

I/336975/2022

Government of West Bengal
Labour Department
I. R. Branch

N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/. ⁹⁸⁰ / (LC-IR/22015(16)/50/2022 Date: ¹⁰⁻¹¹⁻ 2022

ORDER

WHEREAS an industrial dispute existed between M/s. Quantum Global Infratech Ltd., B. C. - 200, Sector - 1, Salt Lake City, Kolkata - 700064 and Sri Bikash Chandra Mondal, Village & Post Office - Garbari, P.S - Bhupatinagar, Dist. - Purba Medinipur, PIN - 721626 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 filled an application under section 10(1B) (d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Second Labour Court, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, Second Labour Court, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS Second Labour Court, Kolkata has submitted to the State Government its Award under section 10(1B) (d) 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 31/08/2022 as shown in the Annexure hereto vide memo no. 1478- L.T. dated - 23/09/2022.

ANNEXURE

(Attached herewith)

By order of the Governor,

^{sdt}
Joint Secretary
to the Government of West Bengal

I/336975/2022

: 2 :

No. Labr/ 980/1(5) (LC-IR)

Date: 10-11-2022

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

1. M/s. Quantum Global Infratech Ltd., B. C. - 200, Sector - 1, Salt Lake City, Kolkata - 700064.
2. Sri Bikash Chandra Mondal, Village & Post Office - Garbari, P.S - Bhupatinagar, Dist. - Purba Medinipur, PIN - 721626.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building, (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/ 980/2(2) (LC-IR)

Date: 10-11-2022

Copy forwarded for information to: -

1. The Judge, Second Labour Court, West Bengal, with respect to his Memo No. 1478 -L.T. dated 23/09/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Joint Secretary



In the matter of an application under Section 10(1B)(d) of The Industrial Disputes Act, 1947 filed by **Shri Bikash Chandra Mondal**, Village and Post Office – Garbari, P.S. – Bhupatinagar, Dist. – Purba Medinipur, PIN – 721 626 against **M/s. Quantum Global Infratech Limited, B.C.-200, Sector-1, Salt Lake City, Kolkata-700 064.**

Case No. 02/2019 u/s. 10(1B)(d)

Before the Second Labour Court, West Bengal, Kolkata

Present: Shri Argha Banerjee, Judge

Second Labour Court

Kolkata

Dated: 31.08.2022.

AWARD

The brief facts of the present proceeding filed by the applicant Shri Bikash Chandra Mondal of under section 10(1)(B) of The Industrial Disputes Act, 1947 is that the O.P. Company had appointed the applicant who was then posted in tower - I.D. No. 1123551 at Garhbari Indus Tower on 01.01.2009. That during such time the O.P had sought for some documents which mainly included the Voter I.D Card, Class-VIII Pass Certificate that was to be submitted to the Company for ascertaining the proper age of the applicant. That, the applicant had duly produced the Aadhaar Card, Voter Card and VIII Pass Certificate to disclose the necessary information being sought for by the O.P. concern and also included the age proof as desired by the company above-named. That all of a sudden this applicant who was also a permanent workman of the company aforesaid being been in service continuously and un-interruptedly found that the salary for the month of July, 2018 was not credited in his Bank Account.

That no written notice or intimation was given to the workman showing the reason as to why the salary was not credited since July, 2018. That on queries made by the Opposite Party it was revealed that the age of the workman was wrongfully and arbitrarily determined as 58 years by the management and accordingly the service of the applicant was terminated in consideration of the view that the alleged applicant had exceeded his service tenure retirement effected on 01.07.2018.

Sd/-
Judge
Second Labour Court W.B.



The workman further had submitted his respective School Certificate, Voter Card ID card, P.F. Paper, Aadhar Card, PAN Card, E.S.I. Card for Affidavit, Employ Exchange Card, reassuring information of date of birth which as shown in the above mentioned document was 11.04.1966. That it further appeared from the record that owing to a clerical/printing mistake and wrong entry of date of birth in the Aadhar Card which was printed as 01.01.1955, the O.P. No. 1 had declared the workman as a retired person and his age as per the above mentioned Aadhar Card became 63 years 06 months. However the other relevant documents such as P.F. A/c. No. WBCAL0054130000001946, UAIB – 100114420737, ESIIP No. 4114632764 the recorded date of birth was 11.04.1966.

