

I/149331/2021

(32)

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/ 1633 / (LC-IR)/11L-45/2017 Date : 08/09/2021

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/681/(LC-IR)/11L-45/17 dated 05.07.2017 the Industrial Dispute between M/s Lytton Hotel, 14 & 14/1, Sudder Street, Kolkata - 700016 and its workmen represented by Lytton Hotel Permanent Workers Union, 2/B, Neogi Pukur Bye Lane, Kolkata - 700014 regarding the issue mentioned in the said order, being a matter specified in the Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Fifth Industrial Tribunal, Kolkata.

AND WHEREAS the said Fifth Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 20.04.2021 on the said Industrial Dispute vide Memo No. 586 -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/ 1633 / (1(5))/(LC-IR)

Date : 08/09/2021

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

1. M/s Lytton Hotel, 14 & 14/1, Sudder Street, Kolkata - 700016.
2. The Secretary, Lytton Hotel Permanent Workers Union, 2/B, Neogi Pukur Bye Lane, Kolkata - 700014.
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, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Deputy Secretary

No. Labr/ ..... /2(2)/(LC-IR)

Date : ..... 2021

Copy forwarded for information to :

1. The Judge, Fifth Industrial Tribunal, Kolkata with reference to his Memo No. 586 - L.T. dated 22.04.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

Shanda (IT)  
M. do the needful  
GR



In the matter of an dispute referred by Govt. of West Bengal from its Labour Department u/s 10 read with sub-section 2A , of the Industrial Disputes Act, 1947 for adjudication regarding the disputes in between the workmen of M/s. Lytton Hotel, represented by "Lytton Hotel Permanent Workers Union, 2/B, Neogi Pukur Bye Lane, Kolkata – 700 014 and M/s. Lytton Hotel, 14 & 14/1, Sudder Street, Kolkata – 700 016.

(Case No. VIII-14/2017 under Section 2A , of the Industrial Disputes Act, 1947)

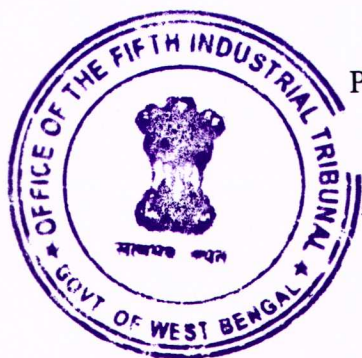
**Present : Sri Kamal Sarkar, Judge,  
Fifth Industrial Tribunal, Kolkata**

**AWARD**

This case has arisen out of a reference received from the Labour Department, Government of West Bengal, vide G. O. No. Labr. 1681/(LC-IR)/IR/11L-45/17, dated 05<sup>th</sup> July, 2017, referring an Industrial disputes between M/s. Lytton Hotel, 14 & 14/1, Sudder Street, Kolkata – 700 016 and Lytton Hotel Permanent Workers' Union, 2B, Neogi Pukur Bye-Lane, Kolkata – 700 014, u/s 10 read with sub-section 2A of the Industrial Disputes Act, 1947.

After receiving that reference the case has been properly registered and notices were issued to both the parties for their appearance and for filing of their written statements. The workmen had filed their written statement through their concerned Union as stated above, but inspite of getting so many opportunities. The authority of M/s. Lytton Hotel did not file any written statement and finally this care has been fixed for exparte hearing.

The brief facts of the written statement of the Union namely Lytton Hotel Permanent Workers' Union which is as follows:



That the Lytton Hotel is a well reputed Hotel in the city of Kolkata engaged in Hotelier Business providing service of fooding and lodging to its customers on commercial bases and use to earn huge profit and its growing its business day by day due to the skillfull performance of its workmen. The Union is registered one under Indian Trade Union Act, 1926 combination of the workmen of the said Hotel functioning for the purpose of job security and protection of legitimate and fundamental right of the Workmen of that concerned and also for betterment of service condition of the employees. Inspite of flourishing of business and earning of huge profit but the Lytton Hotel authority was too much reluctant and unfair to its workmen regarding the payment of wages, bonus, eave and other emoluments. Inspite of negligence on the part of Lytton Hotel Authority concerned the workmen of the said Hotel are all along very much sincere, hard working and also provided their best services to the Hotel Authority.

It is also the case of the Union that in the year 2011, the Hotel Management and the employees / workmen through their previous Union namely Lytton Hotel Workmen / Union entered into a bi-partite agreement which contained various terms and conditions related with the employment, payment of variable Dearness Allowance, with effect from January, 2011 till December, 2012 as per half-yearly revision rise and fall of Consumer Price Index declared by Labour Department and accordingly the Hotel Management agreed to pay variable Dearness Allowance at the rate of Rs. 2/- per point rise and fall for the ending period of said settlement i.e. July, 2012 – December, 2012. After expiry of the aforesaid period the previous Union demanded to pay V.D.A. to all employees for further period commencing from January, 2013 at the rate of Rs. 2/- per point rise and fall of Consumer Price Index, but the Hotel Management did not response against said demand.



