

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

No. Labr./...../2067/(LC-IR)/22015/8/2019

Date 18-11-2021

ORDER

WHEREAS an industrial dispute existed between M/s Indo Thai Flexible Tubes Ltd. 1 Kyd Street, Flat No.17B, Palace Court, Kolkata - 700016 and their workman Sri Pradip Porey, Vill. Italey, P.O. Chaulkhola, P.S. Noakhali, Dist. 24 Parganas (South) 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 Second Labour Court Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the Second Labour Court heard the Parties and framed the following issues as the "Issue" of the said dispute;

AND WHEREAS the Second Labour Court has submitted to the State Government its Award on dated 28/10/2021 the said Dispute vide memo no. 1258 - L.T. dated. 29/10/2021.

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/

Joint Secretary
to the Government of West Bengal

(2)

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

Dated 18-11-...../2021

Copy forwarded for information to :

1. The Judge, Second Labour Court with reference to his Memo No.1285 - L.T. dated 29/10/2021.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Joint Secretary

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

Dated 18-11-...../2021

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

1. M/s . Indo Thai Flexible Tubes Ltd. 1 Kyd Street, Flat No.17B, Palace Court, Kolkata - 700016.
2. Sri Pradip Porey, Vill. Italey, P.O. Chaulkhola, P.S. Noakhali, Dist. 24 Parganas (South).
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 Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 5. The Deputy, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Joint Secretary

In the matter of an application sub section (2) of Section 2A of the Industrial Disputes Act, 1947 filed by Shri Pradip Porey, Vill. Italey P.O. Chaulkhola, P.S. Noakhali, Dist. 24 Parganas (South) against M/s. Indo Thai Flexible Tubes Limited, 1 Kyd Street, Flat No. 17B, Palace Court, Kolkata – 700 016 & factory at Mahestala Budge Budge Trunk Road, Jalkal, near Babul Paste, Dist. South 24 Pgs. Kolkata-141.

(Case No. 02/2014 u/s. 2A(2))

BEFORE THE SECOND LABOUR COURT, WEST BENGAL, KOLKATA

PRESENT: SMT. DIPASHYAM RAY, JUDGE

SECOND LABOUR COURT

KOLKATA.

DATED: 28.10.2021.

A W A R D

The present case u/sec 2A(2) of Industrial Disputes Act, 1947 was filed by the applicant, Shri Pradip Porey praying for reinstatement in service with full back wages and other consequential reliefs.

The fact of the case in nutshell is that applicant's name came in employment role on 13.12.2007 and he was working at the factory of the Company namely M/s. Indo Thai Flexible Tubes Ltd. as a workman without an iota of blemish and / or any adverse report. Applicant has claimed that he used to draw Rs. 7,500/- per month. Applicant Shri Pradip Porey has alleged that though the Company deducted the Provident Fund, it did not deposit the same to the office of the Regional Provident Fund Commissioner and this fact was communicated to the office of the Regional Provident Fund Commissioner vide letter dated 02.05.13 but yielded no result.

Applicant has further alleged that the company forced the workman to discontinue his service by way of refusal of employment. According to the applicant, company threatened the workman that so long he would not submit resignation letter, he would not get his statutory payments. Finding no other alternative, the workman was compelled to submit his resignation letter on 27.03.14 under duress and intimidation with pressure which is nothing but "alleged consequential effect of termination of service under the veil of forced resignation."

In spite of repeated request by the workman to take him back in employment, the employer kept mum, rather recruited fresh workman adopting unfair measure of anti-labour policy and also taking the advantage of illiteracy and poverty of the workman.

Applicant took shelter before the conciliatory machinery vide its letter dated 27.03.14 and finally brought to the notice of the Labour Director, Govt. of West Bengal on 27.03.14 when 45 days had been completed.

Applicant has reiterated that due to such wrongful and illegal termination of service under the veil of forced resignation with effect from 27.03.14 he is praying for reinstatement with full back wages and other consequential benefits. Applicant has further prayed to hold the alleged forced resignation with intimidation & duress with effect from 06.11.13 by the OP Company as unjustified, bad and illegal and to pass an award directing the Company to reinstate the petitioner with full back wages along with consequential statutory benefits.

