

I/390675/2023

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

No. Labr /³³⁴.~~334~~/(LC-IR)/11L-107/17 Date: ²⁸/~~28~~.04/2023.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/12/(LC-IR)/ dated 04/01/2005/05.01.2005 the Industrial Dispute between M/s. Bharat Chamber of Commerce, 9, Park Mansion, 2nd Floor, 57A Park Street, Kolkata - 700016 and its workman Sri Somnath Roy, 208, Ballygunge Terrace, Kolkata - 700029 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.

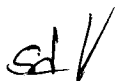
AND WHEREAS the Third Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 04/04/2023 on the said Industrial Dispute vide memo no. 394-L.T. dated - 05/04/2023.

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,



Assistant Secretary
to the Government of West Bengal

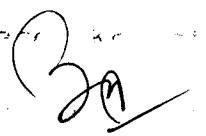
I/390675/2023

No. Labr/. 334/1(5) / (LC-IR)

Date: 28/04/2023.

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

1. M/s. Bharat Chamber of Commerce, 9, Park Mansion, 2nd Floor, 57A Park Street, Kolkata – 700016.
2. Sri Somnath Roy, 208, Ballygunge Terrace, Kolkata - 700029.
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.

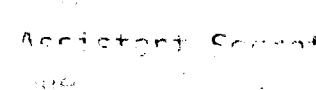

Assistant Secretary

No. Labr/. 334/1(2) / (LC-IR)

Date: 28/04/2023.

Copy forwarded for information to:

1. The Judge, Third Industrial Tribunal, West Bengal with reference to his Memo No. 394- L.T. dated – 05/04/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.


Assistant Secretary

**IN THE THIRD INDUSTRIAL TRIBUNAL,
NEW SECRETARIAT BUILDINGS, KOLKATA-700 001**

Case No. VIII-34 of 2006

Present: Sri Mihir Kumar Mondal

Judge, 3rd Industrial Tribunal

Kolkata

A W A R D

Dated: 4th April, 2023

The Government of West Bengal, Labour Department has referred an Industrial Dispute between M/s. Bharat Chamber of Commerce, 9, Park Mansion, 2nd floor, 57A Park Street, Kolkata-700016 and their Workman Sri Somnath Ray of 208, Ballygunge Terrace, Kolkata-700029 to this Tribunal vide G.O. No. 12-IR dated 04.01.05/05.01.05 on the following issue(s) for adjudication:

I S S U E S

- 1) Whether the termination of services of Sri Somnath Roy w.e.f. 15.01.2000 by the management is justified?
- 2) What relief, if any, is he entitled to?

On receiving the 'Order' of the appropriate Government containing 'Reference of Disputes', this Tribunal on 12.04.2006 by its Order No. 1 issued Notice upon both the parties. On receiving notice, both the parties entered their appearance in this case complying the statutory provision. Subsequently, the Bharat Chamber of Commerce and the Workman Sri Somnath Roy submitted their respective Written Statement.

The case of the Workman, in a nutshell, is that he joined in the Bharat Chamber of Commerce as an Executive Trainee on 15.03.89 and after completion of one year, he was placed in the post of Executive Officer on 14.03.90. He has stated that he was promoted to the post of Assistant Secretary of M/s. Bharat Chamber of Commerce w.e.f. 01.01.97. He has stated that he used to perform his duty to the full satisfaction of authority of Bharat Chamber of Commerce till his termination from the service by letter dated 15.01.2000. He has stated that the letter dated 15.01.2000 was received by him on 19.01.2000 at about 5:00 P.M. from Sri Srikanta Singh, Assistant Accountant Cum Administrative Officer. He has mentioned that the said termination letter contained no reason for termination as well as he was not paid salary up to 20.01.2000 although it was mentioned in the termination letter. It has been mentioned in the W.S. that the Management proceeded with 'termination simpliciter' which was tantamount to retrenchment and at the same time such termination was given effect violating the Section 25F of the Industrial Disputes Act and consequently such termination was void ab initio and inoperative. He has stated that his nature of job was purely clerical. He has mentioned that on receiving the termination letter dated 15.01.2000, he filed a Civil Suit before the Ld. Judge, 5th Bench of City Civil Court, Calcutta with the prayer for declaration and injunction but the plaint was rejected by

