S. Road, Rishra Hooghly, Pin-712249
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
3. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Buildings, (11<sup>th</sup> Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
4. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

  
Deputy Secretary

No. Labr/ <sup>1203/2(2)</sup> /.../(LC-IR)Date : <sup>16/07</sup> /2021

Copy forwarded for information to :-

1. The Judge, Third Industrial Tribunal, West Bengal, with respect to his Memo No. 565 -L.T. dated 16.04.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

Ananda (IT Cell)  
GR 27/7.



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

Present: Shri Sanjeev Kumar Sharma, Judge,  
Third Industrial Tribunal, Kolkata.

**CASE NO. 01/2016**

**Under Section 10(1B) (d) of the Industrial Disputes Act, 1947**

Sri Thakurjee  
S/o. Late Rajgirh Thakur,  
19/8, N.S. Road, Rishra, Hooghly, PIN-712249.

... Applicant

-Versus-

M/s. Aditya Birla Nuvo Ltd.  
Unit : Jayashree Textiles, Rishra, P.O. Pravashnagar,  
P.S.-Serampore, District-Hooghly, PIN-712249.

... OP/Company

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**A W A R D**

**Dated :- 05-04-2021**

The instant application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 is filed by the applicant Sri Thakurjee stating that he was a workman of the OP/Company having his Token No.6442, P.F. No.7915, P.F. Code No. WB/151/1907 and ESI No. 4107176667. The workman further states that his service was terminated on and from 01.01.2013 in the garb of retirement though his actual date of birth is 31.12.1958 and his retirement was due on 01.01.2017. He further states that his date of birth has correctly been mentioned in his ESI Card, but the company retired him wrongfully assuming his date of birth as 31.12.1954 and due to such erroneous decision of the company, he suffered loss of earning for four years. He made representation before the company management ventilating his grievances on 23.01.2015 but the company did not pay any heed. On 17.08.2015 against, the applicant submitted representation by a letter reiterating that his date of birth was 31.12.1958 and he was wrongfully retired. He further submitted that the provident fund authority could not process his pension benefits due to error on the part of the company. Since the management did not consider the representation of the applicant, he referred the matter to the Deputy Labour Commissioner, Serampore through a letter dated 08.04.2015 on the basis of which the conciliation proceedings was started, but when the conciliation proceeding did not yield any result he applied for issuance of a certificate and consequently he obtained the certificate and filed this case. The applicant further pleads

Contd.....



that he could not file the instant application within stipulated time from the date of issuance of the certificate due to his family problems, physical ailments and economic stringency arising out of wrongful termination of his service. The applicant prayed for passing award holding that the termination of his service w.e.f. 01.01.2013 in the garb of retirement was illegal and he made prayer for his reinstatement in service with all back wages and other consequential benefits.

Upon their appearance on receiving notice, the company filed its written statement stating that the application was not maintainable as the preconditions for invoking Section 10(1B)(d) were absent and that after introduction of Section 2A(2) and 2A(3) in the I. D. Act, Section 10(1B)(d) became otiose. The company also pleads that the application is barred by limitation as well as by the principles of estoppel and acquiescence. The case of the company is that as the notice of retirement was served upon the applicant two months prior to his retirement and after his retirement the workman accepted all his final dues without any protest. It pleaded that the applicant after receiving all his terminal benefits has brought this frivolous application after lapse of more than three years. According to the company, the applicant joined service on 01.07.1981 and retired w.e.f. 01.01.2013 on attaining his age of superannuation i.e. 58 years. The declaration submitted by the applicant to the company's P.F. Institution records his year of birth as 1950, but due to clerical error on the part of the company the applicant enjoyed four extra years of service. The company denied and disputed the allegations made by the applicant and accented that there was no wrongful termination of service of the applicant and the applicant having validly retired was not entitled to any relief in this case.