Filing written statement in reply, the Company has denied all allegations levelled against it and contended that the application u/sec 2A(2) of the Industrial Disputes Act, 1947 was not maintainable since no rule had yet been framed by the appropriate Govt. to regulate the provision of Sec 2A(2) of the Industrial Disputes Act, 1947. Opposite party Company has further pointed out that no certificate was issued by the authority concerned to show that the qualifying period of conciliation proceeding ended. Besides that no investigation was made by the Conciliation Officer as regard the existence of an Industrial Dispute relating to the individual workman and in absence of it entire proceeding is void, nullity in the eye of law.

The Positive Contention of the opposite party company is that the applicant left the job at his own volition. The allegation to the effect of forced resignation with duress is false and concocted. According to OP Company as the petitioner resigned voluntarily the question of charge sheet, show cause or disciplinary proceeding did not arise. Opposite party company has categorically stated that the applicant is not a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947 and accordingly the relationship of employer and employee ceased to exist. Thus, the Company has prayed for rejection of the claim of reinstatement and back wages or consequential benefits of the applicant considering the same as baseless and frivolous one.

From the above rival pleadings of both parties following issues have been framed:—

1. Is this case maintainable in its present form and in law?
2. Whether the applicant was compelled to submit his resignation letter on 09.04.2014 under duress and intimidation with pressure as alleged?
3. Whether the letter dt. 09.04.2014 submitted by the applicant is deemed to be consequential effect of termination of service under the veil of forced resignation as alleged?
4. Is the applicant entitled to get any relief as prayed for?
5. To what other relief or reliefs the applicant is entitled to get?

To prove his own case applicant Shri Pradip Porey has examined himself as PW-1. Following documents were marked Exhibits during his examination in chief.

Sl. No.	Exbt. No.	Nature of document
1.	1	Letter to P.F. commissioner
2.	2	ESI Card.
3.	3	Identity card issued by the company
4.	4	Appointment letter (two pages)
5.	5.	Notice of accident
6.	6	Copy of P.F. account.



P.W.-1 was cross-examined in part only and thereafter the opposite party did not turn up. So, the case was fixed for exparte hearing on 30.09.2021. Then exparte argument was heard.

Let me discuss how far applicant is able to prove his case.

DECISION WITH REASONS

Issue No. 1.

By virtue of the Repealing and Amending Act, 2016 the whole of the Industrial Disputes Amendment Act, 2010 was repealed. But this Act received the ascent of President on 6th May, 2016 and was notified in the Gazette of India on 09.05.2016. So, this act is not affecting the proceeding which is already pending prior to 6th May, 2016. The instant case is pending from 2014. So, I do not find any ground for which the instant case can be held as non-maintainable. Hence, Issue No. 1 is adjudicated in favour of the workman.

Issue No. 2 & 3.

For sake of brevity and precision these two interlinked issues are taken up together for discussion.

Issue No. 2 is the most vital issue, decision of which is determining the ultimate fate of this case. Ld. Advocate for applicant has vehemently argued that the Company refused the employment to the workman and forced him to submit resignation threatening him not to pay the statutory dues to him. Ld. Advocate for applicant has further submitted that he did not get any opportunity to cross-examine the O.P. Company to expose the truth.

Ld. Advocate for petitioner has tried to convince this Court that in the instant case the relations subsisting between the parties are such that one of the party is in a position to dominate the will of the other and the said party used that position to obtain an unfair advantage over the other. According to the Ld. Advocate for the petitioner under no stretch of imagination, it can be presumed that workman is in a position to dominate the will of the employer. Quite naturally, the resignation was obtained under coercion and the threat of non-payment of statutory dues constitutes coercion in the eye of law.

