

I/214258/2022

H/M 27/8/22
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24/8/22

No. Labr/790/(LC-IR)/10L-09/2011

Date: 22/08/2022.

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

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order N. Labr/427/(LC-IR)/10L-46/2001 dated 01/04/2010 the Industrial Dispute between M/s Hindusthan Engineering & Industries Ltd., 38, Tiljala Road, Kolkata - 700039 and its workman Sri Degh Narayan Mahato, Hindusthan Engineering & Industries Ltd. Shrami Union, C/o. Sheo Sankar Singh, 48B, Swinhoe Lane, Kolkata - 700042 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, Fifth Industrial Tribunal, West Bengal.

AND WHEREAS the Fifth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 04/08/2022 on the said Industrial Dispute vide memo no. 1239 - L.T. dated - 05/08/2022.

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,

Sd/-

Joint Secretary
to the Government of West Bengal

I/214258/2022

No. Labr/790/1(5) / (LC-IR)

Date: 22/08./2022.

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

1. M/s. Hindusthan Engineering & Industries Ltd., 38, Tiljala Road, Kolkata - 700039.
2. Sri Degh Narayan Mahato, Hindusthan Engineering & Industries Ltd. Shramik Union, C/o. Sheo Sankar Singh, 48B, Swinhoe Lane, Kolkata - 700042.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Joint Secretary

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

Date:/2022.

Copy forwarded for information to:

1. The Judge, Fifth Industrial Tribunal, West Bengal with reference to his Memo No. 1239- L.T. dated - 05/08/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

Case No. VIII-10/2010**Order No. – 157.****Date: 04.08.2022**

The case record is taken up for passing order in respect of the petition dt. 21.08.2018 filed by the workman supported by verification.

It has been contended, inter-alia, by the workman Deg Narayan Mahato that the present dispute was sent before the Ld. Tribunal by the Appropriate Government for adjudication and after receiving the order of reference Ld. Tribunal issued notice to both parties for appearance and accordingly they had appeared before the Ld. Tribunal. Subsequently they also filed their respective written statements and it was noticed that some error took place in the order of reference which was required to be corrected. Accordingly the present union/workman made necessary application before the appropriate Government for issuance of a corrigendum and the present union/workman was under expectation that necessary corrigendum incorporated the correction would be issued in due course of time and made ample persuasions for that issuance of that corrigendum but it was found that the relative file was misplaced. Subsequently the concerned workman left for his native village as he had no means of livelihood here and a communication gap took place between the workman and the union. Due to the failure of the appearance of the union/workman before the Ld. Tribunal on the date fixed the Ld. Tribunal show caused but the union could not receive the same issue by the Ld. Tribunal. In absence of the parties Ld. Tribunal was pleased to pass an award dt. 23.03.18 holding that there was no dispute exist at present between the parties. On 6.8.18 the petitioner workman/union received the award dt. 23.3.18 along with the published Govt. order dt. 20.7.18. According to this union/workman, by that award Ld. Tribunal did not determine the issues as specified in the order of reference issued by the appropriate Government and it is also settled position of law that no dispute award is not an award. Accordingly by filing this petition the petitioner press for passing an order to set aside the no dispute award dated 23.3.18 and also press to restore the dispute in its original position.

The company has contested this petition by filing written objection denying all the material contention of the union. According to the

management the instant reference is made in the name of the union whereas the present application has filed by the ex-employee in his individual capacity which is not maintainable. It also contended by the management that the award was passed and the instant reference was pending for about eight years and the concerned union failed to file its statements of claim and ultimately the Ld. Tribunal finding no other alternative concluded the case with its opinion that there no dispute exists between the parties. Both the workman and its union are very negligent and they must not allow totake advantage of their own negligence. Moreover, as per provision of Rule 27 (III) of the West Bengal Industrial Dispute Rules, the Tribunal has no jurisdiction to entertain any application for setting aside ex-party / no dispute award after expiry of 15 days from the date of passing of said award. Accordingly the present application is barred by limitation and should be rejected.

During hearing of the petition Ld. Advocate for the management submitted that reference was made in the year 2010 and the workman raised for adjournment continuously from the year 2011 till the year 2018 for bringing corrigendum and even till this date no document has submitted by the union that when they have filed application to bring corrigendum. Therefore, it may be presumed that the union did not apply at all for corrigendum. It also contended that the President of the union is a lawyer who certainly knows the law. It also stated that as per provision of Section 2(b) of the Industrial Dispute Act, the term Award means an interim or final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10(a).

In support of his contention Ld. Advocate for the management relies upon the decisions reported in 1998 (79) FLR 133, 1998(2) LLJ 861.

On the contrary Ld. Advocate for the union submitted that as per provision of Section 2(b) of the Industrial Dispute Act where the definition of the term Award has defined the no dispute award is not an award. He also submitted that in a case reported in 2001(4) LLN 1066 the Division Bench has stated that in spite of the limitation period is over but the Tribunal or Court can set aside an order if it is passed regarding no dispute award. Ld. Advocate for the workman also referred Section 17(A) & Section 17(AA) of the Industrial Dispute Act where the terms,

commencement of the award and pronouncement and commencement of the award has been mentioned. According to him the no dispute award is not at all the award and to that effect he relies upon the decision reported in 2002 LABIC 3224 and also relies upon the decision reported in 1988 (2) CLR 41, 42.

Ld. Advocate for the workman/union has concluded his argument by submitted that as the no dispute award is not at all an award so the Tribunal has ample power to set aside.

