

I/190394/2022

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

No. Labr/. 448/(LC-IR)/22015(14)/1/2022

Date 28/04/2022

ORDER

WHEREAS an industrial dispute existed between M/s. Chamurchi Tea Estate, P. O. Chamurchi, P. S. Banarhat, Dist. Jalpaiguri, Pin - 735207 and Sri Kamiruddin Ansari S/o Late Rojamat Ansari of Vil-Chamurchi Tea Estate, P. O. Chamurchi Bazar, P. S. Banarhat, Dist. Jalpaiguri, Pin - 735207 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 Sixth 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 Sixth Industrial Tribunal has submitted to the State Government its Award dated 06/04/2022 under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. 99 - I.T.(J) dated 20/04/2022.

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,



Joint Secretary
to the Government of West Bengal

I/190394/2022

: 2 :

No. Labr/. 448 .1/(5)/(LC-IR)

Date : 28/04/2022

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

1. M/S. Chamurchi Tea Estate, P. O. Chamurchi, P. S. Banarhat, Dist. Jalpaiguri, Pin - 735207.
2. Sri Kamiruddin Ansari S/o Late Rojamat Ansari of Vil-Chamurchi Tea Estate, P. O. Chamurchi Bazar, P. S. Banarhat, Dist. Jalpaiguri, Pin - 735207.
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

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

Date/2022

Copy forwarded for information to:-

1. The Judge, Sixth Industrial Tribunal West Bengal, with respect to his Memo No. 99 - I.T.(J) dated 20/04/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Joint Secretary

In the matter of Industrial Dispute between M/s Chamurchi Tea Estate, P.O. Chamurchi, P.S. Banarhat, Dist. Jalpaiguri, represented by the Manager, Chamurchi Tea Estate-735207 and their workman Sri Kamiruddin Ansari S/o Late Rojamat Ansari of Vill-Chamurchi Tea Estate, P.O. Chamurchi Bazar, P.S. Banarhat, Dist. Jalpaiguri, Pin-735207.

Case No.22/2020/10(1B)(d)

BEFORE THE JUDGE, SIXTH INDUSTRIAL TRIBUNAL

JALPAIGURI

Present

Sri Baidya Nath Bhaduri, Judge
Sixth Industrial Tribunal,
Jalpaiguri

1. Shri Krishanu Brajabashi.....Advocate- For the Workman
2. Shri Rajkumar Mitra.....Advocate- For the Employer

A W A R D

This is an Industrial Dispute case filed by the workman Kamuruddin Ansari U/s.10(1B)(d) of Industrial Dispute Act as amendment by Act 33 of 1989 of State of West Bengal. According to the workman he was a permanent sub-staff of M/s. Chamurchi Tea Estate since the year,1978 and was performing his duties sincerely and diligently. According to the workman he never did any riotous act or made any disorderly behavior or demonstrated any act of indiscipline prejudicial to the good running of the Chamurchi Tea Estate. According to the workman he used to hold the post of the Secretary of garden unit of "W.B.C.M.S." a registered Trade Union having its unit at Chamurchi Tea Estate and he was very much active as Secretary of the said unit. It is alleged by the workman that the management of the Chamurchi Tea Estate was / is very much reluctant to implement the statutory privileges to the workers and was also not keen to implement the industry wise agreement and as he (workman) raised protest against such attitude of the management being the Secretary of Trade Union the management of Chamurchi Tea Estate illegally and deliberately terminated his service on and from 25/04/2013.

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Kamuruddin
JUDGE
Sixth Industrial Tribunal
Jalpaiguri

According to the workman as per dismissal order dated 25/04/2013 one domestic enquiry was held on 17/02/2013 vide charge sheet dated 27/12/2013 and it was alleged that the workman on 24/12/2012 at about 3.45 P.M. had been to the office premises and without any provocation abused Mr. G. Sharma, the Assistant Manager of the Chamurchi Tea Estate in unparliamentary languages and threatened with dire-consequences if the wages is not provided to him for the dates on which he was absent without intimation. According to the workman the entire allegations is totally false and baseless and without following the principles of natural justice, the management came to the conclusion that the charge against the workman has been proved as per domestic enquiry and accordingly his service was dismissed. The workman raised his grievance against the said decision of the management of Chamurchi Tea Estate before the Conciliation Officer, the Joint Labour Commissioner, North Bengal Zone to the member Secretary of W.B.M.C. and exofficio Commissioner, M.A. & M.F. Department Kolkata but as the conciliation proceeding could not be completed within statutory period he made application for issuing certificate regarding the pendency of the Industrial Dispute in between him and the management of the Chamurchi Tea Estate and thereafter the Conciliation Officer issued pendency certificate under Rule 12A(3) as per provision of Section 10(1B) of the Industrial Disputes Act, 1947 (Amended provision of Government of West Bengal).

After obtaining the said pendency certificate the workman filed this case before this Tribunal.

After registration of this case under the provisions of Industrial Dispute Act, 1947 the notice was issued to M/s. Chamurchi Tea Estate for appearance and submitting written statement. It appears that the said notice was served and thereafter Manager, Chamurchi Tea Estate, appeared before this Tribunal and filed Vokatnama on 24/09/2021 and filed a petition for time to file written statement, the prayer was allowed and 02/11/2021 was fixed for filing W.S. On that day also the employer filed a petition for time to file W.S. and it was allowed fixing 22/11/2021 for filing W.S. On 22/11/2021 the employer did not take any step but inspite of that for ends of justice the case was adjourned to 10/12/2021 for filing W.S. along with list of documents by the employer as a last chance. On 10/12/2021 the employer did not take any step and failed to file W.S. and documents and in such situation this case was set for exparte hearing on 15/12/2021. However, subsequently few days were taken by the workman for ex parte hearing and ultimately the case was heard exparte on 14/03/2022 and thereafter 28/03/2022 was

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 Sixth Industrial Tribunal
 Jalpaiguri

fixed for argument. On 28/03/2022 the argument could not be made due to sudden cease work by the Ld. Advocates for the death of Senior member of Law Clerk Association and in such situation 31/03/2022 was fixed for argument and on that day the argument was heard and today is fixed for passing order.