That owing to the abrupt stoppage of payment from the month of July, 2018 a written representation was given to Zonal Manager by the applicant on 08.09.2018 and on 01.10.2018 stating all facts however no response was shown from the side of the O.P. concern. That finding no other alternative this applicant had raised an industrial dispute before the Assistant Labour Commissioner dated 02.11.2018 owing to illegal act of the management for terminating the service of the applicant without giving the same an opportunity of being heard.

That the applicant was terminated from service in the name of so called retirement without any notice and no reason was shown as to why the monthly wage of the applicant was stopped and the same was ousted from employment of the O.P. No. 1. That the O.P. had no service condition, codified policy of retirement and service rule in regard to the termination of service on superannuation. The applicant further contended the fact that in spite of sending all relevant documents the management had preferred to keep silent which had highlighted the fact that the management had impliedly acknowledged the stand and contention of the applicant workman.

That, the termination of the workman w.e.f. is illegal and unjustified and this is in violation of Section 25F of Industrial Disputes Act read with Section 2(OO) of the said Act. No enquiry was initiated; no charge sheet was issued giving opportunity to the workman to defend his case. That it is further to be taken into consideration that when the applicant was terminated in the name of retirement his age at that point of time was 52 years 03 months. It is further stated that a separate letter dated 24.09.2018 was addressed to O.C. Bhupati

Sd/-
Judge
Second Labour Court W.B.



Nagar. Identity Card of Company M/s. Rainbow Industrial Solution from whom M/s. Quantum Global Infratech (P) Ltd. took job assignment proved and acknowledged the date of birth and entire employment process continued to company under reference which was also indicated in the identity card.

That the applicant since the date of termination which effected upon him in the guise of so called retirement the applicant is unemployed and without gainfully employed anywhere and still he is without any employment and passing days with his family member with severe financial hardship.

The O.P. Company has failed to appear before this Court and necessary order was passed for showing cause to the O.P. Company as to why the matter shall not be heard ex-parte. It transpires from the record that several chances had been given to the O.P. Company for filing written statement and show cause but the same has neither filed any show cause petition nor has appeared before this Court in compliance of Court's order. Consequently, the instant case was taken up ex-parte against the same.

ISSUES

The following issues were being framed: -

- i) Whether the termination of the workman from service w.e.f. 01.07.2018 is justified?
- ii) What relief if any is the workman entitled to?

EVIDENCE ADDUCED BY THE APPLICANT

In order to prove the case the applicant had adduced himself as the only witness in this case. The documents relied upon by the applicant were marked in the following manner: -

Exhibit 1 – Photocopy of applicant's letter dated 25.08.18 to the O.P. (without enclosures).

Exhibit 2, Exhibit 2/1 & Exhibit 2/2 – Photocopy of applicant's letter dated 22.09.18 to the OC., Bhupatinagar P.S., Postal slip and tracking report.

Exhibit 3, Exhibit 3/1 & Exhibit 3/2 – Photocopy of applicant's letter dated 01.10.18 to the O.P. (without enclosures) and postal slip and tracking report.

Exhibit 4 – Copy of applicant's letter dated 02.11.18 to the Assistant Labour Commissioner, contain.

sd/-
Judge
Second Labour Court W.B.



Exhibit 5 – Copy of UAN having No. 100114420737.

Exhibit 6 – Copy of EPF along with UAN.

Exhibit 7 – Applicant's EPF slip for 2014-2015.

Exhibit 8 – Copy of EPF passbook of the applicant (printed on 02.09.2019.)

Exhibit 9 – Applicant's Transfer certificate issued on 10.09.88 of Bajkul Bali Chandra Vidyapith.

Exhibit 10 – Applicant's employment exchange card of Contai employment exchange.

Exhibit 11 – Photocopy of certificate dated 11.07.2022 issued by the Headmaster, Bajkul Balai Chandra Vidyapith.

Exhibit 12 – Photocopy of certificate dated 18.07.2022 issued by the Pradhan of Garhbari II Gram Panchayat.

Exhibit 13 – Photocopy of applicant's ESI Card.

Exhibit 14 – Photocopy of applicant's Aadhaar Card.

Exhibit 15 – Photocopy of applicant's PAN card.

Exhibit 16 – Photocopy of applicant's voter identify card.

Exhibit 17 (collectively) – Photocopies of Memos issued by the office of Assistant Labour Commissioner, Contai.