Heard Ld. Advocate for the parties at length. Perused the petition in question, its written objection thereby, the case record and also other materials on record. On perusal the same it appears before this Tribunal that since after receiving of the reference notice was issued from this Tribunal to both the parties, both the management as well as the workman entered their appearance in the instant case and also filed their respect written statement and list of documents and the case was fixed at the stage of recording of evidence. On 12.10.11 the union had filed one application praying for adjournment of the hearing on the ground that the union has applied for amendment of order of reference to the department and accordingly the prayer for adjournment was allowed and since then the hearing of the case was stalled for bringing corrigendum. It also appears from the record that since then neither the union nor the management did take any steps and this Tribunal also not received any corrigendum from the Labour Department. Then the Tribunal again issued notice to both the parties but inspite of receiving the same none of the parties appeared before the Tribunal to proceed with the case and finally this Tribunal finding no other way was compelled to dispute of the case with an observation that there is no existence of dispute at present between the parties and in view of Rule 22 of West Bengal Industrial Disputes Rules this Tribunal has disposed of the case as no dispute award on 23.3.18. It further reveals from the case record that the no dispute award was passed due to continuous non-appearance of the parties therein and it was not an adjudication of the case on merit and it can be said that the no dispute award was passed due to certain conduct of the parties which appeared to this Tribunal to indicate that the parties may have abandoned the instant case and the industrial dispute under reference may no longer be in existence.

In respect of the contention of the management that the instant reference is made in the name of the Union and the present application has filed by the ex-employee in his individual capacity for which the instant petition is not maintainable is not tenable and acceptable before this Tribunal. It appears from the order of reference vide reference no. 427/IR/IR/10L-46/2001, dated 01/04/2010, that the name of the present application namely Sri Deg Nnarayan Mahato who has been represented by the Union is mentioned there.

Therefore, it can not be said that Deg Narayan Mahato has no capacity to file the present application. Now regarding the contention of the Ld. Advocate for the management that as per provision of Rule 27(III) of the West Bengal Industrial Dispute Rule, this Tribunal has no jurisdiction to entertain any application for setting aside ex-parte / no dispute award passed after 15 days from the date of passing of said award, this Tribunal is of the opinion that "no dispute award" which was passed due to continuous non-appearance of the parties there in and that it was not an adjudication of the case on merits. It can be clearly said that an award is to be passed due to certain conducts of parties which appeared to this Tribunal to indicate that the parties may have abandoned, the instant case and the Industrial Dispute under reference may no longer be in existence. Regarding the matter of limitation the Hon'ble High Court in a case of 'Hindustan Motor Limited Vs. Janardan Singh' reported in 2001(4)LLM1066 has been observed which is as follows:-

"We find that the term 'award' appearing in Sub-section (10) as also in Sub-section (1) of Section 17- AA is followed by the words 'other determination or decision'. The context in which the words 'other determination and decision' appear following the word 'award' in both the Sub-sections clearly indicates that the term 'award' in these sub-sections means some interim or final determination of a dispute as contemplated by the term 'award' defined in Section 2(b) of the 1947 Act and not a 'NO DISPUTE' award within the meaning of Rule 22 of the 1958 Rule.

From the provisions of Sub-section (1) of Section 17-AA of the Act it is found that the award the Tribunal is to be pronounced in open Court on a date to be notified for the purpose of such pronouncement of award. A 'NO DISPUTE' award when the parties do not appear, can not be said to be an 'award' within the meaning of Section 17-AA(1) in as much as the 'NO DISPUTE' award (when the parties do not appear) is not pronounced by

notifying the date of such pronouncement as contemplated by Sub-section (1) of Section 17-AA of the 1947 Act. Section 2(b) of the 1947 Act defines the word 'Award' to mean an interim or a final determination of any industrial dispute by a Tribunal.

IN view of the above we hold that a 'NO DISPUTE' award passed under Rule 22 of the 1958 Rules for non-appearance of the parties, can not be said to be an award within the meaning of Section 2(b) nor Under Section 17-AA of the 1947 Act. As there has been no award within the meaning of section 2(b) of the 1947 Act, the dispute still subsists and awaits adjudication, notwithstanding the 'NO DISPUTE' award under Rule 22".

In view of the decision of the Hon'ble High Court this Tribunal is of the view that the period of limitation is not applicable in this case as that no dispute award is not an award. Further, this Tribunal is also of the view that the workman / union has shown sufficient cause for their / his absence on the concerned dates and further there is nothing had recorded of this Tribunal to disbelieve the statement of the workman / union that they/he intend to pursue the present case on merits and seek appropriate remedies.

Therefore, the prayer made in the petition is accepted and allowed and is disposed off accordingly.

The no dispute award dated 23/03/2018 passed by this Tribunal thereby disposing of the Case No.VIII-10/2010 is hereby set aside, upon due notice, for sufficient cause shown by the workman / union and the Case No. VIII-10/2010 be and the same is restored to its original file. Parties are directed to appear in that case on 01/09/2022 for further direction.

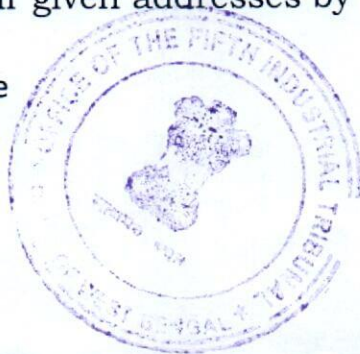
Copy of this order is be sent to the concerned offices of the State Government for information and necessary action and also be sent to both the parties at their given addresses by registered post.

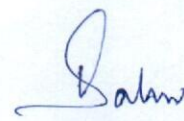
Dictated & Corrected by me



Judge
Fifth Industrial Tribunal
Kolkata

Judge,
5th Industrial Tribunal
Govt. of West Bengal





Judge
Fifth Industrial Tribunal
Kolkata

Judge,
5th Industrial Tribunal
Govt. of West Bengal