

I/165960/2021

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

2320 N.S. Buildings, 12<sup>th</sup> Floor, 1, K.S. Roy Road, Kolkata - 700001  
No. Labr/...../(LC-IR)/ 22015(12)/8/2018 Date: 20-12-2021

**ORDER**

WHEREAS an industrial dispute existed between M/s Samnugar Jute Factory (North Mill), Bhadreswar, Hooghly, Pin - 712124 and its workman Sri Lalon Chawdhury, S/o Late Ramjuman Chawdhury, C/o Baiju Chawdhury, Rabindranagore, P.O. - Tenlinipara, Hooghly, Pin - 712125 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 filled an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Third Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997;

AND WHEREAS the said Third Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 02.09.2021 under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide Memo No. 983 - L.T. dated 02.09.2021;

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

2320  
No. Labr/...../1(5)/(LC-IR)

Date: 20-12-2021

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

1. M/s Samnugar Jute Factory (North Mill), Bhadreswar, Hooghly, Pin - 712124.
2. Sri Lalon Chawdhury, S/o Late Ramjuman Chawdhury, C/o Baiju Chawdhury, Rabindranagore, P.O. - Tenlinipara, Hooghly, Pin - 712125.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Buildings, (11<sup>th</sup> 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.

2320  
No. Labr/...../2(2)/(LC-IR)

*DL*  
Joint Secretary  
Date: 20-12-2021

Copy forwarded for information to :-

1. The Judge, Third Industrial Tribunal, Kolkata, with respect to his Memo No. 983 - L.T. dated 02.09.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Joint Secretary



**In the Third Industrial Tribunal, West Bengal  
New Secretariat Buildings, Kolkata**

Present: Shri Sanjeev Kumar Sharma, Judge,  
Third Industrial Tribunal, Kolkata.

**CASE NO. 20/2018**

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

Sri Lalon Chawdhury ... Applicant  
S/o. Late Ramjuman Chawdhury,  
C/o Baiju Chawdhury,  
Chandrababu Lane, P.O. Bhadreswar, Hooghly, PIN-712124.  
Present Address- Rabindranagore, P.O. Telinipara,  
Hooghly, PIN-712125.

-Versus-

M/s. Samunagar Jute Factory (North Mill) ... OP/Company  
Bhadreswar, Hoogly, PIN-712124.

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**A W A R D**

Date :- 02-09-2021

The applicant Sri Lalan Chowdhury filed the instant application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (as amended in West Bengal) praying for his reinstatement with full back wages on the ground that his service has been illegally terminated by the company namely M/s. Samunagar Jute Factory (North Mill), Bhadreswar, Hooghly, PIN-712124 w.e.f. 13.07.2015.

The case of the applicant is that he joined the service of the company in the year 1991 as permanent workman having assigned L.B. No. 9039. He was enrolled under Employees' State Insurance Corporation Act w.e.f. 16.03.1991. On the basis of the declaration of the applicant before the company the ESI Corporation issued e-Pehchan card in his favour where his date of birth is categorically mentioned as 01.07.1966. The applicant is also a member of Employees' Provident Fund. According to the applicant on 13.07.2015 all of a sudden, the management of the company did not allow him to join his duties on the ground that his service has been terminated on his attaining the age of superannuation of 58 years. The applicant raised protest against such termination verbally and also sent letter dated 19.07.2015 through registered post which returned with postal remark 'refused'. Despite several requests the company did not allow him to join his duties and finally he approached Deputy Labour Commissioner by writing letter dated 27.07.2015. Conciliation was held but the management dragged the matter. On the application dated 14.08.2016 of the applicant the Conciliation Officer, Chandannagar, Hooghly issued certificate under Section 10(1B) of the I. D. Act, 1947 as per Rule 12A (3) of the West Bengal Industrial