EVIDENCE OF THE APPLICANT

The applicant has examined himself as P.W. – 1 and has filed examination-in-chief on affidavit. From the evidence on the record it is clear that: -

- a) The O.P. Company had appointed the applicant who was then posted in tower - I.D. No. 1123551 at Garhbari Indus Tower on 01.01.2009. That during such time the O.P had sought for some documents which mainly included the Voter I.D Card, Class-VIII Pass Certificate that was to be submitted to the Company for ascertaining the proper age of the applicant.
- b) That, the applicant had duly produced the Aadhaar Card, Voter Card and VIII Pass Certificate to disclose the necessary information being sought for by the O.P. concern and also included the age proof as desired by the company above-named.

Sd/-
Judge
Second Labour Court W.B.



c) That all of a sudden this applicant who was also a permanent workman of the company aforesaid being been in service continuously and un-interruptedly found that the salary for the month of July, 2018 was not credited in his Bank Account. That on queries made by the Opposite Party it was revealed that the age of the workman was wrongfully and arbitrarily determined as 58 years by the management and accordingly the service of the applicant was terminated in consideration of the view that the alleged applicant had exceeded his service tenure retirement effected on 01.07.2018.

d) The workman further had submitted his respective School Certificate, Voter Card ID card, P.F. Paper, Aadhar Card, PAN Card, E.S.I. Card for Affidavit, Employ Exchange Card, reassuring information of date of birth which as shown in the above mentioned document was 11.04.1966. That it further appeared from the record that owing to a clerical/printing mistake and wrong entry of date of birth in the Aadhar Card which was printed as 01.01.1955, the O.P. No. 1 had declared the workman as a retired person and his age as per the above mentioned Aadhar Card became 63 years 06 months. However the other relevant documents such as P.F. A/c. No. WBCAL0054130000001946, UAIB – 100114420737, ESIIP No. 4114632764 the recorded date of birth was 11.04.1966.

e) That owing to the abrupt stoppage of payment from the month of July, 2018 a written representation was given to Zonal Manager by the applicant on 08.09.2018 and on 01.10.2018 stating all facts however no response was shown from the side of the O.P. concern. That finding no other alternative this applicant had raised an industrial dispute before the Assistant Labour Commissioner dated 02.11.2018 owing to illegal act of the management for terminating the service of the applicant without giving the same an opportunity of being heard.

f) That the applicant was terminated from service in the name of so called retirement without any notice and no reason was shown as to why the monthly wage of the applicant was stopped and the same was ousted from employment of the O.P. No. 1. That the O.P had no service condition, codified policy of retirement and service rule in regard to the termination of service on superannuation. The applicant further contended the fact that in spite of sending all relevant documents the management had preferred to keep silent which had highlighted the fact that the management had acknowledged the stand and contention of the applicant workman.

Sd/-
Judge
Second Labour Court W.B.



g) The termination of the workman w.e.f. is illegal and unjustified and this is in violation of Section 25F of Industrial Disputes Act read with Section 2(OO) of the said Act. No enquiry was initiated; no charge sheet was issued giving opportunity to the workman to defend his case. That it is further to be taken into consideration that when the applicant was terminated in the name of retirement his age at that point of time was 52 years 03 months. It is further stated that a separate letter dated 24.09.2018 was addressed to O.C. Bhupati Nagar. Identity Card of Company M/s. Rainbow Industrial Solution from whom M/s. Quantum Global Infratech (P) Ltd. took job assignment proved and acknowledged the date of birth and entire employment process continued to company under reference which was also indicated in the identity card.

h) That the applicant since the date of termination which effected upon him in the guise of so called retirement the applicant is unemployed and without gainfully employed anywhere and still he is without any employment and passing days with his family member with severe financial hardship.

DECISION WITH REASON

All the issues are taken up together for discussion. The applicant Shri Bikash Chandra Mondal has filed this case U/s. 10(1)(B)(d) of the Industrial Disputes Act, 1947. He has adduced evidence through affidavit and in the affidavit he has stated that he was appointed by the O.P. concern on and from 01/01/2009 who was then posted in tower - I.D. No. 1123551 at Garhbari Indus Tower. That during such time the O.P had sought for some documents which mainly included the Voter I.D Card, Class-VIII Pass Certificate that was to be submitted to the Company for ascertaining the proper age of the applicant. That, the applicant had duly produced the Aadhaar Card, Voter Card and VIII Pass Certificate to disclose the necessary information being sought for by the O.P. concern and also included the age proof as desired by the company above-named. That all of a sudden this applicant who was also a permanent workman of the company aforesaid being been in service continuously and un-interruptedly found that the salary for the month of July, 2018 was not credited in his Bank Account. That no written notice or intimation was given to the workman showing the reason as to why the salary was not credited since July, 2018. That on queries made by the Opposite Party it was revealed that the age of the workman was wrongfully and arbitrarily determined as 58 years by the management and accordingly the service of the applicant was terminated in consideration of the view that the alleged applicant had exceeded his service tenure retirement effected on 01.07.2018.