DECISION WITH REASONS

I S S U E (S)

In this case the points for consideration is

1. Whether the workman Kamiruddin Ansari was an employee under M/s. Chamurchi Tea Estate as claimed ?
2. Whether the order of termination of the said Kamiruddin Ansari made by the management of M/s. Chamurchi Tea Estate is legal and valid or not ?

In this case the workman has filed examination-in-chief on affidavit as PW-1. He was tendered and thereafter further examination-in-chief was made and documents were marked as Exhibits-1 to 25.

It is found that the employer was served with notice of this case and after appearance of the employer sufficient time was given for submitting written statement and documents but the employer failed to submit written statement and also documents and in such situation as per provision of Rule 21 of the West Bengal Industrial Disputes Rules, 1958 this case was heard. The workman has adduced evidence both oral and documentary in support of his allegation that the employer illegally terminated his service. As per provision of Section 11A of the Industrial Disputes Act where an Industrial Dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. It has also been made clear in the proviso of the said section that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely on the materials on record and shall not take any fresh evidence in relation to the matter.

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JUDGE
Sixth Industrial Tribunal
Jalpaiguri

I have already observed that this case has been started as per provision of Section 10(1B)(d) of the amendment Act of West Bengal. In this case, the workman has categorically alleged that the employer was dissatisfied as he being the Secretary of the unit of the Trade Union of Chamurchi Tea Estate raised protests against the employer over different issues which were taken against the workmen of the Tea Garden breaking the rights of the workman and simply for that reason the employer brought a false charge against him and ultimately by making an enquiry dismissed him from his service. So it is clear that according to the workman the domestic enquiry on the basis of which the employer terminated his service has been challenged by the workman. In such circumstances it was the duty of the employer to file written statement and also to make a prayer before this Tribunal for giving chance for proving that the domestic enquiry was properly held maintaining all principles of natural justice but unfortunately the employer did not file written statement and documents in support of the case of the employer.

Now it is settled position of law that where enquiry conducted by employer is defective and there was violation of principles of natural justice or where no enquiry was held the Tribunal has to hold that the termination of the concerned workman was illegal. The proviso of the Section 11A specifies matters which a Tribunal or a Labour Court shall take into account as also matters which it shall not. The expression " materials on record " occurring in the proviso cannot be confined only to the materials which were available at the domestic enquiry and besides that the Tribunal or Labour Court may consider the evidence taken by the management at the enquiry and the proceedings of the enquiry or the above evidence in addition, any further evidence led before the Tribunal or evidence placed before the Tribunal for the first time in support of the action taken by the employer as well as the evidence adduced by the workman contra.

Here in this case the employer failed to file written statement and to seek permission from this Tribunal to adduce evidence to prove the validity of the enquiry held by the employer on the basis of which the workman was dismissed. So there is no materials on record to prove that the domestic enquiry which was held properly maintaining principles of natural justice and all other provisions of law required to be followed in the said enquiry. In this case there is no evidence at all that the dismissal of the workman was legally made and the charges were proved in the domestic enquiry which was held properly as per law and principles of

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Jalpaiguri

natural justice. It is settled position of law that it is not the duty of the workman to prove that the domestic enquiry was invalid as it is the duty of the employer to prove that dismissal was made as per proper enquiry. The employer has totally failed to discharge its duty. It is also settled position of law as per several decisions of the Hon'ble Supreme Court that there is no obligation on the Labour Court or the Tribunal to indicate its mind about the infirmities in the enquiry before giving its finding and the award and then to call upon the employer to adduce additional or independent evidence even if no such opportunity is sought by the employer, in view of the decision in the case of State Bank of India -VS- R.K. Jain reported in AIR 1972 SC 136. The above principle has been reaffirmed in the subsequent decisions. Therefore, as the employer did not file written statement there is no question of giving any opportunity to the employer to adduce additional evidence to prove the misconduct of the workman for which he has been dismissed.

In view of the above materials on the record it is clear that there is nothing in the record to come to the conclusion that the dismissal of the workman was legal and accordingly it must be held that the dismissal of the workman Kamiruddin Ansari w.e.f. 25/04/2013 is illegal. In such situation the workman is entitled to be reinstated with all benefits which he was entitled since the date of such termination and thereafter till he works under the employer as a workman. Hence, it is

ORDERED

THAT the order of dismissal of Sri Kamiruddin Ansari w.e.f. 25/04/2013 is illegal and accordingly the said order of dismissal is hereby set aside. The management of M/s. Chamurchi Tea Estate is directed to reinstate the workman Kamiruddin Ansari in his original post along with all back wages, continuity of service, seniority in the service, with immediate effect along with all other service benefits which he used to get before the said order of dismissal was passed against him by the management. Accordingly, this award is passed on this day and the workman Kamiruddin Ansari is at liberty to take steps according to law if the management does not comply the direction of this award. This award shall be enforceable after 30 days from the date of publication of this award in Gazettee notification.

Dictated & corrected by me

(B. N. Bhaduri)

sd/ Judge,

Sixth Industrial Tribunal

Jalpaiguri

06/04/2022

(B. N. Bhaduri)

sd/ Judge,

Sixth Industrial Tribunal

Jalpaiguri

06/04/2022

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B. N. Bhaduri
JUDGE
Sixth Industrial Tribunal
Jalpaiguri