

Government of West Bengal
Labour Department, I. R. Branch
N.S. Buildings, 12th Floor
1, K.S. Roy Road, Kolkata - 700001
No. Labr/ 1603 / (LC-IR)/22015(16)/319/2018 Date : 06/08/2021

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order N 956-IR/11L-78/2015 dated 17.09.15 and corrected under order No. Labr/1032/(LC-IR)/11L 78/2015 the Industrial Dispute between M/s K. S. Oils Ltd., J.L. No. 149, Debhog, HPL Lir Road, Haldia, Purba Medinipur and its workman Sri Goutam Bhunia, C/o Sukumar Bhunia Vill & P.O. Garbari, Purba Medinipur regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947) was referred for adjudication to the Third Industrial Tribunal, Kolkata.

AND WHEREAS the said Third Industrial Tribunal, Kolkata, has submitted to the State Government its award dated 16.04.2021 on the said Industrial Dispute vide Memo No. 587 LT dated 22.04.2021.

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,

Sd/-
Deputy Secretary

to the Government of West Bengal
No. Labr/ 1603 / (1(5))/(LC-IR) Date : 06/08/2021

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

1. M/s K. S. Oils Ltd., J.L. No. 149, Debhog, HPL Link Road, Haldia, Purba Medinipur .
2. Sri Goutam Bhunia, C/o Sukumar Bhunia, Vill & P.O. Garbari, Purba Medinipur .
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

[Signature]
Deputy Secretary

No. Labr/ /2(2)/(LC-IR) Date : 2021

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, Kolkata with reference to his Memo No. 587 - L.T. dated 22.04.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata 700001.

Deputy Secretary

Ananda (IT Cell)
For n.a.
GR 6/08

BEFORE THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL.

Present - Sanjeev Kumar Sharma,
Judge, 3rd Industrial Tribunal,
Kolkata.

Case No. VIII-36/2015

Award

Date - 16.04.2021

In the matter of an Industrial Dispute between Messrs K. S. Oils Ltd., J. L. No. 149, Debhog, HPL Link Road, Haldia, Purba Medinipur and their workman Sri Goutam Bhunia, C/o. Sukumar Bhunia, Vill & P. O. Garbari, Purba Medinipur referred to this Tribunal vide Reference order No. 956-I. R./ IR/11L-78/2015 dated 17.09.2015 corrected under order No. Labr/1032/(LC-IR)/IR/11L-78/15 dated 28.09.2016 of the Labour Department, I. R. Branch, Govt. of West Bengal.

ISSUES

1. Whether the refusal of employment of the workman Sri Goutam Bhunia on and from 15.11.2013 justified?
2. If not, what relief is he entitled to ?

The case of the workman is that he was appointed in the company on 14.02.2009 as Assistant Pouch Operator. He has been continuously working till 14.11.2013. On 15.11.2013 when he went to the factory to join his duties as usual he was prevented to entering to the factory by the security personnel and was told by the Labour Officer that his services were no longer required by the company in terms of notice dated 31.08.2013 affixed in the notice board of the factory. The workman saw the notice board and learnt that services of ten employees including the workman were terminated, but no reason for such termination was given in the notice. No show-cause, charge-sheet was issued to him nor any domestic enquiry was held. The workman further pleaded that he performed duties till his termination without any adverse report. He further pleaded that out of the ten terminated employees under notice dated 31.08.2013 two employees namely Manoj Kumar and Trilokinath Yadav were reappointed in continuous service without following the rule 'last come first go'. Despite repeated requests the workman was not permitted to meet the head of the management and ultimately he could meet the

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head of the management at the factory on 15.11.2013 only. The head of the management told the workman that his service was terminated at the direction of the higher management and his entitlements could be given in due course. Finding no other alternative the workman approached the Assistant Labour Commissioner, Haldia on 18.11.2013, but in spite of several discussions on different dates no settlement could be arrived at. During the discussions, the management told that the workmen were terminated to reduce the man power and notice of termination was affixed to the notice board and was not sent to the individual employee. He further pleaded that since his illegal termination, he could not get any job and he is still unemployed.

The company contested the reference by filing written statement. According to the company the reference is misconceived, erroneous and not maintainable and the claim of the workman is highly belated. It also pleaded that the reference suffers from non-application of mind as the issue of refusal of employment has been framed though there was no refusal of service and that refusal of employment is not dismissal nor discharge under industrial law and it is not termination within the meaning of section 2A of the I. D. Act. The case of the company is that the workman was initially appointed by Ambo Agro Products Ltd. on 30.04.2005 as driver and was then redesignated as Asst. Pouch Operator w.e.f. 01.09.2008. The present company took charge of the said Ambo Agro Products Ltd. with all liabilities on 14.02.2009 and issued appointment letter to the workman as Asst. Pouch Operator. Due to financial exigencies the company terminated the service of the workman in compliance with the provisions para 7 of the appointment letter. Several intimations were given to the workman for full and final settlement, he was instructed to receive his dues from the accounts section and a cheque of full gratuity amount was also sent to the workman but he refused intending to harass the company and raised the instant dispute. The authorized representative of the company attended the conciliation and informed all the facts of the case to the conciliation officer but he lost sight of the dispute and submitted a failure report erroneously to the appropriate Government. The Govt. instead of closing the file referred the matter to this tribunal after framing imaginary and non-existing issues. The company denied and disputed all the allegations made by the workman stating that termination notices were served upon the employees individually which they refused to accept. According to the company the service of the workman was terminated in terms of para. 7 of the appointment letter due to financial crisis of the company as such there was no

question of domestic enquiry. The company further pleaded that the workman was gainfully employed after the termination and prayed for passing an award to the effect that the termination of service of the workman is legal and justified and he is not entitled to any relief.

