

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

No. Labr/2273/(LC-IR)/22015(12)/1/2021

Date : 14-12-2021

ORDER

WHEREAS an industrial dispute existed between M/S. Vijay Shree Ltd. Fort William Jute Mill Division, 47 & 48, R.N.R.C. Ghat Road, Shibpur, Howrah - 711102 and Samim Khan, 7/4, G.C.R.C. Ghat Road, Shibpur, Howrah - 711102 regarding the issue, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Second Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Second Industrial Tribunal heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

AND WHEREAS the Second Industrial Tribunal has submitted to the State Government its Award dated 29/09/2021 under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no.1419 - L.T. dated 01/12/2021.

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

: 2 :

2273
No. Labr/.1/(5)/(LC-IR)

14-12-
Date :/2021

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

1. M/S. Vijay Shree Ltd. Fort William Jute Mill Division, 47 & 48, R.N.R.C. Ghat Road, Shibpur, Howrah - 711102.
2. Samim Khan, 7/4, G.C.R.C. Ghat Road, Shibpur, Howrah - 711102 .
3. The Asstt. Labour Commissioner, W.B. In-Charge, 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.



Joint Secretary

2273
No. Labr/.2/(2)/(LC-IR)

14-12-
Date/2021

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal West Bengal, with respect to his Memo No. 1419 dated 01/12/2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Joint Secretary

Before the 2nd Industrial Tribunal, Kolkata

**Present : Shri Partha Sarathi Mukhopadhyay, Judge
2nd Industrial Tribunal, Kolkata**

Case No. 05 of 2012

Under Section 10(1B)(d) of The Industrial Disputes Act, 1947

Samim Khan

-Vs-

M/S. Vijay Shree Limited

Dated, 29.09.2021



J U D G E M E N T

The petitioner/workman has filed this case under Section 10(1B)(d) of The Industrial Disputes Act, 1947 and he has submitted that he was a regular employee working under the O.P. company since 21.09.1984 and became the member of the Provident Fund, ESI and availed the benefit of earned leave etc.

The petitioner further submits that vide letter dt. 01.11.2011 the Opposite Party terminated his service w.e.f. 01.11.2011 by making some false allegations without giving the petitioner an opportunity of hearing and then by a letter dt. 05.12.2011 the workman challenged the said order of termination and requested for reinstatement with full back wages and then he approached the office of the Deputy Labour

Commissioner for intervention and finding that there was no chance of settlement of the dispute, he requested for issuance of a certificate over pendency of conciliation to enable him to file the case directly without waiting for reference by the Government and on and from 30.05.2011 the O.P. company did not allow him to enter into the company and the allegations as made in the letter dt. 01.11.2011 by the O.P. company are false and baseless and no domestic enquiry was held regarding the alleged incident and on the above mentioned grounds the workman has filed this case praying for reinstatement and declaration that the termination of his service w.e.f. 01.11.2011 is illegal and unjustified.

The O.P. company has contested this case by filing a written statement denying therein all the material allegations in the written statement of the petitioner.

The O.P. company submits that the case is not maintainable in its present form and law and the petitioner was a badli workman for which the instant dispute cannot be termed as industrial dispute and a badli workman is not entitled to get any protection under The Industrial Disputes Act, 1947.

The O.P. company has further submitted in its written statement that the petitioner had been enrolled in the employment of the O.P. company w.e.f. 01.02.1997 as badli worker and thereafter he had worked intermittently as and when the vacancy arose but he never worked continuously for 240 days at a stretch and on 29.05.2011 at about 7.00 a.m. this petitioner along with other badli workers wrongfully confined one D.R. Thakur of the Weaving Section for half an hour in the Weaving Department and forced him to mark their attendance despite the facts that they had refused to work at their allotted places of work on that date and had tried to work forcefully at the places of their own choice and when said Thakur tried to convince them, they assaulted him physically by fists & blows causing serious injuries to him and those acts of the said workers are major misconducts within the meaning of Certified Standing Orders and

for this reason this petitioner along with others were asked on 30.05.2011 not to enter the company premises for work and thereafter **thorough internal enquiry**, the O.P. company came to the conclusion that this petitioner along with others wrongfully confined and assaulted said Thakur and then the Disciplinary Authority by its letter dt. 01.11.2011 delisted the petitioner and other persons from the list of badli workers according to the Certified Standing Orders followed by the O.P. company and all the allegations made by the petitioner in his written statement are totally false and baseless. Hence, the O.P. company has prayed for dismissal of the case.

Considering the materials on record, the following issues have been framed in order to arrive at a decision:-

1. Whether the present case is maintainable.
2. Whether after introduction of Section 2A(2) in The Industrial Disputes Act, 1947 the provision of Section 10(1B) of The Industrial Disputes Act, 1947 (W.B. Amendment) are operational.
3. Whether the applicant is a workman within the meaning of Section 2(S) of The Industrial Disputes Act, 1947.
4. Whether the termination of service of the applicant, Samim Khan by the company is justified.
5. To what relief, if any, the applicant is entitled ?

