

I/197765/2022

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

No. Labr/SSS/(LC-IR)/11L-52/12

Date: 07/06/2022

ORDER

WHEREAS an industrial dispute existed between M/s. Atlantic Shipping (P) Limited, Indraprastha, Block-B, Ground Floor, 46-A, Pandit Madan Mohan Malvia Sarani, Kolkata-700020 and their workmen Om Prakash Pandey (Deceased) and substituted by Smt. Asha Pandey and three others, 43/4, N.S. Road, Rishra, Distt. - Hooghly, Pin - 712248 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workmen has filled an application under section 10(2A) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Second Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, Second Industrial Tribunal, Kolkata heard the parties under section 10(2A) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS Second Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(2A) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute.

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 dated 25/05/2022 as shown in the Annexure hereto vide memo no. 752- L.T. dated - 25/05/2022.

ANNEXURE

(Attached herewith)

By order of the Governor,



Joint Secretary
to the Government of West Bengal

: 2 :

No. Labr/555/1/5/(LC-IR)

Date : 07/07/2022

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

1. M/s. Atlantic Shipping (P) Limited, Indraprastha, Block-B, Ground Floor, 46-A, Pandit Madan Mohan Malvia Sarani, Kolkata-700020.
2. Om Prakash Pandey (Deceased) and substituted by Smt. Asha Pandey and three others, 43/4, N.S. Road, Rishra, Distt. - Hooghly, Pin - 712248.
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//(LC-IR)

Date : 2022

Copy forwarded for information to:-

1. The Judge, Second Industrial Tribunal, West Bengal, with respect to his Memo No. 752- L.T. dated - 25/05/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Join Secretary

Before the Second Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge
2nd Industrial Tribunal, Kolkata

Case No. VIII-33 of 2012

Under Section 10(2A) of The Industrial Disputes Act, 1947

Om Prakash Pandey (Deceased) and substituted by Smt. Asha Pandey
and three others,
43/4, N.S. Road, Rishra, Distt.-Hooghly, PIN-712248, W.B.

-Vs-

M/S. Atlantic Shipping (P) Limited

Indraprastha, Block-B, Ground Floor, 46-A, Pandit Madan Mohan Malvia Sarani,
Kolkata – 700 020.

Dated, 25.05.2022

J U D G E M E N T

This case has been received on reference from the Labour Department, West Bengal for adjudication of the dispute between the parties, and the Labour Department, West Bengal framed the following two issues for consideration:-

- (i) Whether the termination of service of Shri Om Prakash Pandey w.e.f. 08.06.2011 by the management of M/s. Atlantic Shipping (P) Ltd. is justified.
- (ii) To what relief, if any, is the workman entitled?

The case of the petitioner/workman as per his written statement is that he had been working as a Driver from 07.9.97 under the O.P. company but out of a pre-planned conspiracy his service was terminated illegally on 08.06.2011. Hence, the petitioner has prayed for taking legal action so that he can get justice.

Record shows that during pendency of this case the workman/petitioner namely Om Prakash Pandey died on 26.06.2014 and his legal heirs namely Smt. Asha Pandey and three others have been substituted on record in place of said deceased Om Prakash Pandey and the case has proceeded.

The O.P. company has contested this case by filing a written statement and this company has denied all the material allegations of the petitioner.

The O.P. company has submitted in its written statement that the reference made by the Labour Department, Govt. of West Bengal is not maintainable in Law and the deceased petitioner Om Prakash Pandey was appointed as a Driver in the Kolkata Office of the O.P. company and he used to work as the Driver of the said company and on 14.03.11 at about 22.15 hrs. when the Regional Manager of the O.P. company was returning by a office car, the petitioner suddenly stopped the car and started using abusive languages towards the Regional Manager and then again on 18.05.11 at about 13.30 hrs. the said workman entered into the chamber of the said Regional Manager without any permission and started shouting with his illegitimate demands but the said Manager asked him to calm down but he did not stop, and on the contrary, he sat on the chair in front of the said Manager and threatened him of dire consequences if his demands were not fulfilled and then a show cause letter dt. 20.5.11 was issued to the said workman for his misconduct and then on 24.05.11 the said workman submitted his explanation and requested that he might be given a written submission for all the mistakes committed by him so that he could rectify and after 18.5.11 he also threatened the said Manager with dire consequences and as the charges levelled against the said workman were serious, his service was terminated by a letter of the company dt. 07.6.11 and a cheque of Rs. 80,070/- was given to him as the payment of gratuity and on 14.6.11 over telephone he threatened the said Manager for which one diary was lodged at the Bhawanipur Police Station and on 28.9.11 the said workman with his two sons and wife assaulted one Ujjal Kr. Halder, an employee of the O.P. company and then one diary was lodged at the Hare Street Police Station and due to serious misconduct of the said workman the O.P. company terminated his service.