In order to support his case, the workman Goutam Bhunia examined himself as PW-1 and brought the following documents on record :

1. Copy of letter of appointment as Exbt.-1;
2. Copy of notice of termination as Exbt.-2;
3. Copy of letter addressed to ALC, Haldia as Exbt.-3;
4. Copy of pay slip for the month of November, 2011 as Exbt.-4;
5. Copy of identity card of the workman as Exbt.-5;
6. Copy of EPF slip for the year 2010-2011 as Exbt.-6;
7. Copy of ESI Card as Exbt.-7; &
8. Copies of letters issued by the office of DLC (4 sheets) as Exbt.-8.

The company examined its Factory Manager Sri Ashok Jain as OPW-1 and brought the following documents on record :

1. Letter regarding change of department and designation of the workman as Exbt.-A;
2. Copy of Show-cause notice as Exbt.-B;
3. Copy of termination notice as Exbt.-C;
4. Copy of letter dated 30.10.2013 of JVL Agro Industries regarding negligence in duty of Pouch Operator as Exbt.-D;
5. Copy of letter to Deputy Labour Commissioner by company as Exbt.-E;
6. Copy of letter to Assistant Labour Commissioner by the company as Exbt.-F;
7. Copy of letter dated 05.05.2014 to the workman by the company regarding settlement as Exbt.-G;
8. Copy of 2nd letter to the workman by the company regarding settlement as Exbt.-H;
9. Copy of lease agreement between K.S. Oil and JVL Agro as Exbt.-I;
10. Copy of letter from SBI Corporate Accounts Group Branch to the company as Exbt.-J;

11. Copy of letter from SBI-CAP Trustee Company Limited to the company as Exbt.-K;
12. Copy of possession notice of SBI CAP Trustee Company Ltd. as Exbt.-L;
13. Copy of order dated 21.07.2017 of National Company Law Tribunal, Ahmedabad Branch as Exbt.-M; &
14. Copy of full and final settlement, issued by the company, as Exbt.-N.

Decision with reason

The workman claims that he was refused employment by preventing his entry when he reported for duty while the version of the company is that his service was lawfully terminated in terms of clause 7 of the appointment letter and the financial crunch of the company. During arguments learned advocate for the company submits that the reference is bad in law as the workman did not raise the dispute with the company before raising the same with the conciliation officer and that the term refusal of employment mentioned in the reference and termination of employment are different things. The reference over refusal is not maintainable in view of section 2A of the I. D. Act. She refers to the decisions in *Sindhu Resettlement Corporation Ltd. Vs Industrial Tribunal of Gujarat reported in AIR 1968 SC 529* and *Jagdamba Motors Vs State of W. B. reported in 2009 (4) CHN Cal 67*. Learned advocate further submits that the company has units in different states of the country, therefore the Govt. of W. B. is not the appropriate Govt. in this case and the reference is not maintainable. Learned advocate cites the decision of the Hon'ble Calcutta High Court in *Sabitri Motor Service Vs State of W. B. reported in FLR 1976 (33) 14* and submits that this is a reference over refusal of employment as such the tribunal cannot go beyond the reference. She also submits that there being order of moratorium under the Insolvency and Bankruptcy Code 2016 the corporate debtor/company cannot do anything.

Learned advocate for the workman on the contrary submits that the workman can raise dispute directly with the conciliation officer. He also relies on the decision in *Jagdamba Motors Vs State of W. B.* He contends that the cause of action having arisen in the State of WB, the Govt. of W. B. is the appropriate Govt. in this case. On this score he cites the decision in *Bikash Bhusan Ghosh Vs Novaratis India Ltd. reported in 2007-II-LLJ 837*. He submits that the workman has been illegally refused employment

by whimsical decision of the management and he is entitled to the relief of reinstatement with full back wages.

In **Jagdamba Motors** case, the Hon'ble Calcutta High Court held that in view of the decision of the Hon'ble Supreme Court in **Avon Services Production Agencies (P) Ltd. Vs Industrial Tribunal** reported in 1979 (1) SCC 1, the decision in **Sindhu Resettlement** case turns purely on the facts of the case. In this case admittedly the workman was an employee of the company and he was working as pouch operator. It is found that the workman raised dispute with the conciliation officer through his letter dated 18.11.2013. In their written statement, the company stated that their representative appeared in the conciliation proceeding on different dates. Evidently the conciliation failed and the conciliation officer submitted failure report which led to this reference. The submission of failure report by the conciliation officer itself is sufficient to infer that the company did not agree to reinstate the workman.

