

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

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

No. Labr./1659/(LC-IR)/22015(16)/39/2018

Date : 10/09/2021.

ORDER

WHEREAS an industrial dispute existed between M/s. Belle Vue Clinic, 9, Dr. U. N. Brahchari Street, (Formerly Loudan Street), Kolkata - 700017 and their workman Sri Tushar Kanti Ghosh, Netaji Nagar, P.O. Sahagunj, Dist. Hooghly, Pin - 712104 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14of 1947) to the Seventh Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the Seventh Industrial Tribunal has submitted to the State Government its Award dated 31.08.2021 on the said Dispute vide memo no. 981 L.T. dated 01.09.2021.

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

ANNEXURE

(Attached herewith)

By order of the Governor,

Sd/-
Deputy Secretary

to the Government of West Bengal

Date : 10/09/2021.

No. Labr./1659/1(2) - IR

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 981-L.T. dated 01/09/2021.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Sd/-
Deputy Secretary

No. Labr./1659/2(5) - IR

Date : 10/09/2021.

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

1. M/s. Belle Vue Clinic, 9, Dr. U. N. Brahchari Street, (Formerly Loudan Street), Kolkata - 700017.
2. Sri Tushar Kanti Ghosh, Netaji Nagar, P.O. Sahagunj, Dist. Hooghly, Pin - 712104.
3. The Assistant Labour Commissioner, W.B., In-Charge of 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 Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Sd/-
Deputy Secretary

Ananda (IT)
A. do the needful.
GR

In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata

Present: Shri Ashis Kumar Das, Judge,
Seventh Industrial Tribunal, Kolkata.

CASE NO. 13 of 2018

Under Section 2A (2) of the Industrial Disputes Act, 1947, as amended.

Sri Tushar Kanti Ghosh

...Applicant

Netaji Nagar, P.O. Sahagunj,
Dist. Hooghly, Pin – 712 104,
West Bengal

-Versus-

M/s. Belle Vue Clinic.

...OP/Company

9, Dr. U.N. Brahmachari Street,
(Formerly Loudan Street)
Kolkata – 700 017.

AWARD

Dated : 31-08-2021

Both the parties are present through their Ld. Advocates.

Today is fixed for passing order in respect of a verified petition dated 10.02.2021, which was filed on 15.02.2021 by the applicant namely Tushar Kanti Ghosh praying for permission to withdraw the instant case with a liberty to file a fresh case in terms of existing law mainly on the ground that the O.P./Company has filed an application dated 10.12.2019 raising the point that Section 2A(2) of the Industrial Disputes Act, 1947, as amended, has been repealed by virtue of the Repealing and Amending Act, 2016.

The petition for withdrawal dated 10.02.2021 (filed on 15.02.2021) along with petition dated 10.12.2019 filed on behalf of O.P./Company are taken up together for passing order.

Perused the present petition for withdrawal. Also perused the petition dt. 10.12.2019 , filed by the O.P./Company , wherein O.P./Company has prayed for an order for rejection of the application U/s 2A(2) of the Industrial Disputes Act, 1947, as amended, which was filed on 26.03.2018, as the same has become infructious in law mainly on the ground that by virtue of Repealing and Amendment Act , 2016, the whole of the Industrial Disputes (Amendment) Act, 2010 was repealed and said Act received the assent of the President on 06.05.2016 and was notified in the official Gazette of India on 09.05.2016. Also perused the materials on record.

This is a case under **Section 2A(2) of the Industrial Disputes Act, 1947, as amended**, filed by the applicant/workman namely, Sri Tushar Kanti Ghosh on **26.03.2018** against his employer OP/Company namely, M/s. Belle Vue Clinic in connection with dismissal of his service w.e.f. 30.04.2015 declaring that such dismissal of service is illegal, with a prayer to reinstate him in service with full back wages and other consequential benefits.



(2)

Now, the point which comes for consideration is that as to whether the applicant can be permitted to withdraw the instant case on the ground that Section 2A(2) of the Industrial Disputes Act, 1947 has been repealed by the Repealing and Amending Act, 2016 (No.23 of 2016) w.e.f. 09.05.2016 or not ?

Let me now see the relevant provision of the Industrial Disputes Act, 1947.

Before the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), **Section 2A** of the said Act was as follows :-

2-A.Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- 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.

By the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), Section 2A was renumbered as sub-section (1) and by the same Act i.e. Act 24 of 2010 sub-section (2) and sub-section (3) came to be inserted after section 2A(1) of the I. D. Act. The said amendment came into effect on and from 15th September, 2010 and after such amendment section 2A runs as follows :-

[2-A.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).]

Thereafter, by the Repealing and Amending Act, 2016 (No.23 of 2016), the whole Industrial Disputes (Amendment) Act, 2010 (24 of 2010) has been repealed. The said



(3)

Repealing and Amending Act, 2016 (No.23 of 2016) came into effect on and from 09.05.2016, as it appears in The Gazette of India (Extraordinary, Part-II, Section1). In absence of any specific provision to the contrary, the Repealing and Amending Act, 2016 (No.23 of 2016) is to be held operative prospectively. So, original Section 2A of the Industrial Disputes Act, 1947 came into force again on and from 09.05.2016.

Admittedly, this case has been filed under Section 2A(2) of the Industrial Disputes Act, 1947, as amended, on **26.03.2018**, which is long after repealing of the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), repealed by the Repealing and Amending Act, 2016 (No.23 of 2016). So, it is clear that on the date of filing of the instant case i.e. on 26.03.2018, there is no existence of Section 2A(2) of the Industrial Disputes Act, 1947 and/or Section 2A(2) of the Industrial Disputes Act, 1947 had no application on 26.03.2018.

Therefore, in view of my above made discussion and findings, I am of the same view of the contentions as advanced by the Ld. Advocate for the O.P./Company with regard to non maintainability of application u/S 2A(2) of I.D. Act, 1947, as amended, after coming into force of the Repealing and Amendment Act, 2016 and so, considering all aspects, I think that the applicant should be permitted to withdraw the case, as prayed for, in the interest of justice with a liberty to sue afresh in terms of existing law.

Hence, it is,

ORDERED

that the petition for withdrawal dated 10.02.2021 (filed on 15.02.2021) is allowed without costs.

Applicant namely, Sri Tushar Kanti Ghosh is permitted to withdraw the instant Case No. 13 of 2018 under Section 2A(2) of the Industrial Disputes Act, 1947, as amended, with a liberty to sue afresh in terms of existing law.

The instant proceedings stands disposed of as withdrawn.

Consequently, the petition dated 10.12.2019, filed by the O.P./Company, is also disposed of.

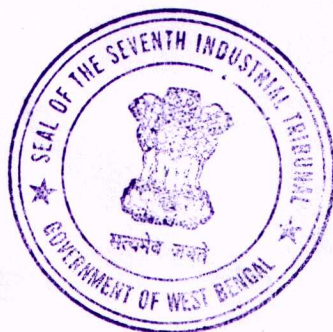
This is my Award.

Let six 6 (six) copies of the Award be sent to the Appropriate Authority for information and taking necessary action.

Dictated & corrected by me

Sd/-
Judge

Judge
Seventh Industrial Tribunal



Sd/-
(ASHIS KUMAR DAS)
Judge,
Seventh Industrial Tribunal,
Kolkata
31/08/2021

Judge
Seventh Industrial Tribunal