

I/209811/2022

Government of West Bengal
Labour Department,
I. R. Branch

N.S. Buildings, 12th Floor, 1, K.S. Roy Road, Kolkata – 700001

No. Labr/ ⁷³³...../(LC-IR)/22015(16)/35/2022

Date: ²⁷⁻⁰⁷.....2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 130– I.R /11L-20/06 dated 12.02.2007 the Industrial Dispute between M/s Avenue Mistanna Bhandar, 99, C. R. Avenue, Kolkata - 700073 and Calcutta Sweetmeat Shops Mazdoor Union, 68/1, Sri Gopal Mallick Lane, Kolkata - 700012 regarding the issue mentioned in the said order, being a matter specified in the Second 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 15/07/2022 on the said Industrial Dispute vide memo no. 1111/ L.T. dated 15/07/2022.

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,

31/

Joint Secretary
to the Government of West Bengal

I/209811/2022

No. Labr/. 733/115 /LC-IR)

27-07
Date:/2022.

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

1. M/s Avenue Mistanna Bhandar, 99, C. R. Avenue, Kolkata - 700073.
2. Calcutta Sweetmeat Shops Mazdoor Union, 68/1, Sri Gopal Mallick Lane, Kolkata - 700012.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, 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/ 733/212 /LC-IR)

27-07
Date:/2022.

Copy forwarded for information to:

1. The Judge, Third Industrial Tribunal, West Bengal with reference to his Memo No. 1111/ L.T. dated 15/07/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.



Joint Secretary

BEFORE THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL.

Present - Sanjeev Kumar Sharma,
Judge, 3rd Industrial Tribunal,
Kolkata.

Case No. VIII-12/2007

Award

Date - 15.07.2022

In the matter of an Industrial Dispute between Messrs Avenue Mistanna Bhandar, 99, C. R. Avenue, Kolkata-73 and their workmen represented by Calcutta Sweetmeat Shops Mazdoor Union, 68/1, Sri Gopal Mallick Lane, Kolkata-12 referred to this Tribunal vide Reference order No. 130-I. R./ IR/11L-20/06 dated 12.02.2007 of the Labour Department, I.R. Branch, Govt. of West Bengal.

ISSUES as enumerated in the reference

1. Whether the demand for –
 - a) Enhancement of existing wages of each workman
 - b) The amount of bonus at the enhanced rate for the year 2004-2005
 - c) Daily allowance for Pen and Bidi for each workman
 - d) Enhancement of monthly Shaving, Soap and Oil allowance for each workman
 - e) Enhancement of Tiffin allowance per day per workman?
2. What relief, if any, are the workmen entitled to ?

Upon receiving the reference notices were issued to the parties. Calcutta Sweetmeat Shops Mazdoor Union, hereinafter referred to as the union and Messrs Avenue Mistanna Bhandar, hereinafter referred to as the employer firm appeared and filed their statement of claim and written statement respectively.

The case of the union as depicted in their statement of claim, in a nutshell, is that the employer firm, a partnership firm, is a family business. As it was known for oppression and humiliation to its employees and for denying benefits to its workers by violating social statutes the workmen took membership of the union. The union placed a charter of demands to the employer on behalf of the workmen through registered post which was duly served upon the employer on

Contd...

15.10.2004. Upon failure of the employer to settle the issue at bipartite level, the union referred the matter to the Labour Commissioner. The Dy. Labour Commissioner convened joint conference on several dates for conciliation but due to adamant attitude of the employer no settlement could be arrived at and ultimately the issues came to be referred to this tribunal.

The union prays for enhancement of wages, bonus and allowances in the following manner.

- a) One-time increase in wages at the rate of Rs. 800/- per month w.e.f. 01.08.2004 with yearly increment at the rate of Rs. 400/- per month for the year 01.08.2004 to 31.07.2005 and again at the rate of Rs. 400/- per month for the year 01.08.2005 to 31.07.2006. The union alleges that the employer is creating discrepancy amongst the employees as the salary of a newly appointed worker namely Sri Gouranga Dey is Rs. 2100/- per month while that of Sri Santosh Kumar Jana after service of 38 years is only Rs. 1590/- per month. The union further alleges that in other sweetmeat shops namely M/s Bhim Ch. Nag of Nirmal Street, M/s Jayashree Confectionery and M/s Annapurna Mistanna Bhandar of Doctors Lane the monthly salary of the employees is above Rs 3000/-.
- b) Enhancement of rate of bonus from 8.33% of the yearly earning to 20% of the yearly earning which should be payable at least 20 days prior to Durgapuja. The union states that M/s Bhim Ch. Nag pays 20% bonus, M/s Jayashree Confectionery and Reliance Mistanna pay 95 days salary as bonus and M/s Annapurna Mistanna Bhandar pays 72 days salary as bonus.
- c) Enhancement of daily allowance for Pan and Bidi for each employee from Rs. 2/- to Rs. 4/-. The union states that M/s Annapurna Mistanna Bhandar pays Rs. 5/- per day for pan and bidi and M/s Jayashree Confectionery and Reliance Mistanna and M/s Annapurna Mistanna Bhandar also pay daily Pan and Bidi allowance at higher rates.
- d) Enhancement of monthly Shaving, Soap and Oil allowance for each workman to Rs. 120 as paid by M/s Jayashree