The following issues were framed in this case :-

#### I S S U E S

1. Whether the application of the applicant / applicant filed under Section 10(1B)(d) of the Industrial Disputes Act, 1947 is maintainable in its present form and prayer in law ?
2. Whether the termination of service of the applicant / applicant by the management of the OP/Company in the garb of retirement w.e.f. 01.01.2013 is justified ?
3. Whether the present application of the applicant / applicant is barred by law of limitation ?
4. To what other relief / reliefs, if any, the applicant / applicant is entitled?



In support of his case the applicant examined himself as PW-1 and brought on record the following documents :-

1. Copy of identity card issued by ESIC as Exhibit-1;
2. Copy of duplicate identity card issued by the ESIC as Exhibit-1/A;
3. Copy of pay slip of the applicant for December, 2012 as Exhibit-2;
4. Copy of notice of retirement as Exhibit-3;
5. Copy of applicant's letter dated 23.01.2015 to company as Exhibit-4;
6. Copy of applicant's letter dated 17.8.2015 to company as Exhibit-5;
7. Copy of applicant's letter to the Deputy Labour Commissioner, Serampore as Exhibit-6;
8. Copy of company's certificate in the name of the applicant as Exhibit-7;
9. Copy of Form P-4 as Exhibit-8; and
10. Copy of company's letter to the Assistant PF Commissioner, Howrah as Exhibit-9.

The company examined its Administrative Manager Rakesh Pandey as OPW-1 and brought the following documents on record:

1. Signature of the applicant on PF Declaration Form and the P.F. Declaration form as Exhibit-A & Exhibit-A/1 respectively;
2. Signature of the applicant in Form-I as Exhibit-B;
3. Copy of notice of retirement as Exhibit-C;
4. Copy of the letter of the company dated 22.05.2015 addressed to the Assistant Labour Commissioner as Exhibit-D;
5. Copy of P.F Statements of the applicant as Exhibit-E; and
6. Copy of letter dated 20.05.2015 of the company addressed to Branch Manager, ESIC, Rishra as Exhibit-F.

### **Decision with reasons**

#### **Issue Nos. 1 and 3**

Learned advocate for the company raises the point of maintainability of the proceeding on the grounds that it is barred by limitation as well as by the principles of waiver, acquiescence and estoppel. He contends that the applicant was served with notice of retirement well in advance but the applicant did not raise any dispute rather after his retirement he accepted all the terminal benefits without any protest and after about three years he raised the dispute. He cites the decision of the Hon'ble Supreme Court in *Haryana State Coop. Land Development Bank Ltd. Vs Neelam* reported in **2005 LLR 483** and submits that the principles of waiver, acquiescence and estoppel are very much applicable



to Industrial proceedings. He also cites the decisions of the Hon'ble Supreme Court in **Bhagwat Sharan Vs Purushottam** reported in (2020) 6 SCC 387 and submits that after accepting all the terminal benefits the applicant cannot challenge his valid retirement on his attaining the age of superannuation. He contends that the instant proceeding is barred by limitation. Learned advocate for the applicant on the other hand submits that the applicant is an uneducated workman, he trusted upon his employer and only on coming to know about his actual date of birth due to delay in receiving pension and then he raised the issue. He further submits that the principles of waiver, acquiescence and estoppel are not applicable to industrial disputes and cites the decision of the Hon'ble Supreme Court in **Guest, Keen, Williams PR. Ltd. Vs P. J Sterling** reported in **Laws (SC) 1559 528 (AIR 1959 SC 1279)**.