In this case it is to be considered as to whether the service of the workman was lawfully terminated on 08.06.11 by the O.P. company and whether the said order of termination was justified.

In this case the Ld. Lawyer for the O.P. company has cited the decisions of the Hon'ble Supreme Court passed in the case namely Deepali Gundu Surwase and Kranti Junior Adhyapak and Others as reported in 2013 (139) FLR Page-541, in the case namely Steel Authority of India Limited -Vs- Union of India and Others as reported in Indian Kanoon- <http://Indiankanoon.org/doc/1160961>, in the case namely Prabhakar-Vs-Joint Director, Sericulture Department and Another reported in (2016) 2 Supreme Court Cases (L&S) page-149 and the decision of the Hon'ble High Court, Calcutta passed in a case namely Capital Limited - Vs - Eighth Industrial Tribunal, West Bengal and Others reported in 2006 (3) CHN page-180. Perused the above mentioned decisions.

In this case the petitioner Om Prakash Pandey has examined himself as the PW-I before his death but he has not proved any document. The O.P. company has examined one witness and proved some documents.

The petitioner/workman, Om Prakash Pandey as the PW-I has deposed in this case but he has not filed his deposition in chief by affidavit whereas the OPW-I has filed his deposition in chief by affidavit.

According to Rule 24 of The West Bengal Industrial Disputes Rules, 1958, a Tribunal has power to consider reception of evidence taken on affidavit according to the Code of Civil Procedure, 1908 while trying a labour dispute.

Order 18 Rule 4 of the Code of Civil Procedure, 1908 is related to evidence in chief in the form of affidavit. As per this provision evidences in chief in the form of affidavit can only be in relation to the fact or facts required to be proved by the parties and the examination in chief of a witness shall be **only** on an affidavit as per order 18 Rule 4 of the Code of Civil Procedure and each witness of both sides has to submit affidavit in chief in respect fact or facts required to be proved in a case as evidence and this is a mandatory provision and without any affidavit in chief of any witness of any of the parties, his evidence in chief in respect of the fact or facts and circumstances cannot be considered legally as per this provision.

The provisions of Order 18 Rule 4 of the Code of Civil Procedure, 1908 has come into force **w.e.f. 01.07.2002** and it is concerned with evidences of the witnesses of both sides in chief only by affidavit and it is not concerned with the proof of documents in chief and crossexamination of the same witness by the other side and if a witness does not submit his evidences in chief by affidavit, his evidences in chief cannot be considered legally as per Order 18 Rule 4 of the Code of Civil Procedure, 1908 but if he proves any document in his examination in chief, that will be considered legally and his crossexamination will also be considered legally.

The PW-I has deposed before this Tribunal on **09.04.14** and the provisions of order 18 Rule 4 of the Code of Civil Procedure, 1908 has come into force w.e.f. **01.07.02**. As the PW-I has not filed his deposition in chief by affidavit according to the mandatory provisions of order 18 Rule 4 of the Code of Civil Procedure, 1908, his evidences in chief regarding facts and circumstances in this case cannot be considered legally as the same are valueless but his crossexamination can be considered legally.

In this case the OPW-I, Tamalesh Kumar, who was the Regional Manager of the O.P. company at the time of the alleged incidents, has proved one show cause letter dt. 20.5.11 issued by the O.P. company to the workman as Exbt.A and on perusing this Exbt.A, I find that the alleged incident dt. 18.5.11 has been mentioned in it and though this Exbt.A mentions about some previous incidents, the dates of those alleged past occasions have not been mentioned in this Exbt.A. Accordingly, the show cause letter (Exbt.A) has to be considered only for the alleged incident of 18.05.11, not for any other past or future incidents, and this case also has to be considered for the alleged incidents of 18.05.2011 only.

In its written statement the O.P. company has stated about some alleged incidents which took place on 14.3.11, 14.6.11, 13.6.11, 28.9.11 & 12.10.11 but the said alleged incidents and those dates are not relevant for consideration in this case because the Exbt.A does not mention the said dates specifically, and on 08.06.11 the workman was admittedly dismissed from service. So the alleged incidents, if any, which took place before the order of termination dt. 08.06.11 have been passed and the incidents of future dates which took place after 08.06.11 as per the written statement of the O.P. company cannot be relevant and subject matter of the present dispute, and the Exbt.C, C/1 and C/2, the complaints lodged by the O.P. company before the Bhawanipur Police Station and Hare Street Police Station cannot also be considered in this case because those incidents are related to the dates after the order of termination dt.

08.06.11 was passed and accordingly these Exbt.C, C/1 and C/2 are not the subject matters of this case.

