

IN the matter of an industrial dispute between (1) M/s. J.J. Spectrum Silk Limited, Vill. & Mouza Gangarampur, Diamond Harbour Road, P.O. Dakshin Alipore, P.S. – Bishnupur, Dist. South 24-Parganas, Pin. 743503, (2) Shri Chandrachur Pan, The Conciliation Officer and Assistant Labour Commissioner, Alipore, South 24 Parganas, Office of the Assistant Labour Commissioner, Alipore, 06, Church Lane, 4th Floor, Kolkata – 700001, Service to be made through the Deputy Labour Commissioner, South 24 Parganas, Office of the Labour Commissioner, New Secretariat Buildings, 11th Floor, 01, Kiran Shankar Roy Road, Kolkata – 700 001 and their workman Shri Arun Kuma Swain residing at Vill. – Araikona, P.O, - Bhandari Pakhari, Dist. Bharak, Odisha, Pin. – 756120 has been initiated due to an application filed by Shri Arun Kuma Swain U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 against M/s J.J. Spectrum Silk Limited as stated above.

Case No. 03/2016
Under Section 10(1B)(d) of the Industrial Disputes Act, 1947

Before the Eighth Industrial Tribunal: West Bengal

Present Sri Amit Chattopadhyay
Judge,
Eighth Industrial Tribunal,
West Bengal.

Sri Arun Kumar SwainApplicant / workman
Vs.
M/s. J.J. Spectrum Silk Limited O.P. Company

A W A R D

Dated 28.11.2024

An industrial dispute between (1) M/s. J.J. Spectrum Silk Limited, Vill. & Mouza Gangarampur, Diamond Harbour Road, P.O. Dakshin Alipore, P.S. – Bishnupur, Dist. South 24-Parganas, Pin. 743503, (2) Shri Chandrachur Pan, The Conciliation Officer and Assistant Labour Commissioner, Alipore, South 24 Parganas, Office of the Assistant Labour Commissioner, Alipore, 06, Church Lane, 4th Floor, Kolkata – 700001, Service to be made through the Deputy Labour Commissioner, South 24 Parganas, Office of the Labour Commissioner, New Secretariat Buildings, 11th Floor, 01, Kiran Shankar Roy Road, Kolkata – 700 001 and their workman Shri Arun Kuma Swain residing at Vill. – Araikona, P.O, - Bhandari Pakhari, Dist. Bharak, Odisha, Pin. – 756120 has been initiated due to an application filed by Shri Arun Kuma Swai U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 against M/s. an industrial dispute between (1) M/s. J.J. Spectrum Silk Limited, Vill. & Mouza Gangarampur, Diamond Harbour Road, P.O. Dakshin Alipore, P.S. – Bishnupur, Dist. South 24-Parganas, Pin. 743503, (2) Shri Chandrachur Pan, The Conciliation Officer and Assistant Labour Commissioner, Alipore, South 24 Parganas, Office of the Assistant Labour Commissioner, Alipore, 06, Church Lane, 4th Floor, Kolkata – 700001 and their workman Shri Arun Kuma Swain residing at Vill. – Araikona, P.O, - Bhandari Pakhari, Dist. Bharak, Odisha, Pin. – 756120 has been initiated due to an application filed by Shri Arun Kuma Swain U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 against M/s. J.J. Spectrum Silk Limited as stated above. On the basis of both the written statements this Tribunal has framed the following issues on 07.04.2021 for the purpose of adjudication of the case.

I S S U E (S)

1. Whether the instant case is maintainable either in law or in facts?

2. Whether any domestic enquiry was held against the applicant & reasonable opportunities was given to him?
3. Whether the domestic enquiry report and findings dated 20.02.2013 of the Enquiry Officer was perverse?
4. Whether the management of the company illegally issued termination letter dated 08.04.2013 by way of refusal of employment?
5. Whether the applicant is entitled to get the Award of reinstatement with full back wages and consequential benefits?
6. To what relief / reliefs may be entitled to by the applicant?

As per written notes of submission on behalf of the applicant workman the applicant workman was employed under the Company M/s. J.J. Spectrum Silk Ltd. a unit of M/s. J.J. Exporters Ltd. by the appointment letter dated 10.09.1998 as probationer and subsequently his service was confirmed by the letter dated 01.09.1999 and subsequently issued promotional letter dated 28.12.2006 and got designation as waiver. Appointment letter, conformation letter and promotional letter had already been exhibited.

After rendering about 15 years, his service was dismissed on the basis of the enquiry reports and findings of the enquiry officer, based on baseless charge-sheet.

