

I/200282/2022

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

No. Labr/.....⁵⁹⁹(LC-IR)/11L-97/17Date:¹⁶⁻⁰⁶⁻2022ORDER

WHEREAS an industrial dispute existed between M/s. Harbans Lal Malhotra & Sons (P) Limited, 40, Belur Station Road, P.O. – Belur Math, Distt. – Howrah, Pin - 711202 and their workmen Harbans Lal Malhotra & Sons (P) Limited Sangrami Sramik Union, 14/5, Dharmatala Road (North), P.O. Bally, Distt. – Howrah, Pin - 711201 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 (14of 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 (14of 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 (14of 1947) on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 1947), the Governor is pleased hereby to publish the said Award dated 03/06/2022 as shown in the Annexure hereto vide memo no. 822- L.T. dated – 03/06/2022.

ANNEXURE

(Attached herewith)

By order of the Governor,



Joint Secretary
to the Government of West Bengal

I/200282/2022

: 2 :

No. Labr/ 599/1(5) / (LC-IR)

Date : 16-06-2022

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

1. M/s. Harbans Lal Malhotra & Sons (P) Limited, 40, Belur Station Road, P.O. – Belur Math, Distt. – Howrah, Pin – 711202.
2. Harbans Lal Malhotra & Sons (P) Limited Sangrami Sramik Union, 14/5, Dharmatala Road (North), P.O. Bally, Distt. – Howrah, Pin - 711201.
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/ 599/2(2) / (LC-IR)

Date : 16-06-2022

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, West Bengal, with respect to his Memo No. 822- L.T. dated – 03/06/2022.
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-93 of 2014

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

M/s Harbans Lal Malhotra & Sons (P) Limited,
40, Belur Station Road, P.O.-Belur Math, Distt.- Howrah, Pin-711 202.

-Vs-

Their Workmen represented by Harbans Lal Malhotra & Sons (P) Limited
Sangrami Sramik Union,
14/5, Dharmatala Road (North), P.O.Bally, Distt.-Howrah, Pin-711 201.

Dated, 03.06.2022

J U D G E M E N T

This case has been received on reference from the Labour Department, Govt. of West Bengal for adjudication of the industrial disputes between the above mentioned parties and the Labour Department, Govt. of West Bengal has framed the following four issues for consideration and adjudication:-

- 1) Deduction of wage for one (1) day (i.e. for 16.09.2012).
- 2) Deduction of incentive.

- 3) Whether non-payment of production incentive for seven months i.e. May, June, July, August, October, November & December, 2013 to the workers of Harbans Lal Malhotra & Sons (P) Limited is justified.
- 4) If so, what relief are the workmen entitled?

The case of the petitioners / workmen as per their written statement, in short, is that the O.P. company used to pay production incentive to its workmen on the basis of average production done by the workmen and the said average production has been increasing day-by-day but the O.P. company has not been paying the production incentive to the workmen and the O.P. company has been reducing the manpower day-by-day and the workers used to get their production incentive after four months from its due date and they had received their production incentive in the month of September, 2013 for the month of April, 2013 but since May, 2013 they have not received the said production incentive and the O.P. company issued three notices dt. 12.09.2012 directing all the employees to attend their duties on 16.09.2012 with a condition that the attendance for the said date shall be made on "no work no pay basis" and the workmen raised the dispute regarding deduction of wage for one day on 16.09.2012 and non-payment of production incentive for seven months from May to August, October to December, 2013 and thereafter the conciliation proceeding failed and finally the O.P. company did not pay the above mentioned amount for the above mentioned dates to the workmen. Hence this case.