The Exbt.D shows that the O.P. company sent one cheque of Rs. 80,070/- dt. 16.6.11 to the workman towards full and final settlement of his dues from the O.P. company and the petitioner has admitted in his cross-examination that he received the said cheque and deposited it in his bank for encashment.

The Exbt.E and F are formal in nature and the Exbt.G dt. 22.08.11 is not the subject matter of this case.

Similarly in his complaint the petitioner has mentioned many incidents which took place after 08.6.11 but these incidents are not the subject matters of this case because on 08.06.11 he was dismissed from service, and as per the prayer of the petitioner it has to be considered only as to whether his service was terminated illegally and unjustly on 08.06.11 by the O.P. company.

It is true that the written statements of both sides must contain the entire incidents in details as per their cases and the written statement of the O.P. company mentions the entire incidents regarding dismissal of the petitioner on 08.6.11 but the petitioner has not mentioned in his written statement the incidents in details for which his service was terminated by the O.P. company and he has only mentioned that his service was terminated unlawfully out of a pre-planned conspiracy.

In this case admittedly the petitioner/workman was a Driver by profession under the O.P. company and accordingly it can be presumed that he had no legal knowledge as to how his case had to be described in his petition and certainly he met one Advocate for drafting his case but unfortunately the incidents in details leading to his dismissal have not been mentioned in his complaint, and it is the settled law that due to laches of the Advocate concerned, the litigants should not be allowed to suffer legally, and the Court has to consider the entire record as a whole to see as to whether the case of the petitioner has been proved from the proved facts and circumstances of the case, and though in this case the complaint of the petitioner does not mention the incidents in details, the written statement of the O.P. company mentions the said incidents in details and by giving combined effect as a whole to the written statement of the petitioner and the written statement of the O.P. company, it becomes clear that the petitioner has challenged termination of his service on the ground of illegality and pre-planned conspiracy while the O.P. company has alleged that he was rightly dismissed from service due to his serious misconduct for a number of days.

Admittedly the O.P. company issued one show cause notice dt. 20.5.11 (Exbt.A) to the workman and asked him to submit explanation by 23.5.11 as to why disciplinary action will not be taken against him and in the written statement the O.P. company has admitted that after getting the show cause notice (Exbt.A), the workman submitted his explanation on 24.5.11 and he requested that he might be given a written submission of all the mistakes committed by him so that he could rectify and in his deposition in chief by affidavit the said Regional Manager as the OPW-I has admitted that after receipt of the show cause notice dt. 20.5.11 the workman submitted his explanation by his letter dt. 24.5.11 requesting therein that he might be given a written submission of all the mistakes committed by him so that he could rectify. But peculiarly enough the O.P. company has not produced and proved the said

explanation or reply dt. 24.5.11 given by the workman to the O.P. company after getting the show cause notice dt. 20.5.11 and the petitioner also has not produced and proved copy of the said explanation dt. 24.5.11 in this case. The O.P. company should have produced this explanation of the O.P. company dt. 24.5.11 but did not produce it and did not give any explanation for non-production of the said explanation dt. 24.5.11 given by the workman. This circumstance is suspicious and against the O.P. company.

The O.P. company has not produced any evidence to show whether the O.P. company gave one written document of all the mistakes committed by the workman for his rectification according to the explanation dt. 24.05.11 submitted by the petitioner to the O.P. company and the O.P. company has not whispered anything in this matter in this case.

The O.P. company has proved one termination letter dt. 07.6.11 issued to the petitioner as Exbt.B and this Exbt.B mentions that the petitioner will be dismissed w.e.f. 08.6.11. But how he was dismissed? The O.P. company has not produced any evidence to show that after getting reply dt. 24.5.11 from the petitioner, the O.P. company started any enquiry or domestic enquiry against the petitioner to prove the charges of misconduct according to the allegations of the O.P. company dt. 18.5.11, and the O.P. company has not produced and proved any paper or any other supporting oral evidence to show that the petitioner **admitted** the allegations dt. 18.5.11 against him **specifically and clearly**.

The O.P. company has produced and proved only two papers i.e. Exbt.A and B in respect of the alleged incident dt. 18.05.11. The Exbt.A, the show cause letter, has been issued to the workman by the Deputy Manager of the O.P. company, not by the OPW-I and this Exbt.A starts with the expression "**It has been reported**" but it does not **specifically** mention who has reported the alleged incident to the said Deputy Manager. The O.P. company has not examined the said Deputy Manager as witness in this case. Admittedly the said Deputy Manager is not the eye witness of the incident dt. 18.05.2011.

According to the written statement of the O.P. company, on 18.5.11 at about 13.30 hrs. in presence of **all other staff** of the O.P. company the petitioner entered into the chamber of the OPW-I without any permission and started shouting at him with his illegitimate demands and then he sat on the chair in front of the OPW-I and threatened him with dire consequences if his demands were not fulfilled, but the O.P. company has not examined the said all staff of the O.P. company as witnesses in this case to support the statements of the OPW-I regarding the alleged incident on 18.5.11. So there is no corroborative evidence on record in respect of the alleged incident dt. 18.5.11.