the Ld. Court. He has mentioned that the management had not paid any benefit towards leave salary, salary for the month of January, 2000, customary bonus and etc. to him. He has raised question about the power of the President regarding starting disciplinary action against him and termination of his service from the Bharat Chamber of Commerce. He has stated that on 10.03.2004 he in writing requested Labour Commissioner to take necessary action against his illegal termination from service and accordingly several conciliation meetings were convened but Bharat Chamber of Commerce expressed their inability to attend conciliation meeting and thus this matter was referred to this forum for adjudication. He has prayed for passing award holding that the order of termination was bad in law, unjustified and also violative of service rules and the Articles of the Association of Chamber of Commerce. He has also prayed for an order to reinstate him in his service and direction upon the Bharat Chamber of Commerce to pay him back wages and other consequential benefits.

The Bharat Chamber of Commerce has contested this case by filing Written Statement. Bharat Chamber of Commerce (hereinafter referred to as the 'Company') by its Written Statement has denied all the material allegations leveled against it by the Workman. The Company has claimed that the Reference is not maintainable since Shri Somnath Roy was not a 'Workman' according to the provision of Section 2(s) of the Industrial Disputes Act, 1947. The Company has reiterated that the Workman has admitted that he was appointed as Assistant Secretary of the Company and naturally the post of Assistant Secretary does not come within the scope and ambit of the definition of 'Workman' under Section 2(s) of the Industrial Disputes Act, 1947 whereas his assigned duties would come within the scope and ambit of Supervisory-Cum-Administrative-Cum-Managerial function. It has been mentioned in the W.S. that Sri Roy had been taking negative attitude towards work and had been indulging in dilatory tactics in respect of important works allotted to him from time to time and further he was irregular in his attendance and had been misinterpreting the Management's views secretly, which caused damage to the interest and smooth working of the Chamber of Commerce. It has been mentioned that the contention of the Workman about 'retrenchment' or violation of Section 25F of Industrial Disputes Act, 1947 is totally baseless and misconceived. It has been mentioned that there was no question of applicability of Section 25F of the Industrial Disputes Act, 1947 since Sri Somnath Roy was not a 'Workman' as provided under Section 2(s) of the Industrial Disputes Act, 1947. It has been mentioned that Sri Somnath Roy received the notice of termination on 19.01.2000 as he did not make himself available on and from 15.01.2000 to 18.01.2000. It has been mentioned that Sri Somnath Roy has wrongly mentioned his nature of work as 'clerical'. It has been mentioned in the W.S. that Sri Somnath Roy in the Complaint of the Title Suit No. 160 of 2000 averred that he was belonged to Secretarial Officer Cadre and thus the termination of his service was ultra vires of the power of the President. It was also averred that he (plaintiff) was Assistant Secretary of the Chamber and thus he was not covered by the service rule of the Chamber. It has been mentioned that Sri Somnath Roy was not a Workman and thus his

contention about charge-sheet or show-cause notice or denying the opportunity to defend himself are misconceived. It has been mentioned that Sri Somnath Roy has been working for gain as an Advocate and thus he is not entitled to claim any relief. The 'Company' has prayed for dismissal of the claim of Sri Somnath Roy since Sri Roy is not entitled to any relief whatsoever.

After submission of Written Statements and list of documents by the parties, exchange of documents took place. Thereafter, the matter was fixed for hearing on merit.

During evidence stage, the 'Workman' filed his examination-in-chief on affidavit and he was examined-in-chief before this Tribunal in continuation of his examination-in-chief on affidavit and thereafter his cross-examination was started. In course of cross-examination of P.W-1 (Sri Somnath Roy) a talk of settlement of the dispute amicably was started and subsequently, after much deliberation, finally both the parties have come to a consensus regarding settlement of dispute. Accordingly, on 30.03.2023, the parties to this case have filed a joint petition along with a joint 'Memorandum of Settlement' with the prayer for accepting the said settlement and to dispose of this case in terms of joint 'Memorandum of Settlement'. One Avik Roy, Secretary, Bharat Chamber of Commerce duly authorized by Secretary General of Bharat Chamber of Commerce in writing was present to represent M/s. Bharat Chamber of Commerce and Sri Somnath Roy was present before this Tribunal on 30.03.2023. Mr. Avik Roy and Mr. Somnath Roy were joint signatories on the joint petition and joint 'Memorandum of Settlement'. According to the 'Memorandum of Settlement' the Company has agreed to pay Rs.1,80,000/- by way of Demand Draft to Sri Somnath Roy against full satisfaction of his claim and the Company will co-operate with Sri Somnath Roy in respect of withdrawal of his claim

So/- from EPF Organization.

In the perspective of such joint petition and joint Memorandum of Settlement, the further cross-examination of P.W.-1 was resumed and he was cross-examined in full and discharged.

Mr. Avik Roy, Secretary of Bharat Chamber of Commerce was examined-in-chief as O.P.W-1 in continuation of his examination-in-chief on affidavit and discharged. Prior to deposing as O.P.W-1 Sri Avik Roy filed the authorization letter dated 29.03.23 issued by Secretary General of Bharat Chamber of Commerce authorizing him to depose in this case.

After completion of the evidence of this case, Mr. Avik Roy handed over a Demand Draft amounting to Rs. 1,80,000/- in the name of Sri Somnath Roy drawn on State Bank of India to Sri Somnath Roy against proper receipt.

Sri Somnath Roy openly before this Tribunal has stated that he spontaneously, voluntarily and without being influenced by any person or force has entered into amicable settlement of the Industrial Dispute and he put his signature on the joint petition and joint 'Memorandum of Settlement'. He has submitted that he has received the Demand Draft bearing No. 231100 drawn on State Bank of India amounting to Rs. 1,80,000/- from the representative of Bharat Chamber of Commerce in full satisfaction of his claim and he has expressed his satisfaction in the matter of amicable settlement of long pending Industrial Dispute.

Ld. Advocate for the Bharat Chamber of Commerce has prayed for passing Award on settlement of the Industrial Dispute amicably.

In view of greater interest of keeping industrial peace and good relationship between the Management and the workman, I accept the Memorandum of Settlement made by the parties to this case jointly and thus, an order of Award is being passed over the same. The Memorandum of Settlement be made part of the Award in respect of dispute raised.

In view of such amicable settlement of the dispute, there is no necessity of making discussion on the issues, so framed in the referral order to make appropriate decision. Accordingly, both the issues are disposed of in the light of joint Memorandum of Settlement.

Hence,

it is

Ordered

That the instant Industrial Dispute under the reference is settled in terms of joint Memorandum of Settlement.

According to the joint Memorandum of Settlement Sri Somnath Roy has become entitled to get Rs. 1,80,000/- in full satisfaction of his claim of this case and he has received a Demand Draft (bearing No. 231100 drawn on State Bank of India in the name of Sri Somnath Roy) in full satisfaction of his claim against proper receipt. He will have no further demand from M/s. Bharat Chamber of Commerce in any manner whatsoever. The Management of Bharat Chamber of Commerce will render necessary assistance to Sri Somnath Roy in the matter of withdrawal of EPF amount by him from Employees Provident Fund Organization after passing the settlement award of this case.

This is the settlement Award of this case passed by this Tribunal.

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

Dictated and corrected

Sd/-
Judge

Sd/-
Judge
Third Industrial Tribunal
Kolkata-1
04.04.2023