This is an application u/s 10 (1B) (d) of the Industrial Dispute Act as amended in W.B. The applicant raised a dispute as to the date of his birth and superannuation. On 23.01.2015 the applicant raised the dispute with the company through his letter (Exhibit-4) and on 08.04.2015 through his letter dated 08.04.2015 (Exhibit-6) the applicant raised the dispute with Dy. Labour Commissioner, Serampore. As no settlement could be arrived during the conciliation the applicant applied for certificate to the concerned conciliation officer on 03.09.2015 and the certificate was give to him on 08.09.2015. The instant application was filed on 05.10.2016. Premature retirement as alleged certainly amounts to dismissal or termination of service as such there appears no impediment is filing this case. The facts alleged and denied are certainly subject to proof by evidence. So far, the question of limitation is concerned, we find that the term may has been used in clause (c) of section 10 (1B) of the I. D. Act. The Act is a labour welfare legislation. No strict period of limitation having been provided I find that the bar of limitation as such is not attracted in this case. Coming to the contention of bar of waiver, acquiescence and estoppel we find that in **Haryana State Coop. Land Development Bank Ltd. Vs Neelam** the Hon'ble Supreme Court held, "It is trite that the courts and tribunals having plenary jurisdiction have discretionary power to grant an appropriate relief to the parties. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman but the same by itself would not mean that irrespective of his conduct a workman would automatically be entitled to relief. The procedural laws like estoppel, waiver and acquiescence are equally applicable to the industrial proceedings. A person in certain situation may even be held to be bound by the doctrine of Acceptance Sub silentio. The Respondent herein did not raise any industrial dispute questioning the termination of her services within a reasonable time. She even accepted an alternative employment and has been continuing therein from 10-8-1988." In **Guest, Keen, Williams** case, where there was reference u/s 10 of the I. D. Act,



the Hon'ble Supreme Court held, "In dealing with industrial disputes the application of technical legal principles should as far as is reasonably possible be avoided. Workmen affected by standing orders may not always and in every case succeed in obtaining a reference to the industrial tribunal on the relevant points. That is why the tribunals should be slow and circumspect in applying the technical principles of acquiescence and estoppel in the adjudication of industrial disputes. If a dispute is raised after a considerable delay which is not reasonably explained the tribunal would undoubtedly take that fact into account in dealing with the merits of the dispute. But unless the relevant facts clearly justify such a course it would be inexpedient to throw out the reference on preliminary technical objections of acquiescence and estoppel."

Looking at the two decisions carefully I do not find any divergence between them what we find is that the established principle is that the principles of waiver, acquiescence and estoppel are applicable to industrial disputes but it is only the unexplained delay and laches which are material and when the facts of the case can justify a course of action a cause cannot be thrown out merely on the technical considerations. Whether the delay caused in filing the case and the action of the applicant is justified or not or what is its impact on the case can be decided only on appreciating the evidence on record which will be discussed in the following issues.

The decision in **Bhagwat Sharan** case reiterates the doctrine of election. The payment of gratuity and provident fund are regulated and mandated by law and it cannot be said that by accepting the same the applicant took any advantage/privilege from the company in lieu of his retirement and by virtue of the doctrine of election he is debarred from raising industrial dispute. In view of the nature of the case, the decision is not applicable in this case.

In the light of the above discussions the issues of maintainability and limitation are answered in favour of the applicant.

#### **Issue Nos. 2 and 4**

These are the most important issues in this case. Learned Advocate for the OP/Company, referring to cross-examination of PW-1, submits that the applicant admitted that he received the notice of retirement and he also received the amount of gratuity. He further submits that the ESIC card (Exhibit-A) is always supposed to be in the custody of the applicant but applicant remained silent after retirement and after a long gap he claimed that his year of birth was 1958. He further contends that it is not a case of dismissal, retrenchment or refusal, but it is a case of retirement. He points that Exhibit-A and A1, the members declaration form of Jaya Shree P. F. Fund Institution and signature of the



applicant thereon and submits that the applicant himself declared his year of birth as 1950. He contends that the age of retirement being 58 years the applicant already served four extra years than his actual date of retirement and he is not entitled to any relief.