It is further relevant to mention that he was suspended from service before conducting domestic enquiry and he was not paid subsistence allowance. The enquiry was conducted by the enquiry officer under the dictation of the management and said enquiry was conducted violating the principle of natural justice as well. The applicant did not get proper opportunity to defend his case in the enquiry. However on the basis of so called report and findings, the service of the applicant was dismissed and being aggrieved, the applicant workman ultimately challenged the same dismissal order dated 08.04.2013 before this Learned Tribunal. Parties filed their respective statement and only workman adduced evidence, though the Learned Tribunal framed issues as preliminary issue as to whether the domestic enquiry conducted by the company was proper and fair.

It is further relevant to mention that it is the duty and legal bindings on the part of the management to prove the enquiry by adducing evidence and producing documents but company did not adduced evidence and produce any witness to prove that whether domestic enquiry was proper and fair.

After adducing of the applicant workman, the Learned Tribunal fixed so many dates for adducing evidence by the management but the company failed to appear and produce witness. Ultimately, the matter was fixed for ex-parte hearing in favour of the applicant workman.

It is further stated that the legal position is that if the enquiry could not be proved by the management, it would be deemed that there was no enquiry. It is settled principle of law that the defective enquiry and / or no enquiry are same putting and therefore Tribunal must hold that the

benefit of enquiry must not go in favour of the management since it is not proved by the management.

It is the duty on the part of the Ld. Tribunal to direct the management to justify the action taken against the applicant workman contended in the charge sheet. Since management has failed to appear and adduce evidence on repeated occasions and the Ld. Tribunal has fixed the matter for ex-parte.

Considering the legal position and on the basis of the facts and circumstances of the matter, it is prayed that the Ld. Tribunal would graciously be pleased to pass an award in favour of the applicant workman to direct the company to reinstate the workman in his service with full back wages along with consequential benefits accrued thereon. The following judgments are relevant in this matter to consider and pass the award.

1) 2013 (139) FLR 541 SC 2) 2014 (5) Supreme Court 617 3) 2010 (125) FLR 629.

On scrutiny of the entire record like written statement filed by the parties and evidence adduced by the workman I find that although the Company / O.P. filed written statement but they did not turned up to adduce evidence to substantiate their claim. On the other hand workman adduced evidence and filed documents which were marked Exhibits 1 to 28. It is the duty on the part of the management to justify that the action taken against the applicant / workman contended in the charge-sheet by adducing evidence and by filing documents is illegal and correct. If the enquiry could not be proved by the management by adducing evidence before the Tribunal it would be deemed that there was no enquiry.

It is the settled principles of law that the defective enquiry and no enquiry are same.

Here in this particular case the Company took several times which is mentioned in order No. 89 dated 22.04.2024 to adduce their evidence and to argue the case but all the time they have failed to adduce evidence and to argue the case. Ultimately, the evidence of the Company was closed and the argument on behalf of the workman was heard.

In view of the above facts and circumstances of the case I have no hesitation to hold that the company failed to establish that the enquiry report and the findings dated 20.02.2013 of the Enquiry Officer is legal and valid and also the Company illegally issued termination letter dated 08.04.2013 by way of refusal of employment. On the other hand the workman by adducing evidence and filing documents as clearly proved that the enquiry report and the findings dated 20.02.2013 of the Enquiry Officer is perverse and the issue of termination letter dated 08.04.2013 by way of refusal of employment is illegal.

Therefore, considering all these Tribunal has got no hesitation to hold that the termination of service of the applicant / workman is totally illegal and it hereby cancelled/ set aside.

Hence, it is,

ORDERED

that the applicant workman be reinstated in his service with full back wages and other consequential benefits.

Accordingly, this case is disposed off on ex-parte and this order is to be treated as an Award of this Tribunal.

Let the necessary number of copies of this judgment and award be sent to the Secretary, to the Government of West Bengal, Labour Department, New Secretariat Buildings, 12th Floor, 1 No. Kiran Shankar Roy Road, Kolkata – 700 001.

Dictated & Corrected by me

Judge

-Sd-
(Amit Chattopadhyay)
Judge
Eighth Industrial Tribunal, Kolkata
28-11-2024

GOVERNMENT OF WEST BENGAL
 DIRECTORATE OF INDUSTRIAL TRIBUNALS
 NEW SECRETARIAT BUILDINGS
 BLOCK – 'A', 2ND FLOOR
 1, KIRAN SANKAR ROY ROAD
KOLKATA – 700001

Memo No. Dte./8th I.T./113/2024

Dated Kolkata, the 28/11/ 2024

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From: Shri Amit Chattopadhyay,
 Judge,
 8th Industrial Tribunal,
 Kolkata – 1.

To : The Secretary to the
 Govt. of West Bengal,
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 New Secretariat Buildings, 12th Floor,
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Encl: As stated above.

Yours faithfully,

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Hence, it is,

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that the applicant workman be reinstated in his service with full back wages and other consequential benefits.

Accordingly, this case is disposed off on ex-parte and this order is to be treated as an Award of this Tribunal.