Admittedly, opposite party did not turn up to produce its witness as well as evidence. But at the same time the burden of proving the fact that the applicant was compelled to submit his resignation letter under duress and intimidation with pressure lies upon the applicant / petitioner. It is purely a question of fact to be determined by adequate corroborating evidence.

After careful perusal of all the documents no iota of evidence has been noticed to presume safely that the Company threatened the workman not to pay his statutory dues or refused him employment. No document has been furnished before this Court to substantiate the alleged threatening and intimidation by the Company. Mere oral contention is not sufficient to prove the allegation. If the workman was compelled to tender his resignation it is quite natural that he would complain before any of the forum alleging this compulsion / threatening. Surprisingly no such document has been produced before this court in this regard. None of the exhibited document has corroborated the applicant's claim that management had refused any sort of employment to the workman or stopped his salary prior to the date of submitting resignation letter. In para 10 of the



application under sub-section (2) of section 2(A) of the Industrial Disputes Act, 1947 the applicant Shri Pradip Porey mentioned that the alleged resignation was with effect from 09.04.14 but in the prayer portion he again mentioned that the aforesaid alleged forced resignation was with effect from 06.11.13. So the application before this Court itself created a confusion regarding the date of resignation letter as well as date of its effect. The application further reveals that the applicant was forced to take shelter before the conciliatory machinery vide letter dated 27.03.14. Before submitting resignation on 09.04.14 as alleged in para 10, how the applicant took shelter before the conciliatory machinery on 27.03.2014 — is not clear before this Court. No copy of the alleged resignation letter has been furnished before this Court. Even there is no prayer from the end of the workman to reconsider the decision of the Company or for withdrawal of the resignation. Though workman in his written statement has contended that he had repeatedly requested the management to take back him in employment, the workman has failed to furnish any such document before this Court in support of this contention. Applicant has given different version regarding the date of submission of resignation letter as well as date of its effect such as 06.11.2013, 27.03.2014, 09.04.2014. No document has been furnished before this Court to enable this Court to ascertain the actual date of submission of resignation as well as the actual date from which it became effective. So, the conduct of the workman has created a reasonable suspicion regarding the credibility of this allegation of duress and intimidation. No where in the written statement of the applicant the date from which employment was refused to the workman was mentioned.

So, in the above circumstances this Court has no option but to hold that the applicant has failed to establish his allegation by cogent evidence that he submitted his resignation letter under duress and intimidation with pressure. Thus, issue No. 2 is decided against the workman. As an obvious consequence issue No. 3 is also settled against the workman.

Issue No. 4 & 5.

To avoid repetitions these two interconnected issues are taken up together for discussions.

In cases of wrongful termination of service reinstatement with continuity of service and back wages is the normal rule. But unfortunately in the present case applicant has failed to establish the termination by the Company at all. The documentary evidences produced by the applicant and his oral testimony do not inspire confidence of this Court regarding the veracity of the fact pleaded.

In the light of above discussions, I am of opinion that applicant's contention that he tendered resignation under compelling circumstances has no legs to stand on. So, under no circumstances, submission of resignation letter come within the purview of termination by the Company entitling the workman retrenchment compensation or consequential benefit of termination. As a result, applicant is not entitled to get any relief prayed for. Thus, issues No. 4 & 5 both are determined against the applicant.

To sum up, it is settled law that burden of proof of the existence of a particular fact lies on the person who makes a positive averment about his existence. Following above principle tendering resignation is not a voluntary act of the workman rather a forced one — is to be proved by the applicant and undoubtedly applicant has failed to discharge the said responsibility. Therefore, this Court is constrained to hold the allegations of the applicant that he submitted resignation letter under duress and intimidation with pressure as baseless oral claim only without any corroboration by cogent evidence.



Hence,

It is ordered

That the instant case u/s. 2A(2) of Industrial Disputes Act, 1947 is hereby rejected on contest without any cost.

This is my award.

The copy of the award be sent to the concerned department of the Government.

Dictated & Corrected by me

Sd/—

Judge
Second Labour Court

Sd/—
(Dipa Shyam Ray)
Judge
Second Labour Court
28.10.2021.