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That the School Certificate, Voter Card ID card, P.F. Paper, Aadhar Card, PAN Card, E.S.I. Card for Affidavit, Employ Exchange Card, reassuring information of date of birth which as shown in the above mentioned document was 11.04.1966. That it further appeared from the record that owing to a clerical/printing mistake and wrong entry of date of birth in the Aadhar Card which was printed as 01.01.1955, the O.P. No. 1 had declared the workman as a retired person and his age as per the above mentioned Aadhar Card became 63 years 06 months. However the other relevant documents such as P.F. A/c. No. WBCAL0054130000001946, UAIB – 100114420737, ESIP No. 4114632764 the recorded date of birth was 11.04.1966.

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That the applicant was terminated from service in the name of so called retirement without any notice and no reason was shown as to why the monthly wage of the applicant was stopped and the same was ousted from employment of the O.P. No. 1. That the O.P. had no service condition, codified policy of retirement and service rule in regard to the termination of service on superannuation. That in spite of sending all relevant documents the management had preferred to keep silent which had highlighted the fact that the management had impliedly acknowledged the stand and contention of the applicant workman.

That, the termination of the workman w.e.f. is illegal and unjustified and this is in violation of Section 25F of Industrial Disputes Act read with Section 2(OO) of the said Act. No enquiry was initiated; no charge sheet was issued giving opportunity to the workman to defend his case. That it is further to be taken into consideration that when the applicant was terminated in the name of retirement his age at that point of time was 52 years 03 months. It

Sd/-
Judge
Second Labour Court W.B.



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That the applicant since the date of termination which effected upon him in the guise of so called retirement the applicant is unemployed and without gainfully employed anywhere and still he is without any employment and passing days with his family member with severe financial hardship.

The O.P. Company has failed to appear before this Court and necessary order was passed for showing cause to the O.P. Company as to why the matter shall not be heard ex-parte. It transpires from the record that several chances had been given to the O.P. Company for filing written statement and show cause but the same has neither filed any show cause petition nor has appeared before this Court in compliance of Court's order. Consequently, the instant case was taken up ex-parte against the same.

The documentary evidence, as filed by the applicant, shows that he was an employee under the Opposite Party concern. All the documentary evidence as well as the oral evidence adduced by the applicant shows that the employment of the applicant was refused by the Opposite Party Company without showing any charge-sheet and without taking any domestic enquiry against him which is absolutely unjustified and illegal.

From the unchallenged testimony of the applicant it appears that his service was refused by the Opposite Party Company without giving him any chance to raise his defence and without giving him fair hearing. The documentary evidence relied upon by the applicant tends to show that the actual date of birth of the applicant was on 11.04.1966 and not on 01.01.1955 which has been recorded erroneously on the Aadhar Card of the applicant. The applicant was not given any opportunity to submit his defence before the management and his service was terminated without following the provision of law.

Considering the entire facts and circumstances of this case I am of the view that there is no reason to disbelieve the case of the applicant that he was an employee of the Opposite Party Company and his service was terminated by the Opposite Party Company on and from 01/07/2018 as claimed.

sd/-
Judge
Second Labour Court W.B.

Considering all the facts and circumstances of this case I am of the view that the applicant has been able to prove his case ex-parte. The termination of service of the applicant by way of refusal of employment w.e.f. 01/07/2018 is illegal and unjustified and as such the applicant is deemed to be in service and he has to be reinstated in service with immediate effect by the Opposite Party Company and the Opposite Party Company is directed to reinstate the applicant with immediate effect and to pay him full back-wages along with other consequential benefits from the date of termination of service till the date of actual reinstatement.

Hence, it is

ORDERED

That this case is disposed of on ex-parte hearing. The Opposite Party Company is directed to reinstate the applicant with immediate effect and to pay him full back-wages along with other consequential benefits from the date of termination of service till the date of actual reinstatement i.d. the applicant will be given liberty to take proper legal steps for execution of this award.

This is my award.

Let the copies of this award be sent to the concerned authority of the Government of West Bengal.

Dictated & Corrected by me,

Sd/-
Judge,
Second Labour Court
Judge
Second Labour Court W.B.



Sd/-
(Argha Banerjee)
Judge,
Second Labour Court.
Kolkata
31.08.2022.

Sd/-
Judge
Second Labour Court W.B.