

I/464853/2023

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

No. Labr/. 1149 / (LC-IR)/22015(16)/7/2022 Date: 18/12/2023

ORDER

WHEREAS an industrial dispute existed between M/s. Gloster Limited, P.O. – Fort Gloster, Dist. – Howrah, Pin - 711310 and their workman Janab Akhir Mallick, Vill. – Khajuri, Post – Burikhali, P.S. Bauria, 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(1B) (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(1B) (d) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS Second Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 08/12/23 in case no. 14 of 2020 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 08/12/2023 as shown in the Annexure hereto vide memo no. Dte/2nd IT/119 - L.T. dated – 11/12/2023.

ANNEXURE

(Attached herewith)

By order of the Governor,

Sd/-
Assistant Secretary
to the Government of West Bengal

/464853/2023

:2:

No. Labr/ 1199/1(5) /(LC-IR)

Date : 18/12/2023

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

1. M/s. Gloster Limited, P.O. – Fort Gloster, Dist. – Howrah, Pin - 711310.
2. Janab Akhir Mallick, Vill. – Khajuri, Post – Burikhali, P.S. Bauria, 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/ 1199/2(2) /(LC-IR)

Date : 18/12/2023

Copy forwarded for information to:-

1. The Judge, Second Industrial Tribunal, West Bengal, with respect to his Memo No. Dte/2nd IT/119 - L.T. dated – 11/12/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.


Assistant Secretary

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No. 14 of 2020

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

Janab Akhir Mallick

Address: Village Khajuri, Post- Burikhali,

P.S. Bauria Dist.- Howrah,

PIN- 711 310

.....Applicant

-Vs-

M/S. Gloster Limited

Address: P.O. Fort Gloster

Dist.- Howrah, PIN- 711 310

-----Opposite Party.

Date: 08.12.2023

J U D G E M E N T

According to the written statement of the petitioner, he was a permanent

employee of the OP company and suddenly he met one accident on 27.06.2017 during his employment and sustained severe injuries on his right ankle and he was under treatment of the ESI authority till 15.09.2017 and after long treatment he was allowed to join duty on 16.09.2017 and during duty he felt pain on his leg and thereafter he had been facing great difficulty to do the job and he was under the treatment till 12.06.2018 and according to the discharge certificate, on 13.06.2018 he was allowed to join in his duty of light job and then he went to join in his duty but he was not allowed to join his duty by the OP company in spite of repeated requests by him and then he filed this case before this Tribunal praying for reinstatement of service and full back wages with consequential benefits .

The OP company has contested this case by filing a written statement denying therein all the allegations of the petitioner and the OP company has submitted that the case is not maintainable in its present form and law and the petitioner was appointed as badli worker on 15.09.1999 and he sustained injury during employment on 27.06.2017 and he was under ESI treatment and thereafter he was offered job by the OP company but he refused to do the said work and his service was not satisfactory and due to his negligence he sustained injuries.

In para 18 of the written statement the OP company has stated that **the petitioner is still in the employment of the OP company and he can**

report for duty on any day and he will be provided job on suitable vacancy.

The OP company has further submitted in the written statement that the petitioner has filed this case with false allegations and accordingly prayed for dismissal of this case.

Considering the materials on record the following issues have been framed for proper adjudication –

1. Whether the termination by way of refusal w.e.f. 14.06.2018 is/was justified.
2. To what other relief, if any, is the petitioner entitled?

DECISION WITH REASONS

In order to prove the case the petitioner has examined himself as the PW1 and he was cross-examined in part and his further cross-examination was deferred as per prayer of the OP company and on 07.07.2022 during cross-examination of the PW1, on being offered by the Ld. lawyer for the OP company, the PW1 agreed to join in the OP company in the post of labourer except the work of loading and the petitioner was directed to join his duty but thereafter the petitioner submitted one petition dated 16.08.2022 stating that he went to join his duty on 22.07.2022 but the OP

company asked him to join the department of spring as coolie and then this Tribunal directed the petitioner to join either in his previous admitted posting as hessian weaver in the weaving department or as the goods spreader operator in the batching department of the OP company and then on 28.11.2023 the petitioner has filed a petition stating therein that he has joined his service.

In para 18 of the written statement, the OP company has submitted that the petitioner is still in the employment of the OP company and he can report for duty on any day and he will be provided job and at present the petitioner has submitted before this Tribunal in writing that he has already joined in his service in the OP company.

So **admittedly** the petitioner has been reinstated in his service according to the submission of the OP company in para 18 of the written statement and it means that the OP company has no objection for his reinstatement in service.

It is true that in the written statement the OP company has strongly challenged the allegations of the petitioner in this case but at the same time in the written statement he has stated that the petitioner may join his duty on any day. So such type of conduct of the OP company **impliedly** proves that he has no objection against the case of the petitioner for which he asked the petitioner to join his duty in the written statement.

In the said written statement of the OP company in para 18, the OP company has stated that the petitioner is still in the employment of the company and it also proves that the OP company has admitted that termination of service of the petitioner by way of refusal was illegal because the OP company has asked the petitioner to join his service.

So there is **no legal necessity** to proceed further in this case according to the oral submissions of the Ld. lawyer for the OP company to decide whether the case of the petitioner has been proved according to the written statements of both parties of this case and as the petitioner has joined his service **again with the permission of the OP company**, the petitioner is entitled to get all his full back wages along with other consequential benefits from 14.06.2018.

So considering the abovementioned **consent** of the OP company and the entire materials on record, I hold that on consent of the OP company, the case of the petitioner has been proved legally and his prayer for reinstatement in service has already been allowed **with the permission of the OP company** and at present he is only entitled to get back all full back wages with other consequential benefits from 14.06.2018 from the OP company.

Hence it is,

ORDERED

that the Case No. 14/2020 under Section 10(1)(b)(d) of The Industrial Disputes Act, 1947 is allowed on consent against the OP company without cost.

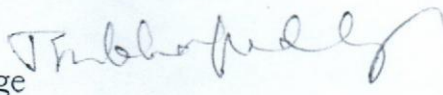
It is hereby declared that the termination of service of the petitioner by way of refusal w.e.f. 14.06.2018 by the OP company was illegal and the petitioner is entitled to get back all the full back wages with other consequential benefits from 14.06.2018 and the OP company is directed to pay the said full back wages with other consequential benefits from 14.06.2018 to the petitioner **within one month from this date of order.**

Let this order and judgement be treated as an award.

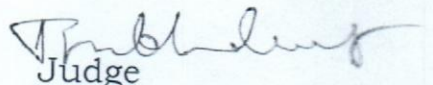
According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this Award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this Award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.


Judge

Judge
2nd Industrial Tribunal
West Bengal


Judge
2nd Industrial Tribunal
08.12.2023

Judge
2nd Industrial Tribunal
West Bengal