

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

2098
No. Labr/...../(LC-IR)/22015(16)/319/2018

24-11-
Date :2021.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/1033/(LC-IR)/IR/11L-78/2015 dated 28/09/2016 the Industrial Dispute between M/s. K. S. Oils Ltd. J. L. No. 149, Debhog, HPL Link Road Haldia, Purba Medinipur and their workman Sri Rabindra Nath Samanta, Vill. Brajalal Chak P. O. Dakshinchak, Purba Medinipur regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Third Industrial Tribunal, West Bengal.

AND WHEREAS the Third Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 29/10/2021 on the said Industrial Dispute vide memo no. 1326 - L.T. dated - 08/11/2021.

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/

Joint Secretary

to the Government of West Bengal

2098/1(5)
No. Labr/...../(LC-IR)

24-11-
Date :/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 Rabindra Nath Samanta, Vill. Brajalal Chak P. O. Dakshinchak, 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 Secretariate 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.

2098/2(2)
No. Labr/...../(LC-IR)

Dm
Joint Secretary
Date : 24-11-2021.

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, West Bengal with reference to his Memo No. 1326 - L. T. dated. 08/11/2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

BEFORE THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL.

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

Case No. VIII-28/2015

Award

Date - 29.10.2021

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 Rabindra Nath Samanta, Vill. Brajalal Chak P. O. Dakshinchak, Purba Medinipur referred to this Tribunal vide Reference order No. 957-I. R./ IR/11L-78/2015 dated 17.09.2015 corrected under order No. Labr/1033/(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 Rabindra Nath Samanta 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 12.06.2012 as Trainee (Mechanical) and 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 from entering into 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 himself 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 named in the 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

Contd...

meet the 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 stated that the employee was appointed as a Trainee w.e.f. 02.07.2012. 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. Strangely the company pleaded 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 with annual remuneration inclusive of all allowances of Rs. 67,524/-. 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 Rabindra Nath Samanta 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. Copies of letters issued by the office of DLC (4 sheets) as Exbt.-4, 4/1, 4/2 and 4/3.
5. Copy of temporary identity certificate of the workman of ESIS as Exbt.-5;

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

1. Copy of the appointment of the workman as Trainee (Mechanical) as Exbt.-A;
2. Copy of termination notice as Exbt.-B;
3. Copy of letter dated 18.11.2012 to Deputy Labour Commissioner by company as Exbt.-C;
4. Copy of letter dated 25.11.2013 to Asst. Labour Commissioner by company as Exbt.-D;
5. Copy of settlement letter dated 05.05.2014 of the company addressed to the workman as Exbt.-E;
6. Copy of second settlement letter dated 21.07.2014 of the company addressed to the workman as Exbt.-F;
7. Copy of lease agreement between K.S. Oil and JVL Agro as Exbt.-G;
8. Copy of letter from SBI Corporate Accounts Group Branch to the company as Exbt.-H;
9. Copy of letter from SBI CAP Trustee Company Limited to the company as Exbt.-I;
10. Copy of possession notice of SBI CAP Trustee Company Ltd. as Exbt.-J;

11. Copy of order dated 21.07.2017 of National Company Law Tribunal, Ahmedabad Bench as Exbt.-K; &
12. Inter office memorandum dated 14.08.2013 as Exbt.-L;
13. Copies of Inter Office Memo dated 06.09.2011 and 07.04.2014 of the company extending service of the factory manager (OPW1) as Exbt.-M & M1 respectively.

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 he was appointed as trainee and his service was lawfully terminated. During arguments learned advocate for the company submits that the workman was appointed as trainee and not as permanent employee as such he is not entitled to any relief. She submits that the trainee was not absorbed in the company due to unsatisfactory performance. She contends 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. She also submits that there being order of moratorium under the Insolvency and Bankruptcy Code 2016 the corporate debtor/company has nothing in its hand.

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. Learned advocate further submits that a trainee is a workman

within the meaning of section 2(s) of the I. D. Act as such he is entitled to the relief under the Act. On this score he cites the decision of the Hon'ble Bombay High Court in *Maria Thomas Gonsalves Vs Concept Pharmaceuticals (P) Ltd.* reported in **2001 LLR 755**. He also cites the decision of the Hon'ble Supreme Court in *Jasmer Singh Vs State of Haryana* reported in **2015 LLR 225** in support of his contention that in case of illegal termination of service workman is entitled to reinstatement with back wages.

In *Jagdamba Motors*, 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 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 and there existed an industrial dispute.

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 allegedly 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. Thus, arguments forwarded by learned advocate for the company challenging the maintainability of the case are not acceptable.

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. 28 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 cannot be deprived of his right and remedy available under the Industrial Disputes Act 1947.

