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

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

No. Labr./1654/(LC-IR)/22015(14)/2/2021

Date : 18/08/2021

ORDER

WHEREAS an industrial dispute existed between M/s The Jayshree Chemicals & Fertilisers (Prop. Jayshree Tea & Industries Ltd.), Nanda Bose Lane, Khardah, Dist.-North 24 Parganas, Pin - 700117 and its workman Sri Ajoy Show, 8/7, P.K. Biswas Road, Khardah, Dist.-North 24 Parganas, Pin - 700117 regarding the issues being a matter specified in the First schedule of the Industrial Dispute act, 1947 (14 of 1947);

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

AND WHEREAS the First Industrial Tribunal has submitted to the State Government its Award dated 26.03.2021 on the said Dispute vide memo no. 950- L.T. Dated.26/08/2021.

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,

Deputy Secretary

to the Government of West Bengal

No. Labr./1654/1(2) - IR

Date : 18/08/2021

Copy forwarded for information to :

1. The Judge, First Industrial Tribunal with reference to his Memo No. 950 - L.T. dated 26.08.2021.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Deputy Secretary

No. Labr./1654/2(5) - IR

Date : 18/08/2021

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

1. M/s The Jayshree Chemicals & Fertilisers (Prop. Jayshree Tea & Industries Ltd.), Nanda Bose Lane, Khardah, Dist.-North 24 Parganas, Pin - 700117.
2. Sri Ajoy Show, 8/7, P.K. Biswas Road, Khardah, Dist.-North 24 Parganas, Pin - 700117.
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

Deputy Secretary

Ananda (IT)
Pl. do the needful.
R

In the matter of an industrial dispute between Shri Ajoy Shaw, 8/7, P. K. Biswas Road, Khardah, North 24 Parganas, Kolkata – 700 117 against his employer M/s. The Jayshree Chemicals & Fertilisers (Prop. Jayshree Tea & Industries Ltd.), Nanda Bose Lane, Khardah, District – North 24 Parganas, Pin – 700 117.

Case No. 03/2019 U/S 2A (2) 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 : 26.03.2021

Case No. 03/2019 U/s 2A(2)

This is an application for passing appropriate order for withdrawal of this case with the liberty to sue a fresh as per existing law since Repealing and Amending Act, 2016 and the Industrial Dispute (amended) Act, 2010, came into operation.

It is mentioned by the application to the effect that the Workman Sri Ajoy Shaw residing at 8/7, P. K. Biswas Road, Khardah, North 24 Parganas, Kolkata – 700 117 has filed an application u/s 2A(2) of the Industrial Disputes Act, 1947 as amended against his employer M/s. The Jayshree Chemicals & Fertilisers (Prop. Jayshree Tea & Industries Ltd.), Nanda Bose Lane, Khardah, District – North 24 Parganas, Pin – 700 117, by challenging the termination of his service by way of pre-matured retirement by his employer with effect on and from 01.01.2018 and praying for reinstatement in service with full back wages and other consequential benefits.

Thereafter the opposite party appeared in due course of time and filed their written statement along with documents for exchange of documents. In spite of repeated orders the applicant workman did not file such documents for exchange of documents. However, record was fixed for framing of issues. At this stage the instant applicant has been filed by the workman for withdrawal of the instant case on behalf of the applicant workman, dated 09.02.2021.

During this procedure being continued the Repealing and Amendment Act, 2016, the whole of the Industrial (amended) Act, 2010 has been replaced and after the ascent of the President being received on 06.05.2016. It is further stated that Section 2A(2) had been inserted in the Industrial Dispute Acts, 1947 w.e.f. 15.09.2010.



Now the Government of India under Ministry of Law & Justice (Legislative Department) published a Gazette Notification on 19.05.2016 called as the Repealing and Amendment Act, 2016.

And in view of the said Repealing of the Industrial Dispute Act, 2010, there is no existence of Section 2A(2) any more with effect from 06.05.2016 and since the instant dispute has been filed by the Workman on 22.09.2017 i.e. after the Repealing and Amending Act, 2016, the instant application filed U/s 2A(2) is not maintainable in law and therefore, the instant case No. 2/2A(2) of 2017 being filed on 22.09.2017 cannot survive in law as it has become in-fractious as well as inapplicable of adjudication since the whole of Industrial Dispute (Amended) Act, 2010 has been repealed.

In view of the aforesaid circumstances, it is prayed by the applicant workman to the effect that the applicant may be allowed for withdrawal of the instant case with a liberty to sue a fresh in terms of the existing law.

I have perused the petition. Heard Ld. Advocate for the petitioner workmen.

Admittedly, the instant case has been filed under Section 2A(2) of the Industrial Disputes Act, 1947, as amended on 10.05.2019 which is long after repealing of the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), repealed by the Repealing and Amending Act, 2016 (23 of 2016). So, it is clear that on the date of filing of the instant case i.e. on 10.05.2019, there is no existence of Section 2A(2) of the Industrial Disputes Act, 1947 and / or Section 2A(2) of the said Act had no application on 10.05.2019.

Therefore, I find no such reason to pass any order so that the present applicant Ajoy Shaw can be permitted to continue the case even after passing of the Repealing and Amending Act, 2016 with effect from 09.05.2016. It is clear that the Repealing and Amendment Act, 2016 with effect from 09.05.2016 has wiped out the provision being laid down under Section 2A(2) of the Industrial Disputes Act but facts remains the right of the workman to file the case has not been wiped out on the ground of illegal termination and refusal of employment as because there is certain provision being existed in the Act.

Therefore, the Workman may file the case once again through conciliation proceeding but in no way he can be allowed this case to continue the same or to run the same under Section 2A(2) of the Industrial Disputes Act, 1947 after enforcement of Repealing and Amendment Act, 2016 (23 of 2016) with effect on and from 09.05.2016.



In my considered opinion for ends of justice the Workman can be given liberty to withdraw the case and to file the same a fresh according to the existing provision of the Industrial Disputes Act other than section 2A(2) of the present Act.

Hence it is,

ORDERED

That the petition filed by the Workman, Ajoy Shaw in regard to the permission for withdrawal of the case with a liberty to file the same a fresh as per the provision of the existing Industrial Disputes Act, is allowed without cost.

The present applicant of the instant case named Ajoy Shaw is permitted to withdraw the instant case being filed under Section 2A(2) of the Industrial Disputes Act with a liberty to file a fresh / or to Sue a fresh in accordance with the existing provision being laid down in the Industrial Disputes Act, 1947 and accordingly the instant petition is disposed of.

This is my **AWARD**.

The Award be sent to the Government.

Sd/-

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)
Judge

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