Now, in view of the W. B. amendment in section 2A of the Industrial Dispute Act, refusal of employment is also deemed to be an industrial dispute. Evidently the workman was working in the factory of the company situated within the District of Purba Medinipur and he was refused employment at the factory on 15.11.2013. The cause of action having arisen in the State of W. B., the Govt. of W. B. is the appropriate Govt. in this case in view of the decision of the Hon'ble Supreme Court in **Bikash Bhusan Ghosh Vs Novaratis India**, referred to by the workman.

During the hearing of the case, the company had filed a petition for passing necessary order in view of order dated 27.07.2017 passed by the Hon'ble Adjudicating Authority (NCLT) Ahmedabad Bench declaring moratorium under section 13(1) (a) of the Insolvency and Bankruptcy Code 2016. After hearing both the sides, my learned predecessor-in-chair rejected the petition under order No. 27 dated 24.11.2017 and proceeded to hear the case. The order passed by this tribunal was not challenged by the company before any Higher forum. At this stage I find no reason to take any different view. Moreover, adjudication of industrial dispute is the exclusive domain of the Industrial tribunal and due to pendency of the proceeding under the Insolvency and Bankruptcy Code 2016 the workman's rights cannot be taken away for a declaration as to its legal status and reliefs under the Industrial Disputes Act 1947.

Evidence of the workman (PW1) to the effect that he was refused entry in the factory on 15.11.2013 has not been denied and disputed in his cross-examination. The

witness in his cross-examination candidly stated that he was in employment of the company till 14.11.2013 and thereafter the management obstructed him to continue with his employment by entering into the company premises. Exhibit-2 is the copy of termination notice dated 31.08.2013. This notice was affixed on the notice board which the workman saw on 15.11.2013 when he was denied entry in the factory. No reason whatsoever for the termination is disclosed in the notice. Exhibit-B is the copy of show-cause notice issued by the company in the name of the workman. The copy of reply of the workman is also lying with the notice wherein the workman tendered his apology for his lapse. The evidence of OPW1 is that no disciplinary action was started against the workman on the basis of the show cause notice which implies that the cause shown was accepted. Exhibit-C is the termination notice dated 31.08.2013 addressed to the workman. The workman has denied the service of the notice upon him. The company has not adduced evidence to show that the notice was served upon the workman. OPW1 did not give any reason for non-service of the notice upon the workman though the workman performed duty till 14.11.2013. There is no material on record to show that the company attempted to serve the notice upon the workman through registered post. Exhibit-D is the letter written by JVL Agro Industries to the General Manager of the company (OPW1) complaining negligence on the part of the workman and others but there is no evidence that the complain was communicated to the workman and opportunity of hearing was given to him. Exhibit-E is the copy of letter dated 18.11.2013 of the company addressed to the Dy. Labour Commissioner, Haldia which says the services of eight employees including this workman were terminated from 14.11.2013 to reduce the manpower as per direction of their higher management. This letter blows up the story of alleged negligence in duty on the part of the workman. There is no material or evidence on record that any compensation was paid to the workman before his termination. Thus, it is a case of violation of section 25F of the Industrial Disputes Act 1947. The refusal of employment to the workman in this case is the direct consequence of the wrongful termination of service. Had the termination of service of the workman been lawful, the refusal would have been justified. Thus, there is no question of traveling beyond reference by exploring the legality and validity of the termination in this case.

In view of the foregoing discussions, I find that the refusal of employment to the workman by the company is not justified.

Now the question is that to what relief the workman is entitled. Learned advocate for the workman submits that the workman is entitled to the relief of reinstatement with full back wages. Learned advocate for the company submits that nothing is there in the hands of the company as it has gone into liquidation.

After considering all the facts and circumstances of this case and foregoing discussions this tribunal is of the view that the refusal of employment to the workman by the company w.e.f. 15.11.2013 was not justified and accordingly the workman Sri Goutam Bhunia is entitled to reinstatement in his original position.

In absence of any evidence that the workman was not gainfully employed anywhere else and keeping in mind that the company had been in financial crisis I hold that awarding back wages from 01.03.2015 till their date of reinstatement at the rate of 25% would be just and reasonable.

The issues are thus disposed of accordingly.

Hence it is,

Ordered

That the workman Sri Goutam Bhunia is entitled to reinstatement in his original positions with 25% of back wages from 15.11.2013 till his reinstatement.

Messers K. S. Oils Ltd. is directed to reinstate the workman Goutam Bhunia in service and pay 25 % of back wages to him from 15.11.2013 till his reinstatement within 60 days from the date of publication of this award.

Let, the copies of the award be sent to the Labour Department, Government of West Bengal in accordance with the usual rules and norms.

This is my award.

Dictated and corrected by me

sd/-

Judge

sd/-

(Sanjeev Kumar Sharma)

Judge

3rd Industrial Tribunal

Kolkata

16.04.2021