Learned advocate for the company refers to the decision in (i) ***Bharat Coking Coal Ltd. vs. Shyam Kishore Singh***, reported in (2020) 3 SCC 411; (ii) ***Golak Singh vs Bharat Coking Coal Ltd. ( W. P. (S) 1480 OF 2020 of the Hon'ble Jharkhand High Court)*** and (iii) ***Ram Manohar vs State of U.P. (WRIT – A No. - 44734 of 2015 of the Hon'ble Allahabad High Court)***

Learned Advocate of the applicant on the other hand submits that the applicant is an illiterate person and after superannuation when he did not get pension, he made enquiry and came to know that his date of birth was 31.12.1958 and as soon as he came to know the fact, he raised the matter with the company and when he did not get any relief he raised the dispute with the conciliation officer. He contends that the premature retirement of the applicant amounts to retrenchment. Referring to Exhibit-1 he submits that the date of birth has been recorded as 31.12.1958 in the document which has been issued by the ESI Authority. He further submits that the illiterate applicant had no knowledge of the affairs of the Company. Referring to the cross-examination of OPW-1 the learned advocate submits that the witness could not explain why exhibit-A was submitted on 17.02.1995 when his date of joining was recorded as 01.07.1981. He highlights that Exhibit-G, records the year of birth of the applicant as 1958. Referring to Exhibit-9 the learned advocate submits that the company admitted that due to clerical mistake the date of birth of the applicant was entered as 1958 in 3 EPS. He further contents that the decision of ***BCCL vs. Shyam Kishore Singh***, referred to by the company, is not applicable in this case as in that case the company was a government company, but in this case it is a private company and moreover, no document of date of birth was produced in that case. He submits that there is a vast difference between government and private employment and while opportunity to verify and seek change in the service record was given to the applicant, but no opportunity to the applicant was given in this case. He submits that the service of the applicant has been wrongfully terminated by the company as such the applicant is entitled to full back wages.

Learned advocate for the applicant cites the decisions in ***Bhupesh Chandra Ghosh vs. Commissioner of Police***, reported in 1992 SCC Online Calcutta 250; ***Shobharam Raturi vs. Haryana Bidyut Prasaran Nigam Ltd.***, reported in (2016) 16 SCC 663; ***Reserve Bank of India vs. C.T. Dighe***, reported in (1981) 3 SCC 545, ***Workmen of Subong Tea Estate vs. Outgoing Management of Subong Tea Estate*** reported in Laws (SC) 1963 12 24 and ***Raghubir Singh Vs Haryana Roadways*** reported in (2014) 10 SCC 301.

The gist of the applicant's case is that he was wrongfully superannuated as he had four more years of service left in the company. He claims his year of birth is 1958 contrary



to the company's case that his year of birth is 1950. The applicant mainly relies on the date of birth recorded on the ESI Card. Evidently, no birth certificate or any school certificate has been produced by the applicant to prove his date of birth. Exhibit-1 is the copy of ESI Card, wherein date of birth of the applicant is recorded as 31.12.1958. Exhibit-1/A is the copy of duplicate identity card issued by ESIC which records the date of birth of the applicant as 01.07.58. The claim of the applicant in his pleadings as well as evidence is that his actual date of retirement was 01.01.2017. We, therefore, find that there is no dispute that the age of retirement was 58 years. If the year of birth of the applicant is taken as 1950 as recorded in the Exhibit-A1 then his date of retirement cannot be 01.01.2013. Exhibit-C is the letter dated 01.01.2012 of the company addressed to the applicant receipt of which is admitted by the applicant. The notice of superannuation was issued upon the applicant two months prior to his date of retirement, but the applicant did not raise any dispute. Exhibit-5 is the copy of letter dated 23.01.2015, written by the applicant to the company, whereby he claimed for the first time that his date of birth was 31.12.1958. He demanded the unpaid dues from 01.01.2013 to 31.12.2016. Exhibit-6 is the copy of the letter dated 08.04.2015 written by the applicant to the Deputy Labour Commissioner, Serampore, claiming that he was wrongfully retired on 01.01.2013 instead of 01.01.2017. Exhibit-B is the copy of application for gratuity submitted by the applicant to the company on 21.03.2013. In this document also the date of retirement is written as 01.01.2013. In ***Bharat Coking Coal Ltd. Versus Shyam Kishore Singh***, referred to by the company, the Hon'ble Supreme Court observed that the Hon'ble Court has consistently hold that the request for change of date of birth in the service records at the fag end of the service is not sustainable and also that even if there was good evidence to establish that the recorded date of birth was erroneous, the correction cannot be claimed as a matter of right but this is not a case of correction of the birth date. In ***Bhupen Chandra Ghosh versus Commissioner of Police***, referred to by the applicant, where the employee police personnel requested the correction of his date of birth in his service book on the basis of school certificate, the Hon'ble Calcutta High Court observed that no hearing was given to the petitioner by the concerned authorities even when he made a representation supported by documentary evidence for correction of his age in service book. The Hon'ble Court further observed that what was worse was that the authorities concerned did not even informed the petitioner that his representation was ever or at all considered not to speak of assigning any reason as to why his representation and the documents produced in support thereof could not be accepted. In ***RBI vs C.T. Dighe***, referred to by the applicant, the Hon'ble Supreme Court held that the date of birth must be determined by holding an enquiry after giving notice of hearing to the effected employee. In that case it was admitted position that the alteration in the



