

I/146758/2021

Government of West Bengal
Labour Department, I. R . Branch
N.S. Buildings, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

1502
No. Labr.//(LC-IR)/22015(16)/16/202125-08-
Date : 2021**ORDER**

WHEREAS an industrial dispute existed between M/s. Raja Udyog Pvt. Ltd., 16 F, I T. Road , Sukchar (Girja), District – 24 Parganas (North), Kolkata-700115 against his employee, Shri Rajendra Nath Chunari, Kundu Nagan (Baishali), Iswar Chatterjee Road, P. C – Sukchar, District -24 Parganas (North), Kolkata -700115 regarding the issue, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the Company has filed the instant case under section 33(2)(b) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge First 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 First Industrial Tribunal, Kolkata heard the parties under section 33 (2)(b) of the I.D. Act, 1947 (14 of 1947) ;

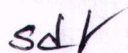
AND WHEREAS the said Judge, First Industrial Tribunal, Kolkata has submitted to the State Government its Award on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,



Deputy Secretary
to the Government of West Bengal

I/146758/2021

1502/1(5)
No. Labr.//(LC-IR): 2 :
25-08-
Date 2021

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

1. M/s Raja Udyog Pvt. Ltd., 16 F,B. T. Road , Sukchar (Girja), District – 24 Parganas (North), Kolkata-700115.
2. Sri Rajendra Nath Chunari, Kundu Nagan (Baishali), Iswar Chatterjee Road, P. O. – Sukchar, District -24 Parganas (North), Kolkata - 700115.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Buildings, (11th 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 Secretary1502/2(2)
No. Labr.//(LC-IR)25-08-
Date 2021

Copy forwarded for information to :-

1. The Judge, First Industrial Tribunal Kolkata, West Bengal, with respect to his Memo No-510 - L. T. dated 05/04/2021 .
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Deputy Secretary

In the matter of an industrial dispute between M/S Raja Udyog Pvt. Ltd. 16 F, B. T. Road, Sukchar (Girja), District - 24 Parganas (North), Kolkata - 700 115 against his employee, Shri Rajendra Nath Chunari, Kundu Nagan (Baishali), Iswar Chatterjee Road, P.O. - Sukchar, District - 24 Parganas (North), Kolkata - 700 115.

Case No. 01/2017 U/S 33 (2) (b) of the Industrial Dispute Act 1947

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

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

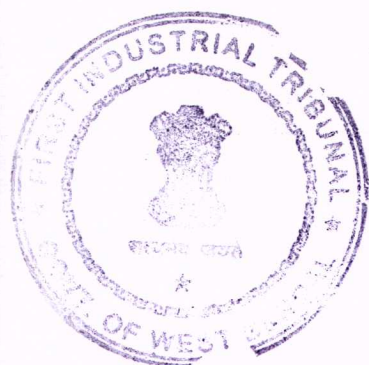
Date of Order : 24.03.2021

Case No.: 01/2017 U/S 33 (2) (b)

The fact of the case is that the Company, M/s. Raja Udyog Pvt. Ltd. had filed the instant case u/s 33(2)(b) of Industrial Disputes Act, 1947 seeking approval of the order of the dismissal of the Workman by the Company along with a copy of dismissal order (two sheets) and postal receipt on 28.06.2017, against which the Workman Rajendra Nath Chunari had challenged the application with a prayer to dismiss the purported application, dated 28.06.2017 with compensation cost and further to pay an award to determine the fixation of wages / salary of Shri Rajendra Nath Chunari / Workman under the Minimum Wages Act 1948 and to reinstate the said Workman with full back wages / salary from 21.12.2016 to till date continuing of service including usual consequential benefits with retrospective effect along with entire cost of proceeding with interest till the date of realization in favour of the Workman by his written statement dated 01.12.2018.

On careful perusal of the record, it is revealed that on 13.09.2017, the Workman appeared. Company was ordered to supply the copy of application u/s 33(2)(b) of the Industrial Disputes Act together with the annexed documents if any to the Workman.