Dispute Rules, 1958 on 29.08.2016. The applicant engaged a learned advocate who filed a case under Section 2A(2) of the I. D. Act before this Tribunal on 24.10.2017 against M/s. Aditya Translink Pvt. Ltd., Mills Samunagar Jute Factory (North Mill), Bhadreswar, Hooghly instead of filing the same against M/s. Samunagar Jute Factory (North Mill), Bhadreswar, Hooghly, the actual employer of the applicant, which was registered as Case No.01/07 u/s. 2A(2). Subsequently, on learning from another learned advocate that the case was filed against wrong employer, he filed an application on 25.05.2018 for withdrawal of the case with liberty to file afresh. The application was allowed by this Tribunal on 11.10.2018 and thereafter he filed the instant case against the company. For the aforesaid reasons there has been a delay of 2 years of 4 months in filing this case as per the time specified under Rule 12A(4) of the West Bengal Industrial Dispute Rules, 1958. The applicant filed a separate petition for condonation of delay. The applicant submits that the company illegally terminated his service by refusal of employment without issuing any notice or causing domestic enquiry though he completed 240 days of work preceding twelve months from the date of termination i.e. 13.07.2015. The applicant further submits that he could not secure any job and is unemployed. He prays for declaration that the termination of his service w.e.f. 13.07.2015 is illegal and unjustified and further prays for an order of reinstatement with full back wages and consequential reliefs.

Summons were issued in the OP/ M/s. Samunagar Jute Factory (North Mill), Bhadreswar, Hooghly, but it did not appear. One M/s. Aditya Translink Pvt. Ltd. appeared and sought to contest the application by filing a petition. The petition was opposed to by the applicant and after hearing both the sides the Tribunal declined to allow M/s. Aditya Translink Pvt. Ltd. to contest the case holding that it was neither a necessary party nor a proper party in this case under Order No.13 dated 13.09.2019. Fresh summons were issued upon the OP/ M/s. Samunagar Jute Factory (North Mill), Bhadreswar, Hooghly, but the same returned with postal remark 'refused'. The OP / M/s. Samunagar Jute Factory (North Mill) did not turn up. Initial appearance of M/s. Aditya Translink Pvt. Ltd. on receiving notice addressed to OP/ M/s. Samunagar Jute Factory (North Mill), Bhadreswar, Hooghly and subsequent refusal of notice by the OP made the tribunal to presume good notice to the OP and therefore the Tribunal proceeded with the case ex-parte due to non-appearance of the OP.

The workman examined himself as PW-1. He brought into evidence a copy of casual workers' employment card issued by the company as Exbt.-1, copy of ESI Card as Exbt.-2, copy of ESI e-pehchan card as Exbt.-3, copy of PF card as Exbt.-4, copy of letter dated 19.07.2015 submitted before the company management with postal receipt and A.D. as Exbts.-5 series, copy of letter submitted before Deputy Labour Commissioner, Chandannagar on 27.07.2015 as Exbt.-6, a copy of letter dated 24.11.2015 of Assistant Labour Commissioner, Chandannagar as Exbt.-7, copy of Form-S dated 29.08.2016 as Exbt.-8 and copy of his pay slip as Exbt.-9.

The question before us is that whether termination of service of the applicant by the company by refusal of employment on the plea of his superannuation is justified or not.



During arguments Ld. Advocate for the applicant submits that the applicant worked for complete 240 days preceding to the date of his termination, but no notice or charge-sheet was issued and the applicant was terminated violating the provisions of Section 25(B) and 25(F) of the Industrial Disputes Act, 1947. He further submits that the date of birth of the applicant is clearly mentioned as 01.07.1966 in his ESI card as such there is no question of termination of service on attaining the age of superannuation.

