

I/213274/2022

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

No. Labr/780/(LC-IR)/11L-81/2015

Date: 16-08-2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/1447-IR/IR/09 dated 18/11/2014 the Industrial Dispute between M/s. Haryana Vidya Mandir, BA – 193, Salt Lake City, Kolkata - 700064 and its workmen Haryana Vidya Mandir Non-Teaching Employees Association, 50/1, Nirmal Chandra Street, Kolkata – 700012 regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Third Industrial Tribunal, West Bengal.

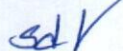
AND WHEREAS the Third Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 28/07/2022 on the said Industrial Dispute vide memo no. 1221 - L.T. dated – 03/08/2022.

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/213274/2022

Anandabala h
16/8/22


No. Labr/780/1(5) (LC-IR)

Date: 16-08- /2022.

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

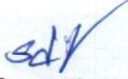
1. M/s. Haryana Vidya Mandir, BA – 193, Salt Lake City, Kolkata - 700064.
2. Haryana Vidya Mandir Non-Teaching Employees Association, 50/1, Nirmal Chandra Street, Kolkata – 700012.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 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.

No. Labr/780/2(2) (LC-IR)


 Joint Secretary
 Date: 16-08- /2022.

Copy forwarded for information to:

1. The Judge, Third Industrial Tribunal, West Bengal with reference to his Memo No. 1221 - L.T. dated – 03/08/2022.
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-106/2014

Award

Date - 28.07.2022

In the matter of an Industrial Dispute between Messrs Haryana Vidya Mandir, BA-193, Salt Lake City, Kolkata-64 and its workmen represented by Haryana Vidya Mandir Non-Teaching Employees Association, 50/1, Nirmal Chandra Street, Kolkata-12 referred to this Tribunal vide Reference order No. 1447-I.R./IR/11L-05/09 dated 18.11.2014 of the Labour Department, I.R. Branch, Govt. of West Bengal.

ISSUES

1. Whether the act of the management of Haryana Vidya Mandir, in introducing casual leave, medical leave, maternity leave in the new set of service rules for their non-teaching workmen w.e.f. 01.04.2009 during the pendency of proceeding before the Ld. Industrial Tribunal on Charter of Demand in casual leave, medical leave, maternity leave is justified?
2. What relief, if any, are the workmen entitled to ?

On receiving the reference from the Government notices were issued upon the parties. Haryana Vidya Mandir Non-Teaching Employees Association, hereinafter referred to as the union and Haryana Vidya Mandir, hereinafter referred to as the school appeared and filed their respective written statements.

The case of the union, in a nut shell, is that the school is affiliated to the Central Board of Secondary Education and it is a listed school under the Code of Regulation for Anglo Indian and other listed schools, 1993 and it is being run in utter violation of Labour and Industrial Laws. It is further case of the union that they had placed a charter of demand raising just and genuine demands and due to non-consideration of the same dispute was raised by the union which is presently pending for adjudication before this Tribunal being Case No.VIII-21/2009. The union further states that in order to keep the workman under duress the school unilaterally introduced new leave rules for its non-teaching staff w.e.f. 01.04.2009

during the pendency of the industrial dispute over their charter of demand. According to the union the new rules contain provisions regarding casual leave, medical leave and maternity leave which are less favourable than the statutorily mandated and existing norms of the non-teaching staff. The union raised objection over the introduction of new leave rules w.e.f. 01.04.2009 during the pendency of the industrial dispute regarding charter of demand, but the school did not pay any heed as such the dispute was raised before the Labour Commissioner, Government of West Bengal on 24.07.2012. The union alleges that the new leave rules were introduced by the school with an intention to break the legal movement of the union regarding their charter of demand. Conciliation proceeding initiated on the basis of the union's representation failed due to adamant stand of the school and ultimately the appropriate Government made the instant reference to this Tribunal. The union prays for an award holding the introduction new leave rules by the school for its non-teaching staff w.e.f. 01.04.2009 as illegal, unjustified and void ab initio with direction upon the school to accord casual leave, medical leave and maternity leave to the non-teaching staff in consonance with the affiliation bye-laws of CBSE as contained in the Code of 1993.