On 10.11.2017, Company without abiding the order of the court filed a verified application along with the copy to the other side praying for stay of further hearing of this case, against which the Workman desired to file written objection, which was deposited on 07.12.2017 and on that day the



Company supplied the copies of the documents annexed with the application u/s 33(2)(b) of the Industrial Disputes Act to the Workman.

Then on 01.02.2018 the written statement along with copy to the other side was filed by the Workman.

Then on 03.05.2018 the petition dated 10.11.2017 filed by the Company was heard and the prayer of the Company for stay for further hearing of this case has been rejected as this Tribunal found no such merit in the application, dated 10.11.2017 and the case was fixed for hearing on 01.06.2018, when the Company filed the petition seeking certain reliefs and also submitted that they had challenged the order dated 03.05.2018 of this Tribunal before the hon'ble court and the date 05.07.2018 was fixed for hearing of the petition, dated 01.06.2018 filed by the Company and W.O. if any in the meantime and that petition was fixed for hearing on 30.07.2018 and the Company may bring appropriate order of Hon'ble Court and lastly this Tribunal ordered the Company to file the appropriate order from the court fixing 29.08.2018 for consideration of the application dated 01.06.2018 filed by the Company in presence of the Company and the Workman.

Then on 05.03.2019 and 10.04.2019 Workman and the Company appointed new Counsels for them. Thereafter, regular P.O.'s tenure was expired and on 22.11.2019 new Presiding Officer joined and on 03.02.2020 Company again pray for adjournment of hearing of this case without filing any stay order for hearing of this case being passed from the hon'ble court and that prayer was rejected. Fixing 18.02.2020 for order, if the Company fails to submit the stay order from the Hon'ble Court.

So, when it is ordered that Company may file the appropriate order for stay of the proceeding from the hon'ble court as submitted by Ld. Counsel for the Company by 05.03.2020 when the Company was ordered to file show-cause as to why the case shall not be dismissed against them on merit by 07.04.2020. This Tribunal was not satisfied with the documents filed by the Company to consider it as good as Stay Order or like that from the Hon'ble Court. But all the Tribunals could not function due to Loc-down followed by



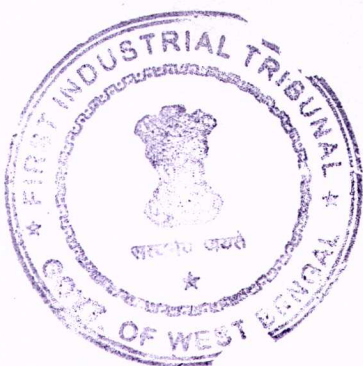
Covid-19 pandemic situation from 23.03.2020 to 05.06.2020 as per order of Government of West Bengal.

Thereafter, due to resolution taken by the local Bar no case was heard on and from 24.07.2020 to 18.11.2020. Thereafter, on 08.01.2021, it was ordered to file show-cause on 02.03.2021, in default necessary order shall follow.

Then ultimately on 02.03.2021, the Company filed show-cause and the date has been fixed for Order on 19.03.2021 when the Workman was present and none appeared for the Company and since P.O. was busy otherwise, a date was fixed for delivery of Order on 22.03.2021 when the Workman was present and none appeared for the Company and accordingly today the record is taken up for Order.

On perusal of the record, it is revealed that the instant case was filed on 28.06.2017 u/s 33(2)(b) of the Industrial Disputes Act relating to the pending proceeding No. 01/2017 filed by M/S Raja Udyog Pvt. Ltd. situated at 16 F, B. T. Road, Sukchar (Girja), District - 24 Parganas (North), Kolkata – 700 115 against his employee named, Shri Rajendra Nath Chunari, residing at Kundu Nagan (Baishali), Iswar Chatterjee Road, P.O. – Sukchar, District – 24 Parganas (North), Kolkata – 700 115, seeking approval of the order of the dismissal of the Workman, dated 27.06.2017 by the Company. On 10.11.2017 the Company filed a petition praying for stay of further hearing of this case.