ISSUES NOS. 1 TO 5

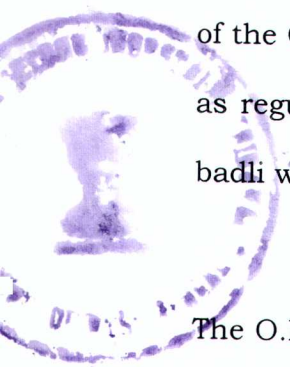
All the issues are taken up together for consideration for the sake of convenience.

During argument, the Ld. Lawyer for the workman has cited one decision of the Hon'ble Supreme Court as reported in 2014-IV-LLJ-171(SC) and one decision of the Hon'ble High Court, Bombay as reported in 1993 LAB.I.C. Page 1494.

The Ld. Lawyer for the O.P. company has cited one decision of the Hon'ble Supreme Court as reported in 2009 LLR 659, one decision of the Hon'ble Supreme Court as reported in 2006 (108) FLR Page 213, one decision of the Hon'ble Supreme Court as reported in (2002) 8 Supreme Court cases Page 400 and one decision of the Hon'ble Supreme Court as reported in 2006 ICLR Page 39.

As per the case of the petitioner, he is a regular employee under the O.P. company working since 21.09.1984 while as per the written statement of the O.P. company the petitioner worked as badli worker in the O.P. company from 01.02.1997 and his name had been enrolled in the employment of the Opposite Party and a badli worker is also commonly known as Casual Badli.

So in its written statement, the O.P. company has admitted that since 01.02.1997 the petitioner worked in the O.P. company and his name was enrolled in the employment of the O.P. company, but the bone of contention is as to whether the petitioner worked as regular employee in the O.P. company since 21.09.1984 or he worked there as a badli worker since 01.02.1997.



The O.P. company has exhibited one document as Exhibit-A and this Exhibit-A shows the name of the petitioner and at the top of this document the expression "Badli Record" is mentioned while in the middle of that document at the right side, the word Casual is mentioned. So this document of the O.P. company shows both badli and casual in respect of the petitioner.

In its written statement the O.P. company has stated that badli worker is commonly known as casual badli but the O.P. company has exhibited one standing orders of the O.P. company as Exhibit-D and according to rule 2 of the first part of this Standing Orders, the badli worker and the casual worker are not the same and they are different. So the submission of the O.P. company to the point that the badli worker and the casual badli are same, is not true according to the Standing Orders of the O.P. company.

The OPW-I has stated that the petitioner used to work as the badli worker.

I have already discussed above that in its written statement the O.P. company has admitted that since 01.02.1997 the petitioner had worked as badli worker and his name had been enrolled in the company.

The O.P. company has not produced the muster rolls of the O.P. company to show that the name of the petitioner as badli worker was enrolled since 01.02.1997 according to the written statement of the O.P. company but the OPW-I has admitted that the petitioner was the badli worker of the O.P. company.

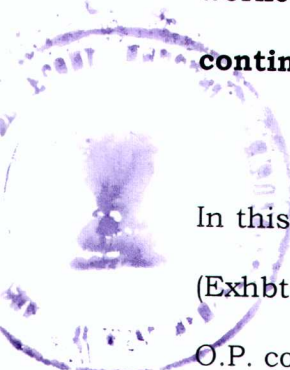
In paragraph 15 of the written statement the O.P. company has stated that from 01.02.1997 the petitioner had worked intermittently as badli worker in the said company and then on 30.05.2011 he was directed not to enter the company for work and then on 01.11.2011 his service was terminated.

As it has been proved from the evidence of the O.P.W.I that the petitioner was the badli worker of the O.P. company, it is to be presumed that he had completed one year of continuous service i.e. 240 days in the O.P. company according to Section 25-B(2)(a)(ii) of The Industrial Disputes Act, 1947.

In its written statement the O.P. company has used the word **intermittently** but this word is vague to determine the period of continuous service by the petitioner since 01.02.1997 till 29.05.2011 and the O.P. company should have produced the muster roll of the O.P. company because it is admitted in the written statement that the name of the petitioner had been enrolled in the employment of the O.P. company since 01.02.1997.

According to Section 25-C Explanation, of The Industrial Disputes Act, 1947, the status of badli workman shall cease after completion of one year of continuous service i.e. 240 days, but admittedly the petitioner had been working in the O.P. company since 01.02.1997 to 29.05.2011 and his service was terminated on 01.11.2011.