The case of the school on the other hand is that the school is an unaided English Medium Co-Education Higher Secondary School affiliated to CBSE and it does not receive any financial assistance or grant from any authority of either State or Central Government and the school is not covered under the Code of Regulation for Anglo-Indian and other Listed Schools 1993. It is further case of the school that the school is covered under ESI Act and none of the non-teaching staff ever alleged non-enjoyment of benefits provided under the Act. Since all the non-teaching staff were covered under the ESI Act they enjoyed medical leave and maternity leave as provided in the Act and the new leave rules introduced w.e.f. 01.04.2009 did not bring any change. The non-teaching staff continued to enjoy casual leave, medical leave and maternity leave as before as the new rules kept them unchanged. The school denied all the material allegation made by the union regarding violation of labour and industrial laws and also that the casual leave, medical leave and maternity leave under the new leave rules were less favourable than the statutorily mandated and existing norms. According to the school no illegality has been committed by the school in framing the leave rules as no

change has been brought and the introduction of new rules is just the codification of leave rules which were not earlier codified.

The union examined their General Secretary Susanta Kumar Pal as PW-1 and brought the following documents on record :

1. Copy of the bye-laws of the CBSE as Exhibit-1;
2. Copy of the Code of Regulation for Anglo-Indian and other Listed Schools, 1993 as Exhibit-2;
3. Copy of letter dated 07.05.2008 of the union addressed to the Principal of the School as Exhibit-3;
4. Copy of the letter dated 19.08.2008 of the union addressed to the Principal of the School as Exhibit-4;
5. Copy of the letter dated 26.11.2008 of the union addressed to the Principal of the School as Exhibit-5;
6. Copy of representation dated 16.12.2008 by the union to DLC as Exhibit-6;
7. Copy of representation dated 19.03.2009 by the union to LC as Exhibit-7;
8. Copy of representation dated 24.07.2012 by the union to LC as Exhibit-8;
9. Copy of letter dated 27.09.2012 written by the school to ALC as Exhibit-9;
10. Copy of letter dated 12.11.2012 of the union to ALC as Exhibit-10;
11. Copy of letter dated 02.01.2013 of the school addressed to ALC as Exhibit-11;
12. Copy of conciliation memo. issued by ALC as Exhibit-12;
13. Copy of letter dated 11.01.2013 of the union to ALC as Exhibit-13;
14. Copy of letter dated 21.01.2013 of the school addressed to ALC as Exhibit-14;
15. Copy of letter dated 31.01.2013 of the union to ALC as Exhibit-15;
16. Copy of letter dated 18.02.2013 of the school addressed to ALC as Exhibit-16;
17. Copy of letter 09.04.2013 issued by the union addressed to ALC as Exhibit-17;
18. Copy of conciliation memo. dated 16.04.2013 as Exhibit-18;

19. Copy of letter dated 24.04.2013 of the school addressed to ALC as Exhibit-19;
20. Copy of letter dated 07.05.2013 of the union addressed to ALC as Exhibit-20;
21. Copy of letter dated 16.06.2014 of the school addressed to ALC as Exhibit-21;
22. Copy of letter dated 24.06.2014 of the union addressed to ALC as Exhibit-22;
23. Copy of letter dated 28.03.2011 of CBSE addressed to the school as Exhibit-23;
24. Copy of Government order dated 23.11.1994 as Exhibit-24; and
25. Copy of a joint petition and memo. of settlement as Exhibits-25 & 25/1 respectively; and
26. Copy of letter dated 19.10.2004 of CBSE addressed to the school as Exhibit-26.