Thereafter on 03.05.2018, this Tribunal observed to the effect that "it is clear from the materials that during pendency of such proceedings (proceeding under section 10(1b)(d) of the Industrial Dispute Act filed by the Workman was disposed of by this Tribunal on the point of maintainability by making observation in the said proceeding) the order of termination of service of the Workman was made by the management and therefore, the management filed the instant case proceeding u/s 33(2)(b) of the Industrial Disputes Act seeking approval of such order of termination" and therefore, this Tribunal has concluded to the effect that the instant proceeding u/s 33(2)(b) should be decided on merit, irrespective of fact of the proceeding u/s 10(1b)(d) of the Industrial Disputes Act.



The Company had challenged the order of this Tribunal before the hon'ble court as submitted by the Company and order was naturally passed for bringing the stay order or any appropriate order from the hon'ble court, so that the instant proceeding could be stayed or suspended till the further order if any being passed by the hon'ble court by 01.06.2018 when the Company filed the petition praying for certain relief as stated in the petition.

Hearing was fixed for said petition on 05.07.2018 and since then the Company neither could produce any such order or appropriate order to stay this proceeding nor appeared on the date fixed for hearing of the instant petition when ultimately on 05.03.2020, it was ordered upon the Company to file show-cause as to why the instant case filed by the Company shall not be dismissed against them on merit and finally today i.e. 22.03.2021 is fixed for Order after considering the show-cause of the Company. After perusal of the show-cause of the Company, I find that as usual the Company did not mention any such explanation regarding facts nor file any stay order by the hon'ble High Court at Kolkata, though it is admitted by the Company that there is no direct stay order passed by the hon'ble High Court, Kolkata but the hon'ble High Court, Kolkata admitted the Writ Petition and fixed it for hearing without mentioning any date, when the proposed hearing would be heard. So, considering the ingredients of show-cause as filed by the Company, I find no merits to accept it and therefore, show-cause petition stands rejected. On perusal of the record, it is also revealed that Company had filed a petition on 01.06.2018 for certain reliefs against which written objection was also filed by the Workman and since the Company did not appear on the date of hearing it is being also dismissed against the Company as the parent case is dismissed.

Now, let us go through the provision of section 33(2)(b) of Industrial Disputes Act, 1947 and it is being reproduced below:

5. 33. **Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.**
- (2) **During the pendency of any such proceeding in respect of an industrial dispute, the employer, may in accordance with the**



standing orders applicable to a workman concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied between him and the workman]

- (b) for any misconduct not connected with the dispute, discharge or punish whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

Under sub-section 5 of section 33, it has been stated that "where an employer makes an application, the Conciliation Officer, Board, an arbitrator, Labour Court, Tribunal (for this proceeding) or National Tribunal under the proviso to sub-section (2) for approval of the action was taken by him, the authority concerned shall, without delay, hear such application and pass [within a period of three months from the date of receipt of such application] such order in relation thereto as it deems fit.

It is further provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing extend such period such further period as it may think fit.

In our case the case was filed on 28.06.2017 and till date the Company could not produce any material to grant further time to be given to them for restraining the Workman to get relief as prayed for dismissing purported application dated 28.06.2018 of the Company/ applicant with compensation cost and further to pass an Award to determine / decide the fixation of wages / salary of Shri Rajendra Nath Chunari/ Workman under the Minimum Wages Act 1948 and to reinstate the said Workman with full back wages / salary from 21.12.2016 to till date continuing of service including usual consequential benefits with retrospective effect with along with entire cost of proceeding with interest till the date of realization in favour of the Workman by his written statement dated 01.02.2018.



The proviso to section 33(2)(b) of Industrial Disputes Act contemplates the three things mentioned therein, namely – i) dismissal or discharge, ii) payment of wages and iii) making an application for approval, to be simultaneously and to be part of same transaction so that the employer when takes the action under this section by dismissing or discharging an employee should immediately pay him or over to pay him wages for one month and also make an application to the Tribunal for approval at the same time.

The employer's conduct should so that three things contemplated under the proviso are parts of the same transaction and the question, where the application was made as part of the same transaction or at the same time when the action was taken would be a question fact will depend upon the circumstances of each cases. It is now well settled (AIRP, Page 382) (Tata Iron and Steel Company).