Now, the question is that whether the workman in this case is a workman within the meaning of section 2(s) of the I. D. Act. According to the company the workman was appointed as a Trainee as such he cannot be a regular employee. Evidence of the workman (PW1) is that he worked in the company from the date of his appointment till 14.11.2013 but he was refused entry in the factory on 15.11.2013. Such testimony of PW1 has not been denied and disputed in his cross-examination. The witness in his cross-examination stated that he joined the company on the strength of the appointment letter issued by the company and he signed the appointment letter after going through its contents and admitting the terms and conditions. His further evidence is that the management obstructed him to continue with his employment by prohibiting his entry into the company premises. Exhibit-B is the copy of termination notice dated 31.08.2013. This notice was affixed on the notice board which the workman allegedly saw on 15.11.2013 when he was denied entry in the factory. No reason whatsoever for the termination is disclosed in the notice. The notice only states that the management had decided to terminate him with immediate effect as per para 11 of his appointment letter. Para 11 of the appointment letter (Exhibits-1 and A) says that your training can also be terminated, without any notice or stipend in lieu thereof, if the management finds that the particulars supplied by you either in the application form or at the time of interview are incorrect. The cause of termination stated in the notice is contrary to the evidence of OPW1 that service of the workman and others were terminated due to extreme financial exigencies complying the provisions of para 7 of the appointment letter dated 12.06.2012. Surprisingly para 7 of the appointment letter (Exhibit-A) does not speak of any condition for termination of service. Exhibit-C is the copy of letter dated 18.11.2013 of the company addressed to the Dy. Labour Commissioner, Haldia which says that the services of eight employees 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 unsatisfactory performance on the part of the workman. The appointment letter (Exhibits-1 & A) shows that the workman was appointed as trainee in the company. The mentioning of the word 'trainee' only in the appointment letter is not itself sufficient to hold that the workman was appointed merely as a trainee. There

is no material on record to show that the company had any system or facility for imparting training to the applicants. The appointment letter does not specify that what sort of training was to be imparted to the workman. The appointment letter contains clauses regarding the transfer of the workman in any department / branch / section / group / line of the company at the discretion of the management and also for fixing shift and duty hours depending upon the exigencies of work of the company. If the workman was appointed merely as a trainee there could be no need for incorporating such terms in the appointment letter. In the circumstances it appears that though the workman was designated as a trainee in the appointment letter in fact he was used as a regular employee for all practical purposes. The management reserved the right of transferring the workman to any other department/branch/group/section/line of the company which clearly indicates that the workman as a regular employee and not merely a trainee.

In *S.K Maini Vs Carona AIR 1994 SC 1824* the Hon'ble Supreme Court held, "After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned Counsel for the parties, it appears to us that whether or not an employee is a workman under section 2 (s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases."

It is well settled that the designation of an employee is not of importance and it is the real nature of duties performed by the employee which decide that whether an employee is a 'workman' under Section 2(s) of the Industrial Disputes Act.

The appointment letter speaks of automatic termination of training period at the end of twelve months from the date of joining and the training commenced with effect from 02.07.2012. In that view of the matter the alleged training should have come to an end on expiry of twelve months from 02.07.2012, but we find from the evidence and materials on record that the workman continued to work till 14.11.2013.

It is the consistent version of the workman that he started work in the company on and from 02.07.2012 and continued to work till 14.11.2013 but there is no evidence from the company to refute the testimony of the workman. The OPW-1 rather admitted in his cross-examination that the workman had gone to resume his duty on 15.11.2013,

but he was debarred from entering into the factory premises as his service was terminated.

Evidently, the workman joined the company on 02.07.2012 on the strength of the appointment letter dated 12.06.2012. Now, Exhibit-A shows that the signatures of the workman were taken thereon on 05.09.2012.

Having regard to the entire facts and circumstances and the materials and evidence appearing on record and in absence of any material to show that the company had a system or facility for imparting training, the workman though designated as a trainee is in fact a workman within the meaning of Section 2(s) of the I. D. Act, 1947.

In the case of *Jasmer Singh*, referred to by learned advocate for the workman, the Hon'ble Supreme Court held that if the workman had completed 240 days' continuous service during the preceding 12 calendar month his termination without compliance of mandatory provisions of the Industrial Disputes Act, 1947 would make the workman entitled to reinstatement with back wages.

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.

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. Save and except the bald statement of the workman in evidence that he is unemployed since termination of his service there is no supportive evidence to show that he was not employed anywhere gainfully.

After considering all the facts and circumstances of this case and in the light of the 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 Rabindra Nath Samanta 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 15.11.2013 till his 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 Rabindra Nath Samanta is entitled to reinstatement in his original positions with 25% of back wages from 15.01.2013 till his reinstatement.


Messers K. S. Oils Ltd. is directed to reinstate the workman Rabindra Nath Samanta 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


Judge


(Sanjeev Kumar Sharma)
Judge
3rd Industrial Tribunal
Kolkata
29.10.2021