The School examined Sri Ashim Kumar Mondal as OPW-1 and brought the following documents on record :

1. Copy of leave rules for non-teaching staff as Exhibit-A;
2. Copy of notice issued by the ESI Corporation as Exhibit-B;
3. Copy of notification issued by the Government of West Bengal, Education Department on 24.12.1993 as Exhibit-C;
4. Copy of letter dated 24.04.2013 of the school addressed to ALC as Exhibit-D;
5. Copies of letters dated 21.01.2013, 02.01.2013 and 27.09.2012 of the school addressed to ALC as Exhibits-E, E/1 & E/2 respectively.

Decision with Reasons

In the course of argument Id. advocate for the school submits that the only question before this Tribunal is whether the action of the school in introducing new leave rules by the school w.e.f. 01.04.2009 during the pendency of the proceedings regarding charter of demand is justified or not. He submits that the introduction of new leave rules actually is nothing but the codification of the leave

rules without causing any change. He submits that all the non-teaching staff of the school being covered under the ESI Act from before 01.04.2009 continued to enjoy the medical leave and maternity leave as per ESI Act. There is no change in the number of casual leaves available to the non-teaching staff. He submits that there being no change in the leave rules by the codification of leave rules w.e.f. 01.04.2009 there arises no question of any prejudice to any of the non-teaching staff of the school. He further submits that Code of Regulation for Anglo-Indian and other Listed Schools, 1993 (in short the code of 1993) is not applicable to the school as the school is neither an Anglo-Indian school nor a listed school within the meaning of the code. He further submits that the introduction of new leave rules is not the promulgation of new rules curtailing the leaves available to the non-teaching staff prior to 01.04.2009. He further submits that there is no material on record to show that the leave rules codified w.e.f. 01.04.2009 are less favourable than the leave rules existing prior to that date. Since the non-teaching staff of the school are continuing to enjoy the casual leave, medical leave and maternity leave as before it cannot be said that the new rules have caused prejudice to them. He submits that the case of the union has no merit and they are not entitled to get any relief in this case.

Ld. advocate for the union on the contrary submits that the introduction of new rules w.e.f. 01.04.2009 itself suggest that there were no leave rules previously. He submits that the prior rules have not been shown by the private school as such it cannot be ascertained whether the new rules are beneficial or prejudicial but the fact remains that change has been effected by the school which violates the provisions of Section 33 of the I. D. Act. He further submits that in introducing the new rules the school has not complied the provisions of Section 9A of the Act as such the rules cannot sustain. He further submits that the school being a listed school under the Code of 1993 it is bound by the leave rules prescribed in para. 30 thereof. He further submits that had the new rules been beneficial the union would not have raised the dispute. He submits that the requirements for change of condition of service laid under Section 9A of the Act has not been complied. The ld. advocate cites the decision of the Hon'ble Supreme Court in **Lokmat Newspaper Pvt. Ltd. vs. Shankar Prasad** reported in 1999 – II – LLJ 600. He submits that the leaves under the new leave rules are less

favourable than the casual leave, medical leave and maternity leave prescribed under Rule 30 of the Code of 1993.

In reply, the Id. advocate for the school submits that the issue referred for adjudication in the instant reference speak of justifiability of the introduction of casual leave, medical leave and maternity leave in the new set of service rules for the non-teaching workmen w.e.f. 01.04.2009 during pendency of proceeding on charter of demand in casual leave, medical leave and maternity leave. Therefore, there is no scope for invoking Section 9A of the Act and the Tribunal being a creature of the statute cannot travel beyond the reference. On this score, he cites the decision of the Hon'ble Supreme Court in **Nav Bharat Press Karmachari Kalyan Sangh vs. State of Chatisgarh** reported in **2013 (11) SCALE 467**. Regarding the applicability of Section 9A of the Act Id. advocate cites the decision of the Hon'ble Supreme Court in **Hindustan Steel Works Construction Ltd. vs. Hindustan Steel Works Construction Ltd.** reported in **2005 (6) SCALE 430** and of the Hon'ble Calcutta High Court in **Assam Carbon Products Ltd. vs. State of West Bengal** reported in **2013 (5) CHN (Cal) 51**.