Confectionery, Reliance Mistanna Bhandar and M/s Annapurna Mistanna Bhandar.

- e) Enhancement of Tiffin allowance to Rs. 20 per day as many organizations are paying the allowance at the same or at higher rate.

The union further pleads that the employer is earning huge profit and the partners who are the members of the same family have purchased huge moveable and immoveable properties including ownership flat etc. the employer is also running a restaurant and eatery serving rice meals from the same premises. The union prays for granting the reliefs by answering the issues in their favour.

The employer firm contested the claim of the union through their partner Sushil Kumar Sinha. He states that he and Sasanka Sinha were the joint tenants of the premises and the trade license and other licenses were granted in favour of joint tenant whereupon the business was being carried by them alternatively for six months on the basis of *Pala* system (turn wise) and they enjoyed the profits after payment of the necessary expenses of the firm including the salaries of the employees. Owing to his ill health Sushil Kumar Sinha used to take help of his brothers Sunil Sinha and Anil Sinha forming a partnership in respect of his turn of six months. It is stated that a dispute cropped up between Sasanka Sinha and Sushil Kumar Sinha over the question of discharge of their liabilities for conducting the business turn-wise as per settlement and therefore the employees made representation before the Assistant Labour Commissioner in respect of their charter of demands. Since Sushil Kumar Sinha had to take the liability during his turn he paid a sum of Rs.36,000/- for settlement in terms of the demand of the employees. Sasanka Sinha did not participate in the conciliation proceeding and in order to avoid his liabilities he instituted one title suit being No.1603 of 2001 before the Learned City Civil Court, Calcutta for dissolution of the firm and accounts. The partner Sushil Kumar Sinha denied any oppression or humiliation of the employees during his turn of running business. He states that the union was not recognized by the firm and it was not known to him whether the workmen became the members of the union as there were only five employees out of which only three were permanent, but it was known to him that the union had placed a charter of demands through their letter dated 13.10.2004 sent by registered post. According to him the dispute over the demand of employees

could not be settled due to non-cooperation and adamant attitude of Sasanka Sinha. He further states that ultimately he resolved to make partition of the business, but nothing could be done due to the reluctance on the part of Sasanka Sinha. He further states that he being a partner of 50 per cent share only it was not possible for him to take any decision unilaterally to settle the charter of demand as Sasanka Sinha was also partner in respect of the 50 per cent share of the business. According to him the charter of demand cannot be settled unless the business premises is partitioned and both the partner shared their respective liabilities towards the employees and therefore the rights and liabilities can be ascertained only in the Title Suit pending before the learned City Civil Court, Calcutta. He further stated that he is carrying on the business without any proper authority and license at his own risk otherwise the business would have been closed. According to him the question of charter of demand and the relief sought for is not sustainable during the pendency of the civil suit.

Union examined Sri Santosh Kumar Jana as PW-1 and Sri Debi Goswami as PW-2 and brought the following documents on record.

1. Copies of charter of demand, postal receipt and postal A.D. card as Exhibit-1, 1(a) and 1(b) respectively;
2. Copy of Union's letter dated 09.12.2004 addressed to the Labour Commissioner as Exhibit-2;
3. Copy of notice dated 28.08.2000 issued by the Employer Firm regarding suspension of work as Exhibit-3;
4. Copy of notice dated 18.09.2000 to withdraw the notice dated 28.08.2000 as Exhibit-4;
5. Copy of memo. dated 26.08.2002 of Deputy Labour Commissioner regarding finalization of charter of demand as Exhibit-5;
6. Copies of appointment letters of Kalipada Santra, Bhupati Kumar Sur, Anup Kumar Jana and Utpal Bhunia as Exhibits-6(a), 6(b), 6(c) and 6(d) respectively;
7. Copy of union's letter dated 16.12.2005 to the Deputy Labour Commissioner as Exhibit-7;
8. Copies of agreements between M/s. Basanti Mistanna Bhandar and union dated 23.11.2007, M/s. Basanti Mistanna Bhandar and union dated 25.06.2004, M/s. Jayashree Confectionary & Union and between