Inspite of indifferent attitude of the Hotel Management the Union of the aforesaid workmen maintained patience and tried to settle the dispute by negotiation regarding their justified demand of V.D.A., but due to adamant attitude of the Management of the Hotel no settlement took place. Thereafter, in the middle of the 2013 most of the employees of Lytton Hotel formed the present Union "Lytton Hotel Permanent Workers Union" and such no other Union is / was functioning in the Lytton Hotel.

Thereafter in the year 2015 another bi-partite agreement took place between the Hotel Management and the Union regarding the demands and claims of the employees concerned but the demand of V.D.A. for the period of January, 2013 to December, 2014 remained unsettled and accordingly the Union referred the matter before the Labour Commissioner vide their representation, dated 03.08.2016 regarding Industrial Dispute and said Authority took up the instant dispute and conciliation process took place in tri-partite level but no result took place in that conciliation proceedings for which the Conciliation Officer referred the matter before the Ld. Industrial Tribunal through the Labour Department. Accordingly to the present Union their demand for variable dearness allowance @ Rs. 2/- per point raise of fall of Consumer Price Index for the period of January, 2013 to December, 2014 is very much justified and accordingly they pray for a direction to the Hotel Management to pay said amount to each and every concerned employee along with accrued interest.

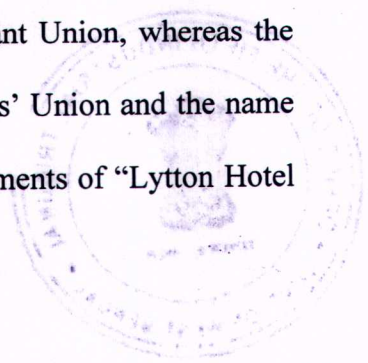


From the case record it reveals that the opposite party i.e. the Management of the Lytton Hotel after receiving notice of the Tribunal had appeared but inspite of getting several opportunity the O.P. did not file written statement and finally the Opposite Party also did not take any steps for which the predecessor of this chair was pleased to fix the case for exparte hearing vide its order No. 30, dated 09.01.2020.

The General Secretary of the applicant Union, namely Sri Debasish Majee has examined as PW-1 and no other witnesses have been adduced evidence on behalf of the Union.

The bi-partite agreement dated 24.03.2011 is marked as **Exhibit-1**, the Letter, dated 17.04.2013 written by one Md. Israil of Lytton Hotel Workers' Union addressing to the M/s. Lytton Hotel is marked as **Exhibit-2**, Charter of Demand, dated 25.02.2014 is marked as **Exhibit-3**, Memorandum of Settlement, dated 15.10.2015 is marked as **Exhibit-4**, Letter, dated 03.08.2016 addressing to the Labour Commissioner is marked as **Exhibit-5**, Minute Book of Union for the year 2013 is marked as **Exhibit-6**, and the Chart of Consumer Price Index for the period January, 2013 to December, 2014 is marked as **Exhibit-7**.

The Ld. Representative of the applicant Union has furnished the written notes of argument where it has been stated that the present case arose with the filing of a representation, dated 17.04.2013 by the instant Union, whereas the fact is that the present "Lytton Hotel Permanent Workers' Union and the name of said Md. Israil has not been found in any other documents of "Lytton Hotel Permanent Workers' Union" filed by the applicant.





It is also argued by the Ld. Representative of the applicant Union in its written argument that the payment of V.D.A. @ Rs. 2/- per point raise and fall of Consumer Price Index for intermediary period January, 2013 to 2014 to be paid to all concerned employees and the Union refer the Government of West Bengal Labour Department statistic, dated 25.07.2018 (Ext.- 6). Accordingly to the applicant Union, inspite of receiving notice the Management of the Lytton Hotel after their appearance did not file Written Statement and the case has proceeded exparte against the O.P. and evidence adduced by the applicant Union both oral and documentary are unchallenged and accordingly applicants case is proved and they are entitled to get relief as prayed for. It also argued by him the claim of variable dearness allowance for he year 2013-14 so raised by Union is not barred by the principles of Estoppel, Waiver and acquiescence.

This Tribunal has gone through the reference order of the Government and also after perusal the Written Statement, the evidence both oral and documentary of the applicant Union, the documents exhibited and the written notes of argument filed on behalf of the Union.