The O.P. company has contested this case by filing one written statement denying therein all the material allegations of the petitioners. The O.P. company submits that the reference is not maintainable in law and on 24.09.2003 an incentive scheme has been formulated in terms of the discussion held between the management and the unions and the same was communicated to both the unions and the said scheme bears the signatures of both parties and in terms of the formula of the said scheme the incentives are being paid to the workmen who will be physically present on all the working days except permissible holidays w.e.f. September, 2004 and till now the said scheme is being followed by the O.P. company and from May, 2013 to August, 2013 the workmen could not achieve the average production of 45,000 packets for which they became ineligible for getting incentive and by a notice dt. 26.09.2013, it was informed to all the unions and on 06.12.2011 and 14.04.2012 due to supervening impossibility the workmen could not perform their job but at the request of the unions, it was decided not to deduct the wages for said two dates with an understanding that subsequently it would be open to the management to compensate the production and accordingly working on 16.09.2012 was made effective in lieu of 06.12.2011 and all the workmen received full wages for 06.12.2011 and 14.04.2014 without performing any duty and if the ingredients of production incentive are not satisfied the question of payment thereof does not arise and since the working of 16.09.12 was in lieu of 06.12.2011, attendance of the workmen were made on the basis of no work no pay and all the allegations of the petitioners are false. Accordingly, the O.P. company has prayed for dismissal of this case.

Considering the entire materials on record, I hold that it is to be seen as to whether the petitioners are entitled to get wage for one day on 16.09.2012 and for production incentive for seven months from May to August and from October to December, 2013 as per their demands.

In order to prove their cases, the petitioners have examined one witness and proved some documents and the O.P. company has examined two witnesses and proved some documents.

The Ld. Lawyer for the petitioners has cited one decision of the Hon'ble Supreme Court passed in a case namely Workmen of Kettlewell Bullen and Company Limited – Vs – Kettlewell Bullen and Company Limited and Others as reported in 1994 (68) FLR SC Page 302, one decision passed by the Hon'ble High Court, Bombay in the case namely Tata Tea Limited (Bombay) Employees' Union –Vs – Tata Tea Limited and Another as reported in 2008 LAB.I.C. (NOC) Page 311 and another decision of the Hon'ble High Court, Punjab and Haryana passed in the case namely the Sewak Bus and Transport Company (P) Limited – Vs – Punjab State and Others as reported in 1973 LAB.I.C Page 218.

The Ld. Advocate for the O.P. company has cited four decisions of the Hon'ble Supreme Court passed in a case namely India General Navigation and Railway Company Limited –Vs- IR Workmen as reported in LAWS (SC) 1959 10 7, in the case namely Oshiar Prasad and Others – Vs – The Employers in relation to Management of Sudamdih Coal Washery of BCCL as reported in LAWS (SC) 2015 2 4, in a case namely COMMNR of Central Excise, Bangalore –Vs – Srikumar Agencies ETC. ETC as reported in LAWS (SC) 2008 11 200 and one decision of the Hon'ble High Court, Calcutta passed in a case namely Algemene Bank Nederland –Vs – Central Government Labour Court as reported in LAWS (CAL) 1977 8 40.

Perused the above mentioned decisions of the Hon'ble Courts.

Regarding Issue No.1 i.e. Deduction of Wage for one day on 16.09.2012.

According to the written statement of the petitioners, the O.P. company did not pay their wages for one date on 16.09.12 though by a notice dt. 12.09.12 the O.P. company directed that all employees must attend their duties on 16.09.12 on no work no pay basis and such type of non-payment is highly illegal and unjustified.

According to the written statement of the O.P. company, on 06.12.11 and 14.04.12 the workmen could not perform their job due to supervening impossibility but at the request of the unions it was decided not to deduct the wages for the said two dates with an understanding that subsequently it would be open to the management to compensate the production and accordingly working on 16.09.12 was effected in lieu of 06.12.11 and all the workmen have received the benefit of full wages for 06.12.11 & 14.04.12 without performing any duty and the management put up notices in respect of these facts.

Non-payment of wages for 14.04.12 is not the subject matter of this case according to the cases of both sides whereas non-payment of wages for 16.09.12 is the subject matter of this case.

The Exbt.D is a notice dt. 03.12.11 sent by the O.P. company to all the unions and some persons concerned and by this notice the O.P. company informed all the staff, workmen and unions' representatives that due to non-availability of steel, the management is compelled to keep the factory closed on 06.12.11 and the management shall later on after discussion with the unions' representatives communicate the off day on which the factory will be remained

open in order to compensate loss and this notice was received by the unions and others with signatures.