M/s. Reliance Mistanna Bhandar and union as Exhibits-8, 8(a), 8(b) & 8(c) respectively;

The employer firm examined Sri Sushil Kumar Sinha as OPW-1, Sri Ajit Kumar Roy as OPW-2, Sri Ranjit Kumar Poria as OPW-3 and Sri Soumen Sinha as OPW-4. One Sri Sasanka Sekhar Sinha was examined-in-chief in part as OPW-5, but subsequently he could not be examined due to his death as appearing from the record and therefore his evidence stood expunged.

Union brought the following documents on record :

1. Copy of letter dated 15.08.2015 of the employer firm addressed to Santosh Jana as Exhibit-A;
2. Copy of money receipt of Rs.70,000/- dated 08.01.2016 executed by Santosh Kumar Jana as Exhibit-B;
3. Copy of resignation letter dated 22.08.2015 of Santosh Kumar Jana as Exhibit-C;
4. Copy of money receipt of Rs.1000/- cum resignation letter dated 06.10.2015 of Anup Jana as Exhibit-D;
5. Copy of letter dated 15.08.2015 of the employer firm addressed to Bhupati Sur as Exhibit-E;
6. Copies of charge-sheets issued by employer against Utpal Bhunia and Kalipada Santra as Exhibits-F & F/1 respectively;

Decision with Reasons

Forwarding arguments, the learned advocate for the employer firm submits that the union has not produced any document regarding the profit & loss or income of the establishments to make them comparable to the employer firm. He submits that there are numerous sweetmeat shops in Kolkata, but all of them are not of the same standard. In order to rely upon the agreements of different establishments with union the union must bring materials on record to show that those establishments are comparable to the employer firm. He adds that only same nature of the business of the establishments sought to be compared is not sufficient as income of different establishments may vary for many reasons. He contends that the union has not filed any document regarding the income and financial status of the employer firm. Referring to the evidence of PW-1 the learned advocate submits that the evidence of the witness is contradictory to the

pleadings as the evidence of the witness shows that the workers are given lodging facilities and they are given salary of 36 days in a month and are further paid 5 days' salary in the event of doing extra work. He further submits that the Payment of Bonus Act, 1965 is not applicable to the employer firm as the number of the employees is less than twenty. He contends that no expiry date is given in Exhibit-5, the last agreement between the employer firm and the workers and therefore the contention of the union that the tripartite agreement expired on 31.07.2004 is vague. He submits that the salary of the workers has been mentioned in evidence but it was not mentioned in the written statement. The learned advocate submits that the workers Santosh Jana, Anup Jana and Bhupati Sur have retired while the workers Uttam Bhunia and Kalipada Santra have voluntarily left the employment and there being no employee at present, no relief can be granted. He submits that the union has failed to make out any case of enhancement of wages and other allowances as such the union is not entitled to any relief in this case.

The learned advocate for the union, on the other hand, submits that the materials and evidence on record shows that the relationship of the employer firm with the union is an admitted fact. Pleadings and evidence of the employer firm clearly shows that the charter of demand was duly placed. He further submits that time to time revision of pay and allowances is necessary due to increase in prices of the essential commodities and unlike the public sectors where pay commissions make recommendations the only way in case of private sector is the placement of demand by the workers before their employers. The learned advocate contends that even if the employees are retired after placing of the charter of demand they will be entitled to the benefit of the Award. Regarding the financial stability of the employer firm the learned advocate contends that there is nothing in the pleadings of the firm that they are unable to meet the demands due to financial reasons rather the non-cooperation on the part of one of the partners namely Sasanka Sinha has been cited as the reason for non-compliance of the charter of demands placed by the workers. Since the employer firm has not raised the issue of its financial condition, there is no necessity of adducing evidence in that behalf. The learned advocate cites the decision of the Hon'ble Supreme Court in the **Kamani Metals & Alloys Ltd. vs. the workmen** reported in **AIR 1967 (SC) 1175** and submits that the decision lays down the principles of revision of

wages. He submits that the wages and allowances given to the workers are highly inadequate and therefore enhancement of the same is necessary in terms of the charter of demands.

Learned advocate for the employer firm in his reply submits that the decision in **Kamani Metal** case is not applicable in this case as in that case there was no revision of pay for last twenty years while in this case the tripartite agreement was in force as on the date of the placement of charter of demands.