On perusal the same it appears before this Tribunal that the main contention of the applicant Union is that in the year 2011 the Management of the Lytton Hotel and the workmen of that hotel represent by their erstwhile Union namely 'Lytton Hotel Workmen Union' entered into a bi-partite agreement settlement regarding various terms and conditions related with the employment inter-alia, variable dearness allowance with effect from January, 2010, till December, 2012 as per half-yearly revision rise and fall of Consumer Price Index as declared by the Labour Department and as per that settlement the Management of the Lytton Hotel paid the variable dearness allowances (hereinafter referred



as V.D.A.) @ of Rs. 2/- per point for the ending period of the said settlement i.e. July, 2012 to December, 2012, but Union has demanded to pay V.D.A. for the further period commencing from January, 2013 which has not been fulfilled by the Management of the Lytton Hotel and hence the dispute cropped up.

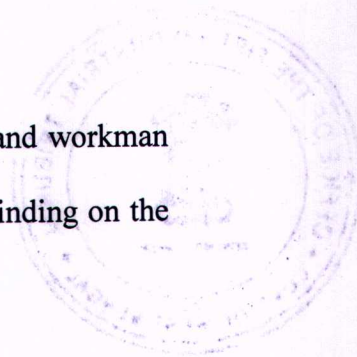
Now, let this Tribunal see, whether applicant Union has been successfully able to proof its case by adducing cogent evidences.

Admittedly the basis of claim of the applicant Union is two memorandum of settlement, dated 24.03.2011 (Ext. 1) and dated 15.10.2015 (Ext. 4). Apart from the memorandum of settlement, dated 24.03.2011 (Ext. 1), the applicant Union has failed to produce any document to show that prior to the year 2010, the workmen were also providing V.D.A. by the Management of the Lytton Hotel.

In the Memorandum of Settlement, dated 24.03.2011 (Ext. 1), it reveals that the V.D.A. was settled for the year 2010, 2011 upto 31.12.2012 as per details of such revised rate as mentioned in that settlement. It is also settled principle of law that the Memorandum of Settlement shall be made in "Form-J" as per provision of Section - 18(I) of the Industrial Disputes Act, 1947 and Rules - 68(3) West Bengal Disputes Rules, 1958.

Sub-Section (I) of Section (18) of the Act stated as follows -

"A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement."





Therefore, as per provision of Section 18(I) of this Act, the memorandum of settlement is binding upon both the parties. Apart from that in that settlement, dated 24.03.2011 (Ext. 1) it reveals that the period for payment of V.D.A. was settled from January, 2010 to December, 2013. It has already discussed earlier that the applicant Union nowhere in their pleading has stated that the workers of the Lytton Hotel were entitled to get the V.D.A. prior to the settlement, dated 24.03.2011 or apart from any settlement they are entitled to get the V.D.A. Rather the evidence has come forward before this Tribunal that the workers are entitled to get the V.D.A. as per memorandum of settlements.

Now, to that effect, this Tribunal likes to discuss the provision of Section 19(1) & (2) of this Act.

Section 19(1) stated as follows :-

“The settlement shall come into operation on such date and agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.”

Section 19(2) stated as follows :-

“Such settlement shall be binding for such period as it agreed upon by the parties, and if no such period is agreed upon, for a period of six months [from the date on which the memorandum of settlement is signed by the parties to the dispute], and shall continue to be binding on the parties after expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other parties to the settlement.”

In the instant case there was a time period for V.D.A. in the settlement, dated 024.03.2011 i.e. period from January, 2010 to December, 2012.





Apart from that the PW-1, Sri Debasish Majee at the time of adducing his evidence had relied upon some documents which are marked exhibits as Exhibit 1 to Exhibit 7. Exhibit 3 is a Charter of Demands, dated 25.02.2014 filed by the applicant Union namely "Lytton Hotel Permanent Workers Union" but it is surprising to note that the applicant Union nowhere in their written statement or in the affidavit-in-chief of PW-1 made any whisper about the document (Exhibit 3) i.e. the Charter of Demands, dated 25.02.2014. It is also the settled principle of law that no documents can be tendered about which there is no whisper either in the written statement or in the affidavit –in-chief. It reveals from the Exhibit 3 that applicant Union did not make any whisper regarding their demands of V.D.A. for the period 01.01.2013 to 31.12.2014 and there is no explanation on the part of the applicant Union that what had precluded them to mention about the demand of V.D.A. for the period 01.01.2013 to 31.12.2014. Practically, the applicant Union has suppressed the fact about the Charter of Demands in their written statement which denotes that the applicant Union has not come in a clear hand before this Tribunal.