So the Exbt.A shows that one show cause notice was sent to the petitioner in respect of the alleged incident dt. 18.5.11 and he was directed to submit explanation by 23.5.11 as to why disciplinary action will not be taken against him and thereafter on 24.5.11 the petitioner admittedly submitted his explanation to the O.P. company though the O.P. company has not produced the said explanation dt. 24.5.11 in this case and the O.P. company has not produced any **cogent evidence** on record to show that the petitioner either orally or by any document, **admitted** his guilt in respect of the alleged incident dt. 18.5.11, and the O.P. company has not **whispered** in its written statement as to whether any enquiry far to speak of any domestic enquiry was held against the petitioner after getting his reply dt. 24.5.11 and during trial the O.P. company has not produced any evidence to show that any enquiry or domestic enquiry

was held against the petitioner and the O.P. company has proved one Exbt.B to show that the service of the petitioner was terminated on 08.06.11.

So it is crystal clear that without holding any enquiry or domestic enquiry or **without any admission of guilt by the petitioner**, the O.P. company suddenly terminated the service of the petitioner on 08.06.11 and this circumstance certainly proves that the O.P. company has terminated the service of the workman **most illegally and unlawfully** without following any legal procedure, causing serious prejudice to the workman and the above circumstances clearly prove also that out of a conspiracy and without following the legal procedure, the O.P. company has dismissed the service of the workman.

It has been proved from the above mentioned materials on record that the O.P. company whimsically, illegally and unlawfully terminated the service of the petitioner on 08.06.11 transforming him to a penniless person forever by terminating his service. The O.P. company has not produced any cogent evidence to prove that after termination of his service on 08.06.11, the deceased workman used to work elsewhere and get sufficient money to maintain his family smoothly and for this reason the petitioner suffered seriously in his financial matter to maintain his family and for this reason I hold that the present petitioners are entitled to get compensatory cost from the O.P. company.

So considering the entire materials on record as a whole, I hold that the O.P. company has failed to prove the alleged incident dt. 18.5.11 against the deceased workman, and the petitioners have been able to prove that the deceased workman was illegally and unlawfully dismissed from service on 08.06.11 by the O.P. company, and accordingly I hold that the petitioners are entitled to get relief in this case but as the deceased petitioner has expired on 26.06.14 during pendency of this case, the present petitioners are not entitled to get any order of reinstatement in service in place of the deceased workman but they are entitled to get back wages from 08.06.11 to 26.06.14, the date of death of the deceased workman, according to the existing salary of the deceased petitioner from 08.06.11 to 26.06.14 with compound interest of 10% on the said amount as the O.P. company illegally terminated the service of the deceased workman.

Accordingly I hold that the order of termination of service of the deceased workman w.e.f. 08.06.11 passed by the O.P. company was not legal and justified and the present petitioners are entitled to get back wages with interest as mentioned above and other consequential reliefs from the O.P. company.

Record shows that by order no.81 dt. 23.9.21 the O.P. company was directed to pay adjournment cost of Rs. 1000/- to the petitioner but finally the O.P. company did not pay the said amount to the petitioner and accordingly the O.P. company is directed to pay the said adjournment cost of Rs. 1000/- to the petitioner within one month from the date of this order alongwith the compensatory cost of Rs. 1,00,000/- (one lac).

Hence, it is

ORDERED

that the Case No. VIII-33 of 2012 under Section 10(2A) of The Industrial Disputes Act, 1947 is allowed on contest against the O.P. company with compensatory cost of Rs. 1,00,000.00 [Rupees One Lac].

It is hereby declared that the order of termination of service of the deceased workman dt. 08.06.11 passed by the O.P. company is illegal, unlawful, unjustified and in valid.

It is hereby declared that the present petitioners are entitled to get back wages from 08.06.11 to 26.06.14 alongwith compound interest of 10% at the existing salary of the deceased workman during the above mentioned period and the O.P. company is directed to make the above payment alongwith compensatory cost of Rs. 1,00,000/- and adjournment cost of Rs. 1,000/- to the present petitioners within one month from this date of order, in default, the petitioners may execute this order according to law.

Admittedly after termination of service the deceased workman received Rs. 80,070/- towards the payment of gratuity from the O.P. company and during pendency of this case the said workman expired and for this reason the O.P. company is directed to pay death gratuity, if applicable to the workman, and other consequential reliefs to the present petitioners within one month from this date of order.

Let this judgement and order be treated as an Award.

According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this Award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this Award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.


Judge


Judge
2nd Industrial Tribunal