Evidently, the employer firm is running a sweetmeat business in the city of Kolkata. The version of the employer firm that the remedy sought for by the union is not sustainable till the rights and liabilities of the partners of the employer firm are decided by a competent Court of law is not acceptable in the light of the fact that the business is running notwithstanding the alleged discontent amongst the partners and also that the workers of the employer firm cannot be made to bear the burden of the alleged *interse* dispute between the partners of the firm. Obviously the business of the employer firm has been going on because of the toil and labour rendered by the workmen. Therefore, the dispute and differences between the partners of the employer firm cannot affect the rights of the workmen.

The provisions of the Payment of Bonus Act, 1965 apply in case of the establishments where the number of workers are twenty and above. In this case, the number of workers being less than twenty, there is no question of invoking the provisions of the Bonus Act but we find that the bonus in this case is linked with the festival of Durga Puja. The other sweetmeat shops, as it appears from Exhibit-8 series, also pay bonus to their workers. In the circumstances there may not be any statutory liability upon the employer firm to pay bonus but the bonus in this case being customary one and there being a general practice of paying bonus to the workers before Durga Puja, the employer firm who has been paying the bonus to its workers, cannot deny the same as such customary practice has acquired the shape of the service conditions. Payment of bonus in this case not being a statutory liability is not compulsory. It is a matter of choice of the employer and not the legal right of the employees. There is no material on record to show that the employer firm earned surplus income in the year 2004-2005 to justify the enhancement of the customary bonus. In absence of any material to compare the size, standard, extent of business and financial strength of the other sweetmeat

shops with the employer firm the bonus given by those concerns cannot be compared with the employer firm. It is found from the evidence of OPW-2 of M/s Basanti Mistanna Bhandar and OPW-3 of M/s Jayshree Confectionery that the employer firm is not situated in the area of those firm.

Exhibit-5 shows that in connection with charter of demands submitted by the union earlier a meeting was held in the office of the Labour Commissioner on 07.08.2002 and a settlement was arrived at between the parties in presence of the Deputy Labour Commissioner. It is further found from Exhibit-5 that the daily rate of wage of Sri Santosh Jana was increased by Rs.4/- w.e.f. 01.08.2002 which was to be further increased by Rs.2/- w.e.f. 01.08.2003 and in case of other workmen the increase was made by Rs.2/- w.e.f. 01.08.2002 which was to be further increased by Rs.2/- w.e.f. 01.08.2003. We therefore find that there was no settlement regarding the increase of wages on and from 01.08.2004. It is no case of the union that the settlement arrived at in the meeting held in the office of the Labour Commissioner on 07.08.2002 was not given effect to or was not complied with by the employer firm. Thus, we proceed with the assumption that the last increase in the wage of the workman of the employer firm was done on 01.08.2003. The employer firm did not disclose the wages of its workers, therefore, the wages of the workers furnished by the union in Exhibits-6 series and 7 are accepted. Exhibit-8 series are the agreements between different sweetmeat shops and unions. The nature of the business of those sweetmeat shops appear to be similar to that of the employer firm, but in absence of any material to show that the size, standard and financial strength of those sweetmeat shops are at par with the employer firm the information derived from Exhibit-8 series cannot be wholly relied upon while considering the wages and allowances of the workers of the employer firm. In the case of **Kamani Metal**, the Hon'ble Supreme Court held, "The principle of industry cum region is that fixation and revision of scales of wages pays or dearness allowances must not be out of tune with the wages etc. prevalent in the industry or the region. This is always desirable so that unfair competition may not result between an establishment and another and diversity in wages in the region may not lead to industrial unrest. In attempting to compare one unit with another care must be taken that units differently placed or circumstanced are not considered as guides without making adequate allowance for the difference. The same is true when regional level of wages are considered

and compared. In general words comparable units may be compared but not the units which are dissimilar.”

One of the components of the allowances is the daily allowance of pan and bidi which has been mentioned as pen and bidi in the reference. Such allowance may be traditional one but pan and bidi being injurious to health and chewing of pan and smoking of bidi in an establishment where food items are prepared, served and sold is certainly not recommendable. Moreover, the Tribunal cannot give indulgence to such unhealthy practices. If any worker has the habit of chewing pan or smoking bidi he must bear its burden himself and cannot make the employer to pay for it. Therefore, the demand for enhancement of daily allowance towards pan and bidi is declined.

Coming to the evidence of PW-1 we find that apart from salary the workers of the employer firm get meals and tiffin twice a day and they are also provided lodging facility in the shop. The workers also get shaving and washing allowance. His evidence further shows that the workers get salary of 36 days in a month as they work throughout the whole month and in the event of doing extra work the workers get 5 days' extra salary. They also get 15 days' festival leave in a year but since they work during those days they are paid extra remuneration. He also states that in case of illness they are given some medical allowance.