The Exbt.20 is a notice dt. 12.09.12 issued by the O.P. company to the unions and by this notice the O.P. company informed all the employees that as the factory could not run on 06.12.11 due to non-availability of steel, both the unions requested the management to work on 16.09.12 i.e. Sunday, a weekly off day, in lieu of 06.12.11 and the management duly considered the said request of the unions and informed that the factory shall remain open on 16.09.12 and all employees must attend their duties on 16.09.12 and this notice bears signatures of the factory manager of the O.P. company and one representative of the union and Exbt.20/1, 20/2 and 20/3 also mention the above fact, that is, due to non-availability of steel, the O.P. company was closed on 06.12.11 and at the request of both the unions the management agreed not to deduct wages of the workmen for two days, that is, 06.12.11 and 14.04.12 and it was agreed that the management shall communicate the off day on which the factory shall remain open to compensate the production loss and 16.09.12, that is, Sunday, a weekly off day, was fixed in lieu of 06.12.11, when the factory shall remain open after discussion with both the unions and all workmen were advised to report for duty on 16.09.12 on no work no pay basis and these notices bear signatures of the managers of the O.P. company, unions and other persons.

So the above mentioned documents which bear the signatures of the O.P. company and the representatives of the unions, show that at the request of both the unions, the O.P. company agreed not to deduct wages of the workmen on 06.12.11 and 14.04.12 when the factory could not run due to acute shortage of steel and then for loss of 06.12.11, 16.09.12 was fixed after discussion with the unions to open the factory for work and all the workmen were advised to report for duty on 16.09.12 i.e. Sunday on no work no pay basis and the above documents also prove that on Sunday i.e. the weekly off day, the workmen agreed to work on no work no pay basis and all the above mentioned documents show signatures of both the parties and it also prove that with consent of both sides this arrangement was made and the Exbt.E, a letter dt. 25.03.13, issued by the O.P. company to the Assistant Labour Commissioner also mentions the above fact and agreement.

In their written statement the petitioners have not specifically challenged the Exbt.D, Exbt.20 to 20/3 on any ground.

Now the petitioners have alleged that the O.P. company did not pay their wages for 16.09.12 while in its written statement the O.P. company has not **specifically** stated as to whether they have paid the said wage to the petitioners and the O.P. company has only stated in its written statement that the workmen are not entitled to wages for one day on 16.09.12 on the basis of no work no pay and all the workmen have received full wages for 06.12.11.

Now the most important question is whether the petitioners went to the O.P. company on 16.09.12 to work because the petitioners have claimed that they did not get any wages for 16.09.12 from the O.P. company. But peculiarly enough, the written statement of the petitioners and affidavit in chief of the PW-I are **silent** on this point and similarly the written

statement of the O.P. company and affidavit in chief of the OPW-2 are also silent on this point and there is also no cross-examination on this point either to the PW-I or the OPW-2. As the dispute regarding non-payment of wages for 16.09.12 has arisen in this case, it was obligatory on the part of the petitioners specifically to mention in their written statement as to whether they went to the O.P. company on 16.09.12 to work and in spite of that work the O.P. company did not pay them the wages for that date because at first there must be work and then payment of wages will come and the O.P. company is also silent as to why the O.P. company did not pay wages for 16.09.12 to the petitioners if they attended factory for work on 16.09.12. So pleadings of both sides, oral evidences and documentary evidences of both sides are silent on this point. But during argument, the Ld. Lawyers of both sides have admitted that on 16.09.12 the petitioners did not attend the factory to work and during argument the Ld. Lawyer for the petitioners submitted that as 16.09.12 was a Sunday i.e. holiday, the petitioners did not go to the factory to work.