It is now well settled that the requirements of the proviso had to be satisfied by the employer on the basis that they form part of the same transaction.

It is also settled that if approval is granted it takes effect from the date of the order passed by the employer for which approval was sought. If approval is not granted the order of dismissal or discharge passed by the employer is wholly invalid or inoperative and the employee can legitimately claim to continue to be in the employment of the employer, notwithstanding the order passed by him dismissing or discharging him. In otherwards approval by the prescribed authority makes order of discharges or dismissal the effective; in the absence, an approval of such an order is invalid and inoperative in law.

The proviso to section 33(2)(b) as can be seen from its very ambiguous and clear language is mandatory. It is obvious that the condition contained for the said proviso are to be essential complied with. Further for employer who contravenes the provision of section 33 invites a punishment under section 31(1) with imprisonment for terms which may extents to 6 (six) months or with fine which may extent to Rs. 1000/- or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the condition stated therein.



The employer cannot be permitted to disobey the mandatory provision of section 33(2)(b) and thereby he cannot be permitted to take advantage of his own wrong. The proviso affords protection to Workman to safeguard his interest and it is shield against victimisation and unfair labour practice by the employer during the pendency of Industrial Dispute when the relationship between employer and employee is already in constraint. The protection and safeguard to a Workman under the said proviso cannot be taken away otherwise the employer may with impunity discharge or dismiss the Workman. So, if approval is not given nothing more is required to be done by the employee as it will have to be deemed with the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This is being the position. There is no need of a separate or specific order for his reinstatement. (Jaipur Zila Sahakari, Supreme Court of India, January 17, 2002).

Under the aforesaid proviso of Section 33(2)(b) of Industrial Disputes Act employee has expressly given protection against possible victimisation, unfair labour practice or harassment because of pendency of Industrial Disputes so that the employee can be saved from hardship or unemployment.

In our case the employee was employed as Permanent Worker under the applicant. A case u/s 10(1b)(d) was pending over the issue of Charter of Demand when the employee was dismissed from his service on 27.06.2017 and therefore the instant case has been instituted by the applicant seeking approval of this Tribunal for the said dismissal. The said application was being contested on various grounds by the opposite party/ Workman including that the applicant had failed to comply with the proviso of Section 33(2)(b) of the Industrial Disputes Act.

Now, on careful perusal of the petition and written statement along with the show-cause petition of the present case I am of view that this Tribunal has got no alternative but to dismiss the instant application u/s 33(2)(b) of the Industrial Disputes Act, 1947 filed by the Company as the applicant could not filed satisfactory show-cause as to why the case shall not be dismissed against them and consequently the case has been dismissed and now, if



that be so, in our case the approval of application on behalf of the Petitioner/ Company u/s 33(2)(b) of the Industrial Disputes Act, 1947 has already been dismissed by this Tribunal and the provisions of Section 33(2)(b) of the Industrial Disputes Act on disapproval goes to show that the status of the Workman remains to be that of a Workman as defined u/s 2(S) of the Industrial Disputes Act. Therefore, in other words of this is being the position of the law, the Workman is entitled to all the consequential benefits including back wages as given to a Workman u/s 2(S) of the said act. Hence once the application filed by the management is dismissed, the concerned Workman is deemed to be in service and this makes Workman entitled to back wages too and there is no need of separate or specific order of the back wages.

In sum, the case of the applicant Company fails.

Hence it is

ORDERED

That the instant case being No. 01/2017 u/s 33(2)(b) of the Industrial Disputes Act, 1947 filed by the Company named M/s Raja Udyog Pvt. Ltd. be and the same is dismissed but without any cost.

Consequently, the Workman is deemed to be in service and he is entitled to all the back wages to be paid by the Company within 3(three) months from the date of communication of this Award / Order including all consequential benefits, in default the Workman is at liberty to execute the order as per law.

This is my **AWARD**.

The Award be sent to the Government.

Dictated & corrected by me.

Sd/-

Judge

Sd/-

Judge
First Industrial Tribunal
Kolkata

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

