

I/198037/2022

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

No. Labr/558/(LC-IR)/22015 (14) /1/2022

Date : 07/05/2022

ORDER

WHEREAS an industrial dispute existed between M/s. Chamurchi Tea Estate, P. O. Chamurchi, P. S. Banarhat, Dist. Jalpaiguri, Pin - 735207 and Sri Gobind Baraik S/o Late Ranju Baraik of Vill-Chamurchi Tea Estate, P. O. Chamurchi, 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 29/04/2022 under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. 103 - I.T.(J) dated 11/05/2022.

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/198037/2022

: 2 :

No. Labr/. 558/1/(5)/(LC-IR)Date 07/06/2022

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 Gobind Baraik S/o Late Ranju Baraik of Vill-Chamurchi Tea Estate, P. O. Chamurchi, 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. 103 - I.T.(J) dated 11/05/2022.
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 Gobind Baraik S/o Late Ranju Baraik of Vill-Chamurchi Tea Estate, P.O. Chamurchi, P.S. Banarhat, Dist. Jalpaiguri, Pin-735207.

Case No.006/2020/10(1B)(d)

BEFORE THE JUDGE, SIXTH INDUSTRIAL TRIBUNAL

JALPAIGURI

Present

Sri Baidya Nath Bhaduri, Judge
Sixth Industrial Tribunal,
Jalpaiguri

A P P E A R A N C E S

1. Shri Pintu Kumar Deb.....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 Sri Gobind Baraik U/s.10(1B)(d) of Industrial Dispute Act as amended by Act 33 of 1989 of State of West Bengal. According to the workman he was a permanent daily rated worker of Chamurchi Tea Estate and he was sincere and diligent to his duty. According to the workman he never did any act of riotous or disorderly behavior or demonstrated any act of indiscipline which was prejudicial to the good running of the Chamurchi Tea Estate. According to the workman he is an active member of " Trinomool Tea Plantation Worker's Union ", a registered Trade Union having its unit at Chamurchi Tea Estate and he would also hold the post of Trade Union as a Secretary since 2011 A.D. and participated in several movements by the union to improve the plight of the worker. According to the workman the management of the Chamurchi Tea Estate was / is very much reluctant the implement statutory privileges to the workers and was

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The workman filed examination-in-chief on affidavit and he was also further examined in chief on 04/04/2022 and discharged as PW-1. The documents submitted on behalf of the workman has been marked as Exhibits no. 1 to 11.

DECISION WITH REASONS

I S S U E (S)

In this case the points for consideration is

1. Whether the workman Gobind Baraik was an employee under M/s. Chamurchi Tea Estate as claimed ?
2. Whether the termination of the workman Gobind Baraik on and from 03/03/2017 is legal, valid or not ?



The workman filed this case after obtaining pendency certificate of conciliation proceeding for his reinstatement after setting aside the termination / dismissal. The Exhibit-1 is the certificate regarding pendency of conciliation proceeding. So this case is quite maintainable in law. The O. P. / employer was served with notice of this case but O. P. / employer failed to file written statement along with documents and as such this case was heard ex parte.

In this case, the workman has filed examination-in-chief on affidavit and he was tendered, further examined in chief and discharged as PW-1. The documents in support of the case of the workman has been marked as Exhibits no. 1 to 11. Considered the oral and documentary evidence adduced by the workman. The workman has categorically stated that the employer illegally terminated his service and did not conduct any domestic enquiry. According to the workman he was also not served with any chargesheet and also did not allow him to submit his representation. According to the workman he made lawful demands as Secretary of the Trade Union regarding the facilities of the workmen and as such the management was very much dissatisfied and illegally terminated his job. According to the workman the management authority did not issue any written order of termination but orally dismissed him from his job

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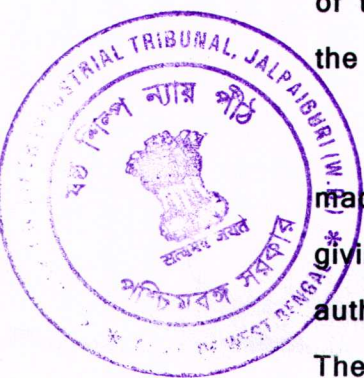
without following due process of law. From Exhibit-11 it appears that the workman Gobind Baraik was a daily rated worker of the Chamurchi Tea Estate since 2 years before 17/09/1992. From Exhibits 3, 4 & 5 it is clear that the workman Gobind Baraik was a permanent employee of Chamurchi Tea Estate and he raised Industrial Dispute regarding his illegal termination before the Labour Commissioner. So from the evidence it is proved that Gobind Baraik was an employee under M/s. Chamurchi Tea Estate as claimed.

The workman has categorically stated that he was not served with any chargesheet or any written termination letter but he was orally dismissed w.e.f. 03/03/2017. The employer did not file W. S. and documents to refute the claim of the workman and in such situation in the absence of any contrary evidence, the evidence of workman both oral and documentary cannot be disbelieved.

It is settled position of law that termination of an employee is to be made with due process of law by holding domestic enquiry, serving chargesheet giving opportunity to file show-cause etc. but in this case the management authority did not hold any domestic enquiry and did not submit any chargesheet. The workman was also not allowed to submit any show-cause but he was orally dismissed without showing any reason. Therefore, it is clear that the termination of the workman from his job w. e. f. 03/03/2017 is totally illegal.

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 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.

Here in this case the employer failed to file written statement and also failed to seek permission from this Tribunal to prove the validity of the enquiry if any held by the employer and whether there was any basis for dismissal of the workman. In this case there is no evidence at all that dismissal



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of the workman was legally made and charges if any were proved against him in domestic enquiry. 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 the dismissal was made as per proper enquiry. In this case, 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. Therefore, as the employer did not file any written statement and documents 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 Gobind Baraik w. e. f. 03/03/2017 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 Gobind Baraik w. e. f. 03/03/2017 is illegal and accordingly the said dismissal is hereby set aside. The management of M/s. Chamurchi Tea Estate is directed to reinstate the workman Gobind Baraik 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 Gobind Baraik 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)

sdf Judge

Sixth Industrial Tribunal
Jalpaiguri

(B. N. Bhaduri)

sdf Judge

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