Accordingly at present, the petitioner cannot be termed as the Badli Workman because one year of continuous service had already been completed since 01.02.1997 till 29.05.2011 and the O.P. company has not produced the muster rolls or any document to prove that in every years from 01.02.1997 to 29.05.2011 the petitioner did not complete one year of continuous service, and accordingly it can be safely presumed that on 01.11.2011 the petitioner was not a badli worker and **he was a regular worker in the O.P. company due to working for more than one year of continuous service.**



In this case the O.P. company has based its case on the basis of the Standing Orders (Exhbt.D) followed by the O.P. company and during argument the Ld. Lawyer for the O.P. company has cited rule 5(b) of the 2nd Part of the said Standing Orders and as per this rule 5(b), the special or registered badli workers' names may be removed from the list of the registered badlies for any of the acts or omissions listed as misconduct in the Standing Orders.

According to rule 14 of the 1st Part of the said Standing Orders, wilful insubordination or disobedience, whether alone or in combination with others, to any lawful or reasonable order of a superior and riotous or disorderly behaviour during working hours at the establishment or any act subversive of discipline shall be treated as misconduct.

So in order to remove any badli worker from the list as per rule 5(b) of the 2nd Part of the Standing Order, any of the acts or omissions as mentioned in rule 14 as misconduct in the standing orders has to be committed.

In its written statement, the O.P. company has claimed that on 29.05.2011 at about 7.00 a.m. the petitioner along with others wrongfully confined one D.R. Thakur of the Weaving Section for half an hour in the Weaving Department of the mill and forced him to mark their attendance despite of the facts that they had refused to work at their allotted places of work on that date and tried to work forcefully at the places of their own choice and when said Thakur tried to convince them, the petitioner along with others assaulted him physically by fists and blows causing serious injuries to him and then internal enquiry was held and after enquiry the Disciplinary Authority delisted the petitioner and others on 01.11.2011 from the list of badli workers as per rule 5(b) of the 2nd Part of the Standing Orders followed by the O.P. company, but the O.P. company has not examined said D.R. Thakur, the victim and most vital witness of the alleged incident, as witness in this case and no medical certificate has been produced to show that said Thakur sustained severe injuries on his body due to assault and though the O.P. company has claimed in the written statement that after through internal enquiry, the Disciplinary Authority terminated the service of the petitioner, no such paper of the said internal enquiry has been produced and proved in this case by the O.P. company and the petitioner was not directed to file any show cause regarding the incident and he was not called in the said enquiry and in his absence the said enquiry was held. So this is a clear case of violation of the principles of natural justice and without the presence of the petitioner at the time of internal enquiry and without giving him any opportunity to submit his case, the O.P. company has terminated the service of the petitioner most illegally and whimsically causing serious injustice to him.

The O.P. company has not given any explanation as to why said D.R. Thakur was not examined in this case.

So considering the Standing Orders of the O.P. company, admitted length of service of the workman from 01.02.1997 till 29.05.2011, Section 25-C Explanation and 25-B (2)(a)(ii) of The Industrial Disputes Act, 1947 and the entire materials on record I

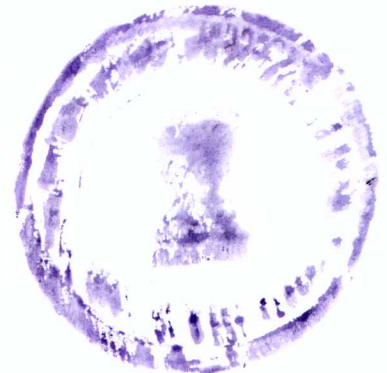
hold that though the petitioner started working as badli worker in the O.P. company, by virtue of his long service from 01.02.1997 to 29.05.2011 he has become a regular worker under the O.P. company and by violating the principles of natural justice and holding internal enquiry illegally, the O.P. company has illegally terminated the service of the petitioner and accordingly I hold that the termination of service of the petitioner w.e.f. 01.11.2011 is illegal and unjustified, and the petitioner is entitled to get reinstatement along with full back wages and other consequential benefits from 30.05.2011 till his reinstatement.

So considering the entire materials on record I hold that the case is maintainable in its present form and law and the petitioner is entitled to get relief as prayed for.

In the result, the case succeeds.

Hence, it is

ORDERED



that the Case No. 05 of 2012 under Section 10(1B)(d) of The Industrial Disputes Act, 1947 is allowed on contest against the O.P. company with a cost of Rs. 20,000.00.

It is hereby declared that the order of termination of service dt. 01.11.2011 passed against the petitioner by the O.P. company is illegal, unjustified and void.

It is also declared that the petitioner is also entitled to be reinstated in his previous service as on 29.05.2011 with full back wages and the O.P. company is directed to pay the full back wages to the petitioner from 30.05.2011 till his reinstatement with a compound interest of 10% p.a. on the entire arrear amount of back wages and the O.P. company is also directed to pay this entire amount to the petitioner within 30 days from this date of order.

The O.P. company is directed to reinstate the petitioner on 01.11.2021 in his previous job, in default, the petitioner is at liberty to take legal action against the O.P. company.

Let this judgement and order be treated as an Award.

According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.

Sd/- P.S. Mukhopadhyay
Judge

Sd/- (P.S. Mukhopadhyay)
Judge
2nd Industrial Tribunal