After completion of arguments the Id. advocates for the parties filed written notes of arguments.

I have carefully gone through the order of reference, pleadings and the evidence of the parties and also the decisions referred to by them.

The issue No.1 in the reference essentially carries the spirit of section 33(1)(a) of the I. D. Act. Justification of the introduction of the new rules during the pendency of the reference over the charter of demands has only been questioned. The issue under reference does not give any glimpse of contravention of section 9A of the I. D. Act. The written statement filed by the union nowhere speaks of the contravention of section 9A of the Act. The edifice of the union's case is the introduction of the new rules during the pendency of the proceeding over their charter of demands. Evidence of PW1 too does not speak of contravention of section 9A of the Act. Therefore, the case of violation of section 9A of the Act has not been made out either in the pleadings or in the evidence of the union. In the circumstances the raising of the point of violation of section 9A of the Act only during the final arguments cannot deviate the tribunal from adjudicating the actual issue referred in this case. Thus, the case of violation of section 9A of the Act attempted to be made out by the union at the time of final

arguments is not accepted. In **Lokmat Newspapers** case notice under section 9A was issued after bringing into force the rationalization scheme which was held to be incompetent and violative of section 9A of the I. D. Act. In view of the facts of this case, the decision in Lokmat Newspaper case cannot be applied in this case.

In this case we are only concerned with the justification of the introduction of allegedly new rules during the pendency of the case over the charter of demands.

Now, we find from the pleadings and evidence of the union that the union had raised demand that the non-teaching staff of the school is entitled to the salaries, emoluments, terms of employments and conditions of service in accordance with the affiliation bye-laws of CBSE and over such demand case No. VIII-21 of 2009 is pending for adjudication before this tribunal. In this case the union pleads that the school is bound to implement leave rules in consonance with the affiliation bye-laws of CBSE as contained in details in the Code of 1993. We find from the cross-examination dated 11.01.2018 of PW1 that the leaves issue as per their charter of demand is also the subject matter of the case No. VIII-21 of 2009. According to the union the school comes within the purview of the Code of 1993 but the version of the school is that it is neither Anglo-Indian school nor a listed school within the meaning of the Code. It is no case of the union that the non-teaching staff of the school were enjoying leaves in accordance with the Code prior to 01.04.2009 and the new rules introduced by the school changed the same to their disadvantage. In view of the issue in reference in this case, I find no necessity in delving into the issue that whether the school is covered by the Code or not. As a matter of fact, the charter of demand placed by the union before the school was based upon their alleged entitlements as per affiliation bye-laws of CBSE. Therefore, the issue that whether the school is covered by the Code or not can well be decided in the proceeding over the charter of demands. When the issues of salaries, emoluments, terms of employments and conditions of service including leave rules are the subject matter of the case over charter of demands, I do not find it expedient to discuss those issues in this case as it may lead to conflicting decisions over the same issue. In the light of the order of reference in this case we are to confine ourselves to the narrow compass of finding justification or otherwise of the introduction of alleged new leave rules pending the case over the charter of demands.

Now, section 33(1)(a) of the I. D. Act reads,

33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. -

(1) During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding.

Admittedly, the proceeding being case No. VIII-21 of 2009 over the charter of demands was pending before the introduction of the new leave rules and it is also an admitted fact that the leave rules are also included in the charter of demands case. Therefore, the alleged introduction of the leave rules w.e.f. 01.04.2009 is certainly connected with the matter in dispute in case No. VIII-21 of 2009. What section 33(1)(a) of the I. D. Act prohibits is that the employer shall not alter the condition of service to the prejudice of the workmen during the pendency of any proceeding which were applicable to them immediately before the commencement of the proceeding. Thus alteration of the service conditions and prejudice to the workmen are the key factors to attract the embargo imposed by Section 33(1)(a) of the I. D. Act.