The Hon'ble High Court, Calcutta has held in a case namely *Algemene Bank Nederland - Vs - Central Government*, Labour Court as reported in LAWS (CAL) 1977 8 40 that "I am of the opinion that the wages, as in the words of Lord Denning, are the payment for services rendered. I am inclined to think that it is not so much a question of whether the contract is divisible or entire but of reciprocal promises as the consideration, that is to say, the employer provides the employment and pays the remuneration and the employee performs the work during the period he is supposed to do the work. Therefore, the right of the employee to get the remuneration depends upon the performance of his work during the period of employment. If there is any failure of that consideration then taking a strict view of the matter the employer is entitled to refuse any payment at all".

So by Exbt.20 to Exbt.20/3 the unions agreed with the O.P. company to open the factory on **Sunday**, that is, 16.09.12 to compensate the loss of work on 06.12.11, and have also agreed to accept the wages for 06.12.11 but they did not attend the factory on 16.09.12 to work and 16.09.12 was fixed in lieu of 06.12.11 but after accepting wages for 06.12.11, they did not go to the factory to work on 16.09.12 with a **childish plea** that it was Sunday but they cannot take this plea of Sunday later on because with their consent this date was fixed earlier and they accepted the wages for 06.12.11 without any work on 06.12.11 and though by Exbt.6 the unions informed the Deputy Labour Commissioner that it is unconstitutional and illegal to direct the workers to work on Sunday, that is, weekly holiday on 16.09.12 and this Exbt.6 was issued on 14.09.12, that is, after about ten months from 03.12.11 (Exbt.D), such type of plea of the petitioners cannot be considered on the ground of long delay and they should have raised this plea immediately after 03.12.11 and 12.09.12 and their said plea of illegality and unconstitutionality regarding fixing of holiday as working day cannot be considered as legal because with their consent the said date 16.09.12 was fixed for working in the factory after taking wages for 06.12.11 without work.

As they have agreed to work on 16.09.12 instead of 06.12.11 and accepted wages for 06.12.11 without work and as Exbt.20 to Exbt.20/3 and Exbt.D mention signatures of the unions, they are now **estopped** from denying their said consent to work on 16.09.12 instead of 06.12.11 and the Exbt.6 is also barred by law of estoppel.

So considering the entire materials on record regarding non-payment of wages on 16.09.12 by the O.P. company, I hold that the plea of the petitioners for non-payment of wages on 16.09.12 is illegal and cannot be considered legally in view of the above mentioned documents and the PW-I has stated in his cross-examination that the unions have not written any letter to the management anything to return the wages for 06.12.11. So it is clear that the petitioners have accepted the wages for 06.12.11 from the O.P. company though they did not work on 06.12.11 with the promise to work on 16.09.12 but finally they did not work on 16.09.12.

So the above conduct of the petitioners sufficiently prove that they are not entitled to get any wages for 16.09.12 as they have already received the wages for 06.12.11 without performing any work and as they admittedly did not work on 16.09.12, they are not entitled to get any further wages for 16.09.12.

Regarding Issues No. 2 to 4:-

Issue no. 2 only mentions "deduction of incentive" but it is an incomplete sentence and it does not mention any period or date for the alleged incentive and actually this Exbt.2 means nothing and this issue is vague. Hence it cannot be considered legally in this case.

According to the written statement of the petitioners, they did not get the production incentive for seven months from the months of May, 2013 to August, 2013 and from October, 2013 to December, 2013 from the O.P. company though they worked in the O.P. company and they have no grievances in respect of production incentive for September, 2013 as per their case for which the issue has not been framed for September, 2013.

Exbt.A dt. 24.09.2003 is an agreement between the O.P. company and the unions regarding reward system and it is not concerned with the term 'production incentive' though the petitioners have mentioned in the name of production incentive but actually it is the reward system according to the Exbt.A, which is admittedly the subject matter of dispute.

