

1/480543/2024

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

No. Labr/.103 / (LC-IR)/22015(16)/7/2022 Date: 02-02-2024

ORDER

WHEREAS an industrial dispute existed between M/s. Gloster Ltd., Fort Gloster, Dist. - Howrah, Pin - 711310 and their workman Shri Dilip Kumar Shaw, Fort Gloster, Line No. 03, Block - E, Room No. 106, P.O. - Fort Gloster, Dist. Howrah, Pin - 711310 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1)(b)(d) of the Industrial Dispute Act, 1947 (14 of 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(1)(b)(d) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS Second Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(1)(b)(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 29/01/2024 in Case No. 16/2020 as shown in the Annexure hereto vide Memo No. Dte/2ndIT/009/2024 dt. 29.01.2024.

ANNEXURE

(Attached herewith)

By order of the Governor,

Sd/-
Assistant Secretary
to the Government of West Bengal

I/480543/2024

:2:

No. Labr/. 103/ 1(5)/(LC-IR)

Date: 02-02-2024

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

1. M/s. Gloster Ltd., Fort Gloster, Dist. - Howrah, Pin - 711310.
2. Shri Dilip Kumar Shaw, Fort Gloster, Line No. 03, Block - E, Room No. 106, P.O. - Fort Gloster, Dist. Howrah, Pin - 711310.
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.

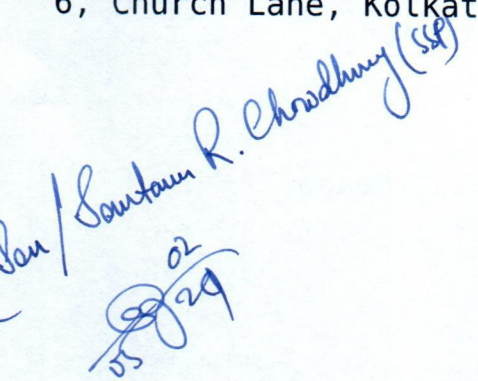

Assistant Secretary

No. Labr/. 103/ 2(2)/(LC-IR)

Date : 02-02-2024

Copy forwarded for information to: -

1. The Judge, Second Industrial Tribunal, West Bengal, with respect to his Memo No. Dte/2ndIT/009/2024 dt. 29.01.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.


Assistant Secretary

Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No. 16/2020

Under Section 10(1)(b)(d) of The Industrial Disputes Act, 1947

Shri Dilip Kumar Shaw,

Address: Fort Gloster, Line No. 03,
Block- E, Room No. – 106,
Post Office- Fort Gloster,
Dist. Howrah – 711 310

..... Applicant

-Vs-

M/S. Gloster Ltd.

Address: Fort Gloster,
District Howrah,
PIN- 711 310

- - - - - Opposite Party.

ORDER NO. 40

Date: 29.01.2024

Both parties are present.

The record is taken up today for passing order on the petition dated 10.01.2024 filed by the OP company.

Both parties were heard on this petition dated 10.01.2024.

On perusing this petition dated 10.01.2024 filed by the OP company, I find that the OP company has submitted that the petitioner has joined his duty on 09.01.2024 in the Drawing Department, and accordingly the petition filed by the petitioner praying for interim relief is infructuous but next dates should be fixed for hearing on merit to ascertain whether there was refusal of service of the petitioner by the OP company or the petitioner had refused to join his service in the OP company.

To consider this petition dated 10.01.2024 filed by the OP company for hearing on merit, trial is necessary to decide as to whether the petitioner had refused to join his service in the OP company or the OP company refused the petitioner from joining his service in the OP company **but before proceeding for trial**, the OP company has submitted in its written statement in paragraph no. 25 that the OP company has no objection if the petitioner joins his duty on any day and as the OP company has submitted in its written statement about no objection of the OP company, the petitioner filed one petition dated 30.03.2021 praying for joining in his service in the OP company in the Roving Department and that prayer of the petitioner was allowed by this Tribunal and the petitioner was directed to join his duty within 07(seven) days from 20.05.2022 and submit his joining report on 30.05.2022 and on 20.07.2023 the petitioner filed one petition stating therein that the OP company did not allow him to join in the Roving Department and then on 05.10.2023 this Tribunal appointed one advocate as the

Commissioner on consent of both sides to visit the OP company to see whether the Roving Department had been closed permanently and then the Commissioner submitted his report on 09.11.2023 and as per the report of the Commissioner, the Roving Department had not been permanently closed till date and the said department had been running occasionally and on 08.11.2023 the General Manager of the OP company submitted one letter before the Commissioner, stating that there are vacancies in the Drawing Department, Spinning Department and Warp Winding Department and the OP company was ready to engage the petitioner in the abovementioned vacancies.