It appears that despite service of notice, the OP/Company did not turn up to contest as such the evidence adduced by the applicant has remained unchallenged. Exbt.-1, 2, 3 and 4 establish 'employer-employee' relationship between the company and the applicant. Exbt.-5 is the copy of the letter dated 19.07.2015 addressed to the company by the applicant ventilating his protest against wrongful termination of his service on the plea of superannuation and demanding his reinstatement with back wages. Exbt.-6 is the copy of letter submitted by the applicant before the Deputy Labour Commissioner, Chandannagar, which coupled with the oral evidence of the applicant goes to show that no notice of termination was issued upon the applicant. It appears from the Exbt.-7 that conciliation proceeding was initiated by the Assistant Labour Commissioner, Chandannagar, Hooghly on the prayer of the applicant. Exbt.-8 is copy of Form-S issued by the Conciliation Officer on 29.08.2016 certifying that conciliation proceeding was pending till then before him. It appears from the evidence that the applicant initially filed an application before the Tribunal under Section 2A(2) against M/s. Aditya Translink Pvt. Ltd., Mills Samunagar Jute Factory (North Mill), Bhadreswar, Hooghly on 24.10.2017. Section 10(1B) (c) requires the filing of application within a period of sixty days from the receipt of certificate under Section 10(1B)(b) of the I. D. Act. In his petition for condonation of delay the petitioner stated that his learned advocate filed application under Section 2A(2) of the I. D. Act erroneously without considering the certificate issued by the Conciliation Officer in Form-S against a wrong party and on coming to know this fact he applied for withdrawal of the application under Section 2A(2) with liberty to file a fresh case on 25.08.2018 and the said application was disposed of by this Tribunal on 11.10.2018 and thereafter, he filed the instant case on 21.12.2018.

The Industrial Disputes Act is a beneficial legislation object of which is to secure social justice and industrial harmony. No doubt there has been delay in filing the instant application, but the grounds made out in the petition for condonation of delay appear to be plausible. It is well settled that a litigant cannot be made to suffer for the mistakes or laches on the part of his Counsel because the litigants usually depend largely on the advice of their Ld. Counsels. The company also did not appear to oppose the application for condonation of delay. When the Conciliation Officer had issued certificate under Section 10(1B) (b) of the I. D. Act the usual course was to file application under Section 10(1B)(d) of the Act, but the applicant was advised to file application under Section 2A(2) of the Act which does not require any certificate. There appears no material on record to show that the applicant derived any benefit by resorting to delay rather he is found running behind litigation for years. The contentions raised by the applicant having remained





unchallenged, there appears no reason to disbelieve the same. Moreover, the application under Section 10(1B)(d) filed on 21.12.2018 has been entertained by this Tribunal and on the basis of the same notice was issued to the OP/Company. Considering the facts and circumstances and the nature of the case I am inclined to condone the delay keeping in mind that the technical considerations should not thwart the substantial justice. Thus, the application for condonation of delay stands allowed.

Coming to the merits of the case we find from the evidence on record that no notice was issued to the applicant by the company nor any compensation was paid to him. It is also found from the evidence that the applicant was in continuous service within the meaning of Section 25B of the I. D. Act. The ESIC records (Exbts.-2 & 3) indicate that the date of birth of the applicant is 01.07.1966. Even if the age of superannuation is held to be 58 years, the same was not attained by the applicant as on 13.07.2015. There is no material before this Tribunal to disbelieve the date of birth of the applicant recorded in his ESIC records. It also transpires from the record that the termination of employment of the applicant is not an outcome of any disciplinary action or any other lawful cause.

Having considered the entire facts and circumstances and in the light of the unchallenged evidence on record, I find that the applicant has been able to prove his case of unlawful termination of his service ex-parte. Now, the delay of more than 2 years caused in filing this case has been condoned but at the same time the company cannot be made to bear the entire burden of the same. Therefore, reinstatement of the applicant with full back wages will not be fair, just and equitable.

Hence it is -

### **Ordered**

That the application u/s 10 (1B) (d) of the Industrial Disputes Act, 1947 filed by the workmen is allowed 'Ex-parte' but without cost. The applicant / workman is entitled to get reinstatement with 50% of back wages since the termination of service w.e.f. 13.07.2015 till his reinstatement. OP/Company is hereby directed to reinstate the applicant / workman pay the back wages to him within a period of 90 days of the date of passing this award, in default the applicant shall be entitled to put the award into execution, in accordance with law.

Let the copies of the Award be sent to the Labour Department, Government of West Bengal in accordance with the usual rules and norms.

Dictated & corrected by me

sd/-

Judge



sd/-

Judge,  
(Sanjeev Kumar Sharma)  
Third Industrial Tribunal,  
Kolkata