accepted date of birth on the basis of high school certificate was made without giving opportunity of hearing to the applicant.

Evidently the company retired the applicant assuming his date of birth as 31.12.1954. In exhibit-9 the company asserted that the date of birth of the applicant was 31.12.1954 but no document to that effect has been produced by the company from its record. The oldest document available in this case is the register of ESIC (exhibit-G) which records the year of birth of the applicant as 1958 and his date of joining as 30.03.1978. The register also bears the signatures of the applicant and representative of the company and also the seal of the company. Exhibit-A1 records the year of birth of the applicant as 1950 and date of joining as 01.07.1981. It is noticed that the document was prepared on 17.02.1995. OPW1 failed to explain that when the applicant joined service on 01.07.1981 why the members' declaration was taken on 17.02.1995. Evidence of OPW1 to the effect that the applicant ought to have been retired on and from 01.01.2009 but due to clerical error he served four extra years is contradictory to his own version that the applicant validly retired on 01.01.2013 on attaining the age of 58 years and also to exhibit-9 which asserts the date of birth of the applicant as 31.12.1954. The pleadings and evidence of the company nowhere says that the date of birth of the applicant was 31.12.1954. Thus, the date 31.12.1954 mentioned in exhibit-9 is found to be imaginary only to support company's claim that the applicant was validly superannuated on and from 01.01.2013. If the year of birth of the applicant recorded in exhibit-A1 is correct then the date of retirement of the applicant cannot be 01.01.2013. The company is certainly managed by expert managers and therefore the version of the company that due to clerical error the applicant was not retired on 01.01.2009 and he worked for four extra years is not believable. There is no mention of such clerical error in exhibit-C. There appears no material on record to dislodge the entries in the ESIC register (exhibit-G). Exhibit-A1 records date of joining of the applicant as 01.07.1981 but exhibit-G records the same as 30.03.1978. The entry is signed by the representative of the company and it also bears the company's seal. In absence of any evidence to the contrary, I have no hesitation to hold that the year of birth recorded in exhibit-G must prevail over the same recorded in exhibit-A1.

It is not a case of alteration of date of birth without notice to the applicant. Therefore, the decision in ***RBI versus C.T. Dighe*** is not applicable in this case. No representation was made by the applicant during his service or even after receiving the notice of superannuation for correcting his date of birth in the company's record on the basis of any birth certificate or school certificate. In the circumstances, the decision in ***Bhupesh Chandra Ghosh's*** case is also not applicable in this case. In ***Subong Tea Estate*** there was question of order of retrenchment of 8 workmen but in this case the date of birth



and superannuation of the applicant is in question and therefore the decision cited is not relevant to the present case.

Having regard to the entire facts and circumstances of the case and the evidence and materials on record, I find that retirement/termination of service of the applicant w.e.f. 01.01.2013 taking his date of birth as 31.12.1954 by the company is not justified.

It is evident that the applicant raised the issue belatedly. Now the question is whether the delay caused by the applicant is reasonable or not. The argument of learned advocate for the company that the ESIC card was always in the custody of the applicant is quite plausible but the fact remains that the applicant is illiterate and hails from poor section of the society. We find from exhibit-9 that pension of the applicant was not sanctioned till 24.11.2014 though the applicant was retired w.e.f. 01.01.2013. In the circumstances, evidence of PW1 to the effect that due to delay in granting pension he made enquiry and came to know about his premature retirement appears convincing. In view of the facts and circumstances and the nature of the proceeding it would not be proper to throw out the entire case of the applicant only due to the delay.

In *Raghubir Singh vs Haryana Roadways*, referred to by learned advocate for the applicant, the Hon'ble Supreme Court held, "We are of the view that the workman must be reinstated. However, due to delay in raising the industrial dispute, and getting it referred to the Labour Court from the State Government, the workman will be entitled in law for backwages and other consequential benefits from the date of raising the industrial dispute i.e. from 02.03.2005 till reinstatement with all consequential benefits."

In *Cement Corpn. Of India Ltd. Vs Raghubir Singh* reported in 2002 AIR SCW 56, the Hon'ble Supreme Court held, "The fact that the date of birth of the respondent is 2-2-1936 cannot be seriously disputed in view of the certificate issued by the Registrar of births and deaths. Therefore, this finding of fact recorded by the Labour Court and affirmed by the High Court cannot be assailed. However, in this regard respondent had made a claim before the Labour Court two years after his retirement and it is not proper for the Labour Court to have granted the backwages for the period between 30-6-1990 to 1-2-1994 and that it could have only granted the backwages from the date of filing of the petition before the Labour Court. The Labour Court ought not to have granted interest either, particularly, when the respondent had not worked for that period and was making a belated claim. In the circumstances grant of interest also is not appropriate. The respondent would be entitled only to backwages for a period of two years from 1-2-1992 till 30-1-1994. He will not be entitled to any interest. The amount due to him shall be paid by the appellant within three months from today. If such a payment is not made he will be entitled to interest @ 18% per annum."



In this case the date of retirement of the workman ie 01.01.2017 is already expired by now and therefore there is no question of his reinstatement. The applicant obtained certificate from the conciliation officer on 08.09.2015 but he filed this case on 05.10.2016 instead of filing the instant application within the period of sixty days from the receipt of certificate ie by 07.11.2015. The explanation of physical illness and financial crisis does not find support from the materials on record. No medical paper has been produced and the correspondences made by the applicant with the company and labour authority ( Exbts.- 4, 5, 6 and 8) indicate that he took help of experts in the field. In view of the facts and circumstances of the case and in the light of the decisions in the cases of **Raghubir Singh** and **Cement Corpn. Of India Ltd.** and the fact that there is no scope of reinstatement in this case the relief of reinstatement is refused and the applicant is held to be entitled to his full salary on the basis of last paid salary from 23.01 2015 (when he raised dispute with the company for the first time) to 31.12.2016 excluding the period from 08.11.2015 to 05.10.2016.

All the issues are thus disposed of.

In result, the application under section 10 (1B) (d) of the Industrial Disputes Act merits success in part.

Hence,

it is,

ordered,

that the application under section 10 (1B) (d) of the Industrial Disputes Act 1947 is allowed in part on contest but without any cost. The applicant is not entitled to reinstatement but he is entitled to full salary on the basis of last paid salary from 23.01 2015 (when he raised dispute with the company for the first time) to 31.12.2016 excluding the period from 08.11.2015 to 05.10.2016 without any interest. The company is directed to pay the back wages for the aforesaid period to the applicant within two months from date hereof failing which the amount shall carry interest @ 18% per annum.”

This is my award.

Dictated & corrected by me

sd/-

Judge

sd/-

(Sanjeev Kumar Sharma)  
Judge,  
Third Industrial Tribunal,  
Kolkata  
05/04/2021