Now, neither the charter of demands nor the evidence of PW-1 disclosed that what amount is being paid to the workers towards tiffin allowance and shaving, soap & oil allowance. Grant of such allowances is admitted by PW-1 but there is nothing in his evidence that the allowances given to them are inadequate to meet the requirement. No material has been produced on record to justify the enhancement of the rate of the allowances. It is no case of the union that the meals and tiffin provided to the workers twice in a day is not up to the mark quality wise or quantity wise. When admittedly, the employer is providing tiffin and meals to the workers, there appear no justification of the demand of enhancement of tiffin allowance.

Coming to the demand of enhancement of wages, we find that the highest salary paid by the employer firm to the senior most worker is Rs.1590/- per month while the lowest salary paid is Rs.700/-. The union demands one-time increase in wages at the rate of Rs. 800/- per month w.e.f. 01.08.2004 with yearly increment at the rate of Rs. 400/- per month for the year 01.08.2004 to 31.07.2005

and again at the rate of Rs. 400/- per month for the year 01.08.2005 to 31.07.2006. Now, it is pertinent to take note that the last increase in wages took place by Rs.4/- w.e.f. 01.08.2002 with further increase by Rs.2/- w.e.f. 01.08.2003 in case of worker Santosh Kumar Jana and by Rs.2/- w.e.f. 01.08.2002 with further increase by Rs.2/- w.e.f. 01.08.2003 in case of other workers. In view of the rate of increase of daily wages lastly the demand of one-time increase of monthly wages at the rate of Rs.800/- per month w.e.f. 01.08.2004 with yearly increment at the rate of Rs.400/- per month for the year 01.08.2004 to 31.07.2005 and again at the rate of Rs.400/- per month for the year 01.08.2005 to 31.07.2006 appear to be abrupt and unreasonable. Such sudden surge in the wages may have adverse impact on the business putting its existence itself at stake. Exhibit-8 shows that the maximum monthly wage of the workers of M/s. Basanti Mistanna Bhandar was Rs.2005/- in the year 2007 which was increased by Rs.150/- for the first year and then by Rs.140/- each for the second and third year. No doubt the increase in wages is necessary as the prices of essential commodities go on to increase, but the increase of wages cannot be unreasonable and abrupt beyond the capacity of the employer. It is found from the evidence of OPW-4, Soumen Sinha, that the workers namely Santosh Jana, Anup Jana, Bhupati Sur, Utpal Bhuiya and Kalipada Santra are no longer working the employer firm.

Learned advocate for the union rightly highlighted that no plea as to the financial condition was raised in the written statement of the employer firm, but the fact remains that financial crisis of the employer firm was one of the grounds for failure of the conciliation as appears from the conciliation file lying with the record. In his evidence also the OPW-1 expressed their inability to meet up the charter of demands. It further transpires from the record that the employer firm during the course of adjudication had sought to produce documents regarding their financial condition, but the prayer of the employer firm to that effect came to be rejected amid vehement objection by the union. In fixing a fair wage the capacity of the industry to bear the burden is a relevant and important factor. In fixing a fair wage the capacity of the industry to bear the burden is a relevant and important factor.

After considering the facts and circumstances and the materials available on record and keeping in mind the requirement of increase of the wages of the

workmen, I find that a fair and reasonable approach is needed to be adopted which would be befitting and commensurate to the wages available to the workers in the establishments dealing with the same kind of business.

Taking into account the materials and evidence appearing on record, existing wages and the extent of last increase in the wages I hold that the increase in the monthly wages of all the workers of the employer firm by Rs.400/- per month w.e.f. 01.08.2004 to 31.07.2005 with further increase by Rs.150/- per month w.e.f. 01.08.2005 to 31.07.2006 would be just and fair in the interest of both the industry and the workers.

In view of my foregoing discussions it is held that the workmen are entitled to enhancement of monthly wages by Rs.400/- per month w.e.f. 01.08.2004 to 31.07.2005 with further increase by Rs.150/- per month w.e.f. 01.08.2005 to 31.07.2006. Rests of the demands are declined. The employer firm shall continue to provide the facilities, allowances and bonus to the workers which are already being provided. Award is passed accordingly and the reference is answered in these terms.

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

Dictated and corrected by me

sd/-

Judge

sd/-

(Sanjeev Kumar Sharma)

Judge

3rd Industrial Tribunal

Kolkata

15.07.2022