On perusing this Exbt.A, I find that as a result of discussion and agreement between the O.P. company and the unions, the O.P. company decided to give reward to the workmen to motivate them on the basis of the production and according to the norms of the said production quantity, 45,000 packets have to be prepared as average production and to get the said reward the employees have to be physically present on all the working days except permissible holidays and it was expressly agreed between the parties that the reward scheme was introduced purely at the company's own volition and it may be revised, modified or withdrawn at the sole discretion of the company and the workmen will not be able to raise any demand or dispute under any circumstances in this matter because this was a gesture of goodwill expressed by the company by introducing the above mentioned reward scheme and this agreement regarding reward system was signed by both parties and there is nothing on record to show that this agreement regarding reward system has been abolished later on by agreement between the parties and accordingly it is clear that till now it is legally maintainable and both parties will be bound by this agreement.

This agreement (Exbt.A) does not **specifically** mention that if the number of workers are reduced for any reasons, the average quantity of production as per this Exbt.A will be lowered down and this agreement also does not mention how many hours the workers have to work in the factory, and it also does not **specifically** mention that if the production quantity is below 45000 packets, the workmen will get reward as per Exbt.A. As per this Exbt.A, the workmen got reward in September, 2013 as the production quantity exceeded minimum level of 45000 packets.

Hence, I hold that this is an agreement regarding reward system executed **on consent** of both sides.

The Exbt.B, Exbt.C, Exbt.C/1 and Exbt.C/2, the four notices, mention that in the months of May, 2013 to August, 2013 and from October, 2013 to December, 2013 the minimum production limit of 45000 packets of blades have not been prepared by the workmen and for this reason these four notices have been sent by the O.P. company to the unions and the PW-I has admitted his signatures in Exbt.C & C/1 and he has stated that the production figures as mentioned in Exbt.C and C/1 are correct.

The PW-I has also admitted in his crossexamination that Exbt.26, another settlement, does not mention any clause to the effect that incentive would be given on the basis of average production and the Exbt.23 prepared for granting of incentive of average production does not bear the seal and signature of the O.P. company and the Exbt.23 was not prepared by the O.P. company.

So regarding average production limit to get reward, the Exbt.A is still lying intact and it has not been superseded by the Exbt.26 and both parties have to obey the Exbt.A for granting reward to the workmen if they have completed minimum average production limit of 45000 packets of blades.

So by proving Exbt.B, C, C/1 & C/2 the O.P. company has proved that as the petitioners did not perform minimum average production limit of 45000 packets of blades during the above mentioned period they are not entitled to get any payment as reward according to the Exbt.A. Hence I hold that non-payment of production incentive or reward for the above mentioned seven months by the O.P. company is legal and justified.

As the petitioners themselves have violated the terms of the Exbt.A, they are not entitled to get any reward or production incentive for the above mentioned period and the above mentioned three decisions cited by the petitioners are not applicable in the present facts and circumstances of this case because there is difference between the facts and circumstances of this case with the facts and circumstances of the cases of the decisions cited by the petitioners.

The Hon'ble Supreme Court has held in a case namely COMMNR of Central Government Excise of Bangalore -Vs- Srikumar Agencies ETC.ETC as reported in LAWS (SC) 2008 11 200 that "Courts should not place reliance on decisions without discussing as to how the factual

situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgements of Courts are not to be construed as statutes. Circumstantial flexibility, one additional or different fact, may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper".

So considering the entire materials on record **as a whole** and in view of the above mentioned decisions of the Hon'ble Supreme Court and High Court, I hold that the petitioners themselves have violated the terms of Exbt.A, that is, agreement regarding reward system and as such they are not entitled to get any reward or production incentive for seven months, that is, from May to August, 2013 and from October to December, 2013 and they are also not entitled to get any wage for 16.09.12 because they did not attend the O.P. company to work on 16.09.12 instead of 06.12.11 as per their consent though they received the wages for 06.12.11 without performing any work on that date according to Exbt.D, Exbt.20 to 20/3 and their claim in this case is not legal, and by themselves doing illegality, they have filed this case with false, vexatious and frivolous claims which are not legally maintainable in law and accordingly, I hold that they are not entitled to get any relief in this case.

Hence, it is

ORDERED

that the Case No. VIII-93 of 2014 under Section 10(2A) of The Industrial Disputes Act, 1947 is dismissed on contest against the O.P. company with cost.


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