Further it reveals from the memorandum of settlement, dated 15.10.2015 (Ext.4) that both the parties are agreed regarding the scheme of V.D.A. and the representatives of the present Union had put their signatures upon that agreement after being consensus ad idem with the Lytton Hotel Management that the period of V.D.A. will be continued for the year 01.04.2015. There is no explanation on the part of the applicant Union that what had prevented them to raise the issue of V.D.A. for the period 01.01.2013 to 31.12.2014 in their charter of demands, dated 25.02.2014 or why the representatives of the Union put their signatures upon the Memorandum of Settlement, dated 15.10.2015 knowingly that said settlement, dated 15.10.2015 (Ext. 4) did not make any whisper about the payment of V.D.A. for the period 01.01.2013 to 31.12.2014.



Nowhere the applicant Union has been able to prove that they are entitled to get the V.D.A. for the period 01.01.2013 to 31.12.2014. It is also surprising to see that the applicant Union in the prayer portion of their written statement has prayed for payment of V.D.A. for the period of January 2013 to December, 2014 as shown in details in Annexure – ‘A’ of the Written Statement, but from Annexure – ‘A’, the Consumer Price Index (CPI) has been given for the period January, 2013 to June, 2014, not upto December, 2014. Even the PW-1 in his Affidavit-in-Chief also prayed for an order to pay V.D.A. for the period of January, 2013 to June, 2014, not upto December, 2014. Therefore, there are some discrepancies in the pleading of applicant Union and regarding this discrepancies no amendment is there to that effect:

Apart from that, the argument led by the Ld. Representative of applicant Union that the claim of variable dearness allowance for the year 2013 to 2014, so raised by the Union is not barred by the principles of Estoppel, waiver and acquiscences – has got no basis. To that effect, the Hon’ble Apex, in “Haryana State Coop. Land Development Bank vs. Neelam” reported in 2005 LLR 483 has stated as follows –

“Industrial dispute, belated claim, although Court could not import a period of limitation when statute did not prescribe the same, it did not mean that irrespective of facts and circumstances of the case, a state claim must be entertained by appropriate Government, procedural laws, like estoppels, waiver and acquiscance were equally applicable to individual proceedings. 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. A person in certain situation may even be held to be bound by the doctrine of “Acceptance Sub Silentio”.





The present applicant did not raise any industrial dispute questioning the non-payment of V.D.A. by the Lytton Hotel for the period January-2013 to December 2014, within a reasonable time. Rather they filed a charter of demands before the Management of the Lytton Hotel where they did not make any whisper about payment of arrear V.D.A. for the aforesaid period. And on the basis of said charter of demands a further bipartite agreement between the parties on 15.10.2015, in which there was also no mention about the payment of arrear V.D.A. for the year 21013 & 2014 and admittedly the representative of the present Union had put their signatures upon that agreement by accepting the clauses of that memorandum of agreement. Accordingly the conducts of the applicant Union are held to be bound by the doctrine of Acceptance Sub Silentio.

In view of the foregoing discussions and above findings this Tribunal has no hesitation to hold that the applicant Union has palpably failed to prove its case by adducing exparte evidences, and the reference made u/s 10(2A) of this Industrial Disputes Act, 1947 has got no merit.

Now, a reference made u/s 10 cannot be rejected and/or dismissed as it would not amount to an Award. An Ex-parte Award normally is passed on the strength of Rule 21 of West Bengal Industrial Disputes Rule 1958. The Tribunal is supposed to pass an 'Award' which has been defined u/s 2(b) of the Act and it clearly stipulated the determination of the Industrial Disputes or any question, relating to thereto, referred to the Tribunal. Once, an order of reference has been made, the Tribunal is bound to decide the same.



In the light of the above discussion, this Tribunal finds and hold that applicant Union has failed to prove that there is any dispute between the parties and the case is liable to finally disposed off on exparte against the Lytton Hotel.

Hence,

**ORDERED**

That the Industrial dispute under order of reference vide G.O. No. Labr./681/(LC-IR)/IR/11L-45/2017, dated 05.07.2017 is disposed off exparte against the Lytton Hotel but without cost as the applicant Union has failed to prove any dispute between the parties as prayed for and the applicant Union is not entitled to get any relief and no award can be passed on the order of reference in the instant case in favour of the applicant Union.

Accordingly, this case is disposed off on exparte and this order is to be treated as an Award of this Tribunal.

Directed & Corrected by me

*Self*  
Judge

20.04.2021

Judge,  
5th Industrial Tribunal  
Govt. of West Bengal

*Self*

(KAMAL SARKAR)  
JUDGE  
Fifth Industrial Tribunal  
Kolkata  
20.04.2021.

Judge,  
5th Industrial Tribunal  
Govt. of West Bengal