On considering the pleadings of both sides and Transfer Policy of the OP company, the petitioner was directed to join in any of the abovementioned 03(three) departments except Roving Department as per his choice. Then on 10.01.2024 the petitioner submitted one petition stating therein that on 09.01.2024 he has joined in the Drawing Department of the OP company.

So it is clear that with the permission of the OP company the petitioner has joined his service in the Drawing Department of the OP company on 09.01.2024.

As per the written statement of the petitioner, he used to work in the Roving Department and the OP company refused him to join his service on 16.12.2019 without any lawful reason and for this reason he filed this case praying for reinstatement in his service and payment of full back wages with all other consequential benefits from 16.12.2019.

According to the written statement of the OP company, the OP company denied every allegations of the petitioner in this case.

In paragraph 25 of the written statement the OP company gave permission to the petitioner to join his duty on any day. So the abovementioned written statement of the OP company is divided into two parts, one is concerned with denial of all allegations of the petitioner in this case, while by other part the OP company permitted the petitioner to join his service without any objection and such type of written statement by the OP company is contradictory to each other because the OP company has denied all the allegations of the petitioner in this case and at the same time the company has given permission to the petitioner to join his service on any day on consent, and such type of contradictory written statement of the OP company is not helpful to the OP company because if the OP company had any serious objection against the allegations of the petitioner, it would not have given permission to the petitioner to join his service again on consent in its written statement and from such type of written statement of the OP company the petitioner filed the petition to join his service in the Roving Department, and had there been no such written statement permitting the petitioner to join his service on consent, the petitioner could not have joined in the OP company by filing the petition before disposal of this case.

Moreover, during commission, the General Manager of the OP company, by writing a letter, permitted the petitioner to join his service in any of the three(03) departments of the OP company as mentioned in his letter.

Considering the pleadings of both sides, I find that there was a dispute regarding the place where the petitioner will work and admittedly the petitioner used to work before 16.12.2019 in the Roving Department of the OP company and on 16.12.2019 his service was terminated by the OP company and according to the

written statement of the OP company, the said Roving Department had not been functioning at that time due to want of order for production of materials and it was temporarily closed and for this reason the OP company gave proposal to the petitioner to join his duty in the Spinning Department, Drawing Department or Warp Winding Department, which was refused by the petitioner.

Though the OP company gave proposal to the petitioner to work in any of the three(03) departments of the OP company i.e. Spinning Department, Drawing Department or Warp Winding Department, the OP company did not allow the petitioner earlier to work in the Roving Department wherein he had been working for a long time since his joining and this circumstance admitted by the OP company in his written statement and in the written statement of the petitioner sufficiently prove that the OP company refused the petitioner to join his job in the Roving Department and as the OP company permitted the petitioner to join his service on consent of the OP company, there is **no legal necessity** to proceed for trial because if any facts and circumstances alleged by the petitioner are admitted by the OP company in its written statement, it will be treated as admission of the allegations of the petitioner.

So considering the entire materials on record, I hold that on consent of the OP company and with the permission of the OP company the petitioner has joined his service in the Drawing Department on 09.01.2024 and accordingly the petition dated 10.01.2024 filed by the OP company praying for hearing on merit does not arise legally and accordingly it is rejected.

As the petitioner has joined his service on 09.01.2024 in the OP company with the permission of the OP company in the

department as per the suggestion of the OP company I hold that there is no legal necessity to proceed further with this case and the prayer of the petitioner for reinstatement in service has already been allowed with the permission of the OP company and at present he is only entitled to get all full back wages with other consequential benefits from 16.12.2019 till 08.01.2024 from the OP company.

Hence, it is

ORDERED

That case no. 16/2020 under section 10(1)(b)(d) of the Industrial Disputes Act, 1947 is disposed of on consent of the OP company.

It is hereby declared that the termination of service of the petitioner by way of refusal w.e.f. 16.12.2019 by the OP company was illegal and the petitioner is entitled to get back all the full back wages with other consequential benefits from 16.12.2019 till 08.01.2024 from the OP company and the OP company is directed to pay the said full back wages with other consequential benefits from 16.12.2019 till 08.01.2024 to the petitioner within one month from this date of order.


Let the order to 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 and Corrected by me


Judge

Judge
2nd Industrial Tribunal
West Bengal


Judge

2nd Industrial Tribunal
29.01.2024

Judge
2nd Industrial Tribunal
West Bengal