Let us now see whether the school has caused any alteration of the service conditions of the non-teaching staff causing prejudice to them by way of the alleged introduction of new leave rules w.e.f. 01.04.2009. The union pleaded that the casual leave, medical leave and maternity leave prescribed under the newly introduced rules were less favourable than the existing norms for the non-teaching staff but there is no pleading and evidence of the union to the effect that what were the existing norms prior to 01.04.2009 regarding the casual leave, medical leave and maternity leave. PW-1 in his evidence stated that the new leave rules for non-teaching staff w.e.f. 01.04.2009 introduced in the place of leave rules notified on 11.08.2000 were in violation of the stipulations and the employer was duty bound to implement its leave rules in consonance with the affiliation bye-laws of CBSE as contained in details in the Code of 1993 some of which were also in the earlier service rules, but the witness did not state that how the leave rules introduced

w.e.f. 01.04.2009 were different from the leave rules existing prior to that date. It appears from the evidence and pleadings of the union that their emphasis is mainly on implementation of leave rules in terms of the affiliation bye-laws of CBSE and the Code of 1993 which is in fact the subject matter of the case No.VIII-21 of 2009. According to the school, the school is covered under the ESI Act from before and all the staff had been enjoying the medical leave and maternity leave in accordance with the provisions of ESI Act. In his evidence OPW-1 stated that the leave rules introduced w.e.f. 01.04.2009 did not cause any change in the matter of casual leave, medical leave and maternity leave. The service rules / leave rules for non-teaching staff of the school w.e.f. 01.04.2009 is marked as Exhibit-A. It is further found from the evidence of OPW-1 that prior to 01.04.2009 there was no codified leave rule of the school and the codified leave rule were introduced w.e.f. 01.04.2009 and the codification of such rules did not bring any change. The witness stated that the only thing done was the codification of the leave rules maintaining the leave benefits to the employees existing prior to the codification. The union alleged that the introduction of new leave rules w.e.f. 01.04.2009 are prejudicial to the non-teaching staff, but there is no iota of evidence to show that how and in which manner the introduction of the new leave rules were different from the uncoded leave rules existing prior to 01.04.2009 and how the codified rules caused prejudice to the non-teaching staff or how the codified rules were less favourable than the rules existing prior to the codification. When there is no alteration of the leave rules and in absence of any material to show that the codification of the leave rules caused any prejudice to the non-teaching staff of the school, I hold that the prohibition under Section 33(1)(a) of the I. D. Act is not attracted in this case. We have already found that no case of violation of Section 9A of the I. D. Act has been made out by the union.

Since the proceeding regarding the charter of demands of the union (Case No.VIII-21 of 2009) which includes the demand of leave rules as per affiliation bye-laws of CBSE and the Code of 1993 is pending, the questions as to the entitlement of the service conditions and leave rules shall be decided in that case only.

Considering the entire facts and circumstances and the evidence and materials on record in the light of the issue under reference I find no reason to hold that the act of the management of the school in introducing casual leave, medical

leave and maternity leave in the new set of service rules for their non-teaching staff w.e.f. 01.04.2009 during pendency of the proceedings on charter of demands is not justified in absence of any material or evidence to establish that such a introduction of casual leave, medical leave and maternity leave in the new set of service rules actually altered the service condition of the non-teaching workmen of the school causing any prejudice to them. Consequently, the workmen are not entitled to any relief in this case. So long the entitlement of the service conditions claimed by the union in the charter of demands case is not decided, the existing leave rules cannot be held to be unjustified merely because the existing leave rules were codified w.e.f. 01.04.2009.

Thus, the issue No. 1 is answered in affirmative and the issue No.2 is answered in negative.

Both the issues are disposed of and the award is passed accordingly.

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
28.07.2022