Let the necessary number of copies of this judgment and award be sent to the Secretary, to the Government of West Bengal, Labour Department, New Secretariat Buildings, 12th Floor, 1 No. Kiran Shankar Roy Road, Kolkata – 700 001.

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28-11-2024

GOVERNMENT OF WEST BENGAL
 DIRECTORATE OF INDUSTRIAL TRIBUNALS
 NEW SECRETARIAT BUILDINGS
 BLOCK – 'A', 2ND FLOOR
 1, KIRAN SANKAR ROY ROAD
KOLKATA – 700001

Memo No. Dte./8th I.T./113/2024

Dated Kolkata, the 28/11/ 2024

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From: Shri Amit Chattopadhyay,
 Judge,
 8th Industrial Tribunal,
 Kolkata – 1.

To : The Secretary to the
 Govt. of West Bengal,
 Labour Department,
 New Secretariat Buildings, 12th Floor,
 1, Kiran Sankar Roy Road,
 Kolkata – 700 001.

Sir,

I am sending the Award passed in the matter of an industrial dispute between M/s. (1) M/s. J.J. Spectrum Silk Limited, Vill. & Mouza Gangarampur, Diamond Harbour Road, P.O. Dakshin Alipore, P.S. – Bishnupur, Dist. South 24-Parganas, Pin. 743503, (2) Shri Chandrachur Pan, The Conciliation Officer and Assistant Labour Commissioner, Alipore, South 24 Parganas, Office of the Assistant Labour Commissioner, Alipore, 06, Church Lane, 4th Floor, Kolkata – 700001, Service to be made through the Deputy Labour Commissioner, South 24 Parganas, Office of the Labour Commissioner, New Secretariat Buildings, 11th Floor, 01, Kiran Shankar Roy Road, Kolkata – 700 001 and their workman Shri Arun Kuma Swain residing at Vill. – Araikona, P.O. - Bhandari Pakhari, Dist. Bharak, Odisha, Pin. – 756120 as initiated due to an application filed by Shri Arun Kuma Swain U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 against M/s J.J. Spectrum Silk Limited being **Case No. 03/2016 Under Section 10(1B)(d) of the Industrial Disputes Act, 1947** for information and necessary action.

Encl: As stated above.

Yours faithfully,

Judge,
 Eighth Industrial Tribunal,
 Kolkata
 09.12.2024

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

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

No. Labr/ 11 / (LC-IR)/22015(13)/3/2024

Date : 03-01-2025

ORDER

WHEREAS an industrial dispute existed between (1) M/s. J. J. Spectrum Silk Limited, Vill. & Mouza Gangarampur, Diamond Harbour Road, P.O. Dakshin Alipore, P.S. – Bishnupur, Dist. South 24-Parganas, Pin - 743503, & (2) Shri Chandrachur Pan, The Conciliation Officer and Assistant Labour Commissioner, Alipore, South 24 Parganas, Office of the Assistant Labour Commissioner, Alipore, 06, Church Lane, 4th Floor, Kolkata – 700001, Service to be made through the Deputy Labour Commissioner, South 24 Parganas, Office of the Labour Commissioner, New Secretariat Buildings, 11th Floor, 01, Kiran Shankar Roy Road, Kolkata–700001 and their workman Shri Arun Kumar Swain, Vill. – Araikona, P.O. - Bhandari Pakhari, Dist. - Bharak, Odisha, Pin. – 756120, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947) ;

AND WHEREAS the 8th Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 28.11.2024 in Case No. 03/2016 on the said Industrial Dispute vide e-mail dated 16.12.2024 in compliance of u/s 10(2A) of the I.D. Act, 1947.

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,


Assistant Secretary

to the Government of West Bengal

No. Labr/ 11 /1(6)/(LC-IR)/ 22015(13)/3/2024

Date : 03-01-2025

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

1. M/s. J. J. Spectrum Silk Limited, Vill. & Mouza Gangarampur, Diamond Harbour Road, P.O. Dakshin Alipore, P.S. – Bishnupur, Dist. South 24-Parganas, Pin - 743503.
2. Shri Chandrachur Pan, The Conciliation Officer and Assistant Labour Commissioner, Alipore, South 24 Parganas, Office of the Assistant Labour Commissioner, Alipore, 06, Church Lane, 4th Floor, Kolkata – 700001, Service to be made through the Deputy Labour Commissioner, South 24 Parganas, Office of the Labour Commissioner, New Secretariat Buildings, 11th Floor, 01, Kiran Shankar Roy Road, Kolkata–700001.
3. Shri Arun Kumar Swain, Vill. – Araikona, P.O. - Bhandari Pakhari, Dist. - Bharak, Odisha, Pin. – 756120
4. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
6. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Assistant Secretary

No. Labr/ 11 /1(3)/(LC-IR)/ 22015(13)/3/2024

Date : 03-01-2025

Copy forwarded for information to :-

1. The Judge, 8th Industrial Tribunal, N. S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 16.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary