

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

No. Labr/ 1242 / (LC-IR)/ 22015(16)/328/2018

Date : 06-11-2025

ORDER

WHEREAS an industrial dispute existed between M/s Kingsley Industries Ltd. 7, Chittaranjan Avenue, Kolkata - 700072 and its workman Sri Alok Kumar Das, 127, Ramchandrapur, Panihati, Khardah, Kolkata-700010, regarding the issues, being a matter specified in the second schedule of the Industrial Dispute Act' 1947 (14 of 1947);

AND WHEREAS the 5th Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 29.10.2025 in Case No. VIII-18 of 2018 on the said Industrial Dispute Vide e-mail dated 31.10.2025 in compliance of Section 10(2A) of the I.D. Act' 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act' 1947 (14 of 1947), the Governor is hereby pleased to publish the said Award in the Labour Department's official website i.e labour.wb.gov.in

By order of the Governor,


Assistant Secretary
to the Government of West Bengal

No. Labr/ 1242 /1(5)/(LC-IR)/ 22015(16)/328/2018

Date : 06-11-2025

Copy forwarded for information and necessary action to :-

1. M/s Kingsley Industries Ltd. 7, Chittaranjan Avenue, Kolkata - 700072.
2. Sri Alok Kumar Das, 127, Ramchandrapur, Panihati, Khardah, Kolkata- 700010.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with request to cast the Award in the Department's website.


Assistant Secretary
to the Government of West Bengal

No. Labr/ 1242 /2(3)/(LC-IR)/ 22015(16)/328/2018

Date : 06-11-2025

Copy forwarded for information to :-

1. The Judge, 5th Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with reference to e-mail dated 31.10.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary
to the Government of West Bengal

Case No. VIII-18 of 2018
Sri Alok Kumar Das
127, Ramchaandrapur, Panihati, Khardah, Kolkata-700010
-Vs-
M/s. Kingsley Industries Ltd.

7, Chittaranjan Avenue, Kolkata-700072

Present: Sri Bibekananda Sur
Judge, 5th Industrial Tribunal, Kolkata

JUDGMENT
DATED 29th OCTOBER, 2025

The present case arose out of reference due to termination of service of Alok Kumar Das, Machine Operator in the Company engaged for Manufacturing purpose with effect from 01.07.2016 as the manufacturing Unit was permanently closed with effect from 30.06.2016 for its consecutive losses. The workman took the compensation for closure of the Unit and thereafter raised the dispute.

In view of above the matter was referred with following issues by the Government:-

- i) Whether the termination of service of Sri Alok Kumar Das, w.e.f. 01.07.2016 by the Management of M/s. Kingsley Industries Ltd. is justified?
- ii) To what relief, if any, is he entitled?

Hence this Case.

Upon receipt of the notice, the management appeared and contested the proceeding on the ground that the present dispute as raised by the workman is not maintainable in law and in facts.

DECISIONS WITH REASONS

To prove the case the applicant relied upon the appointment, notice for closure and also payment made for the closure.

Workman's adduced that that closure arising out of alleged loss of decreasing sale was not supported by any document and without obtaining any prior permission from the Government the closure was not justified. Further case of the applicant is that the other unit of the company is still functioning and the company did not produce the attendance register to ascertain the number of employees, to suppress the unfair labour practice.

Applicant adduced evidence and produced the Exhibit 3 revealing the number of employees who got the closure compensation. It is pertinent to mention here that the applicant adduced evidence but did not adduce any better evidence to show that the number of employees was more than the employees shown in the Exhibit 3. On the otherhand the employees himself relied upon the Exhibit 3 and he is thereby estopped to agitate the number of the employees allegedly exceeding

the number shown therein, because no one is allowed to probate and reprobate simultaneously on the same point or on the same fact. So question as to non production of the attendance register does not appear as having any merit .

That apart question as to non production of the attendance register to examine the validity of the closure or the question as to commission of unfair labour practice being a collective nature dispute should have come from the majority of the employees or through the Union.

The workman adduced as PW-1 and admitted during cross examination that the Branch of the Factory was under closure with effect from 30.06.2016 and the unit was a manufacturing unit and he used to work as a Machine Operator in the unit-1 of OP company which has been closed and further admitted that the activity of Unit-II was assembling of shower machine whereas the Unit-I was engaged in manufacturing and further admitted that in the 2nd Unit the employees are highly technically qualified to perform the job in Unit-II and further admitted that the applicant used to sign the attendance register in Unit-I and the applicant used to draw his salary from Unit-I and further admitted that he has no document to show that he worked in Unit-II or shifted his duty from Unit-I during tenure of his service and further admitted the unit was closed since from 30.06.2016 and further admitted that he never approached the company agitating payment of lesser quantum of closure compensation made by the Company to him.

It is pertinent to mention here that the issue framed by the Government was to examine the justification of termination of the applicant with effect from 01.07.2016 by the Management of M/s. Kingsley Industries Limited. And the issue was not related to the validity or the reality of the closure .

Termination of service is an automatic result of closure.

Admittedly the legality and validity of closure being a collective nature dispute is examined when the same is agitated by the union or by a majority of employees and at that point of time it is adjudicated whether the closure is real or not.

In the present case the dispute is raised by the applicant Alok Kumar Das who did not produce any order to show that the closure was not a real one.

On the other hand the applicant admitted during cross examination that in the unit-I where he was engaged as Machine Operator used to draw his salary and he used to sign the attendance register in Unit-I.

Admittedly the closure has not been challenged by a majority of the employee and that apart the Exhibit-3 revealed that closure compensation of Rs.94,571.98 was paid to the applicant. The applicant though disputed the amount of closure compensation, never revealed the amount of shortfall either before the company management or before this Tribunal.

That being so it appears that the closure being an admitted issue be deemed to be a valid one till date until the same is challenged or agitated by the majority of the employees or by the Union as a collective issue to examine the closure whether legally valid or a real closure.

Accordingly, the termination being an automatic result of closure, cannot be held as unjustified, in the absence of any order declaring the closure as illegal, invalid and not a real one.

Applicant's Exhibit 3 reflects that the amount of closure compensation has been paid.

The applicant relying upon the decision reported in (2000) 1 Supreme Court Cases 371 and relying upon the decision reported in (2000) 3 Supreme Court Cases 588 argued that even after payment of the closure compensation , Same can be agitated .

But the principle decided subsequently by the Hon'ble Apex court reported in 2005 Volume 5 page 91 that Principle of estoppel shall operate . Accordingly , closure compensation as per Exhibit 3 once received by the workman , he is estopped to agitate the same because it is deemed that he received the compensation amount by relinquishing his right to agitate the same and thereby he waived and is estopped to agitate further.

That apart the applicant pleaded that the other unit of the company is functional and that being so, closure should not be a real one and alternatively, the applicant should be absorbed in the functional Unit.

In this regard Division Bench of Hon'ble Apex Court held in the case of District Red Cross Society Versus Babita Arora and others (reported in CDJ 2007 SC 883) that Under Section 2(cc) of the Act closure means the permanent closing down of a place of employment or part thereof. And further relied upon the Judgment of Maruti Udyog Ltd versus Ram Lal and others reported in(2005)2 SCC 638 wherein it is held that Section 25FF and Section 25FFF of the Act leave no manner of doubt that Section 25F is to apply only for the purpose of computation of compensation and for no other.

That apart Once a valid transfer or closure comes into effect, the relationship of employer and employee does not survive and ceases to exist and Hon'ble Apex Court held that when the other unit functions as a separate unit, in that event the objection for functioning of other unit or objection for closure of another unit is not tenable. And accordingly it is held that if the entire establishment of the employer is not closed down but only a unit or undertaking is closed down which has no functional integrity with other units or undertaking, the provisions of Section 25FFF of the Act will get attracted and the workmen are only entitled to compensation as provided in Section 25FFF of the Act which has to be calculated in accordance with Section 25F of the Act.

There is no material to show that the closed down unit depends upon the activity of function of the functional unit and there is no material before this Tribunal to show that the two units are not separate and distinct. On the other hand the evidence of the applicant admits that the two units are separate and engaged in different types of work and the unit which is still running is run by the technically expert employees.

That being so the Unit-I which is closed down is a separate unit and engaged in different type of work and run by technically expert persons and thereby the closed down unit has no functional integrity with other units or undertaking. The closed down Unit-I was functioning as a distinct entity and the mere fact that the Unit-II has not been closed down, cannot lead to infer that the termination of service of the applicant was by way of illegal retrenchment.

Ld. Advocate for the workman pleaded that such plea of estoppel was not disclosed in the written statement by the Management and accordingly submitted that such afterthought plea cannot be taken without incorporating the same in the written statement by the management.

In view of above argument by the Learned Advocate for the workman , this Tribunal does not think it fit to hold good because the plea of estoppel is a plea based on Law point and such plea need not required to be pleaded in the written statement and in the absence of which , the duty of the Presiding Officer is to examine the validity and applicability of the principle of estoppel.

In view of above discussion it appears that termination of service of Sri Aloke Kumar Das with effect from 01.07.2016 was an outcome of closure and closure being not declared as illegal one , the termination of service of the applicant appears as justified and accordingly he is not entitled to get any relief.

Hence it is,

A W A R D E D

that termination of service of Sri Aloke Kumar Das with effect from 01.07.2016 is justified and accordingly he is not entitled to get any relief.

Dictated & corrected by me.

Judge

Judge
5th Industrial Tribunal
Kolkata

GOVERNMENT OF WEST BENGAL
DIRECTORATE OF INDUSTRIAL TRIBUNALS
NEW SECRETARIAT BUILDINGS
BLOCK - 'A', 2ND FLOOR
1, KIRAN SANKAR ROY ROAD
KOLKATA - 700001

Memo No. Dte/5th I.T/2025

Dated Kolkata, the 30.10.2025

From: Shri Bibekananda Sur,
Judge,
5th Industrial Tribunal,
Kolkata – 1.

To : The Secretary to the
Govt. of West Bengal,
Labour Department,
New Secretariat Buildings, 12th Floor,
1, Kiran Sankar Roy Road,
Kolkata – 700 001.

Sub: The Award between M/s Kingley Industries Ltd.
Vs

Alok kumar

(Case No.VIII – 18 of 2018 U/s 10(1B) (d) (I.D.C Act 1947)

Sir,

I am sending herewith the Award passed in the matter of an industrial dispute between **M/s Kingley Industries Ltd. 7, Chittaranjan Avenue, Kolkata - 700072 and their workman Sri Alok kumar Das, 127, Ramchandrapur, panihati, Khardah,Kolkata- 700010**

Encl: As stated above.

Yours faithfully,
Sd/-
(Bibekananda Sur)
Judge,
Fifth Industrial Tribunal
Kolkata
30.10.2025

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Encl: As stated above.

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Sd/-
(Bibekananda Sur)
Judge,
Fifth Industrial Tribunal
Kolkata
30.10.2025

