

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

No. Labr/ 1134/(LC-IR)/22015(15)/3/2024

Date : 29-11-2024

ORDER

WHEREAS under Labour Department's Labr./944(3)/(LC-IR)/22016/7/2024 dated 13.09.2024. reference of the Industrial Dispute between M/s. AHW Steels Ltd., 2, Iswar Chatterjee Road, Sodepur, 24-Parganas (North) having its Head Office at 12-C, Lord Sinha Road, Shyamkunj (Plot No.6), Calcutta - 700071 and their workmen represented by Agarwal Hardware Works Workers Union, C/o. CPI Office, Bibi Bagan, P.O. Panihati, 24-Pgs (N) and other Unions regarding the issues mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Third Industrial Tribunal, Kolkata.


AND WHEREAS the said Third Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 30.10.2024 in case No. VIII - 41/1999 u/s 10(2A) of the I. D. Act, 1947 on the said Industrial Dispute vide E-mail dated 11.11.2024.

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/ 1134/(6)/(LC-IR)/ 22015(15)/3/2024

Date : 29-11-2024

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

1. M/s. AHW Steels Ltd., 2, Iswar Chatterjee Road, Sodepur, 24-Parganas (North) having its
2. H. O. - 12-C, Lord Sinha Road, Shyamkunj (Plot No.6), Calcutta-700071.
3. Agarwal Hardware Works Workers Union, C/o. CPI Office, Bibi Bagan, P.O. Panihati, 24-Pgs (N)
4. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, 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/ 1134/(13)/(LC-IR)/ 22015(15)/3/2024

Date : 29-11-2024

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, Kolkata, N.S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata-700001 with reference to his Memo No. Dte./3rd IT/099/2024 dated 22.08.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary

In the Third Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata

Present: Sri Mihir Kumar Mondal
Judge, 3rd Industrial Tribunal,
Kolkata.

Case No.-VIII-41/1999; u/s. 10 of the I.D. Act, 1947

AWARD

Dated :30-10-2024

The Labour Department, Government of West Bengal has referred an Industrial Dispute between M/s. AHW Steels Ltd., 2, Iswar Chatterjee Road, Sodepur, 24-Parganas (North) having its Head Office at 12-C, Lord Sinha Road, Shyamkunj (Plot No.6), Calcutta-700071 and their workmen represented by Agarwal Hardware Works Workers Union, C/o. CPI Office, Bibi Bagan, P.O. Panihati, 24-Pgs (N) and other Unions to this Tribunal vide Order No. 230-I.R. dated 10.02.1999 on the following issue(s) for adjudication:

I S S U E S

- 1) Whether the management of M/s. AHW Steels Ltd. was justified (i) not restoring suspending amount of variable Dearness Allowance w.e.f. 01.07.1996; (ii) not paying arrear amount of VDA payable from September 1991 to 30.6.1996; (iii) not fitting workmen w.e.f. 01.11.1991 in the appropriate grade and scale of Engineering Industry-wise Wage Settlement dated 14.5.92 and 10.2.97; (v) not introducing night shift allowance; (vi) not paying wages as per industry-wise Engg. Wage settlement dt. 10.2.97.?
- 2) What relief, if any, the workmen are entitled?

In this case, on 10.09.1999 the then Learned Presiding Officer of this Tribunal passed the settlement award in respect of the industrial dispute involving the Company and its five workmen's Unions except the 'Agarwal Hardware Works Workers' Union' and the said award was sent to the Government of West Bengal. The said award dated 10.09.1999 was duly published vide order No.1906-IR dated 07.10.1999. It is found that the Union No.2 i.e. Agarwal Hardware Works Workers' Union was allowed to continue with this case and accordingly the industrial dispute in between M/s. A.H.W. Steels Ltd. and the Union No. 2 i.e. Agarwal Hardware Works Workers' Union was running for adjudication.

Subsequently, on 07.04.2022 a petition was filed on behalf of M/s. A.H.W. Steels Ltd. and the said petition was heard in presence of both the parties as contested matter and thereafter this Tribunal passed the order dated 05.01.2024 with the direction upon Sukhendu Goswami to submit clarification on some specific points as mentioned in the body of the order.

Today is fixed for submission of clarification by Sukhendu Goswami and further order to dispose of the petition dated 07.04.2022.

None is present on behalf of Agarwal Hardware Works Workers' Union (Union No.2).

No clarification has been submitted by the person namely Sukhendu Goswami in terms of order dated 05.01.2024.

Perused the materials on record.

It appears to me that a petition dated 07.04.2022 was filed on behalf of M/s. A.H.W. Steels Ltd. and the hearing of the said petition was completed on 17.07.2023. After completion of hearing this Tribunal fixed 04.08.2023 for passing order on the petition dated 07.04.2022. This Tribunal ultimately took the petition dated 07.04.2022 for passing order on 05.01.2024. In course of consideration of the said petition dated 07.04.2022, upon scrutiny of the materials on record some anomalies were observed in the matter of 'Representation' of Agarwal Hardware Works Workers' Union by one person namely 'Sukhendu Goswami' who claimed himself as the Vice President of the said 'Union'. In view of such facts and circumstances with a view to mitigate any kind of doubt, this Tribunal passed a reasoned order on 05.01.2024 and by such order directed the so called Vice President Sukhendu Goswami to submit clarification on the points mentioned in the body of the order. Thereafter, so many dates have been elapsed but the said so called Vice President Sukhendu Goswami has failed to submit clarification in terms of the order dated 05.01.2024. Due to non-compliance of the order dated 05.01.2024 by the person namely 'Sukhendu Goswami', who executed Vakalatnama on behalf of Agarwal Hardware Works Workers' Union claiming himself as the Vice President of that 'Union', it seems that the said person Sukhendu Goswami pretended himself as the Vice President of the Agarwal Hardware Works Workers' Union. Accordingly, there should not any hesitation to say that the person namely Sukhendu Goswami having no valid authority used the round seal of Agarwal Hardware Works Workers' Union in course of execution of Vakalatnama dated 09.08.2019. Apart from that there should not be any hesitation to suppose that the registration No.8682 in respect of the said Union is not at all a valid registration number. This Tribunal considers that whenever a question has arisen about the validity, authenticity and legal existence of a 'Union' as well as the *locus standi* of a person to represent any 'Union' before the Tribunal, the person who has claimed himself as the representative of the said 'Union', should clarify the matter to answer the said question.

From the materials on record it is found that the Award dated 10.09.1999 was passed in respect of all the Unions involved in this case except the Union No.2 i.e. Agarwal Hardware Works Workers' Union. It is also seen that the then Learned Presiding Officer of this Tribunal heard the petition dated 02.07.2002 along with the photocopy of the order dated 10.09.2001 passed by the Hon'ble High Court, Calcutta in c/w W.P. 13367 (W) of 2001. The then Learned Presiding Officer of this Tribunal on 06.08.2002 passed the order in the fashion – "*As such, in view of the order of the Hon'ble H.C. a date will be fixed for hearing the case on merit on all issues referred herein in respect of Union No.2 only but no final order will be passed as directed.*" By order dated 06.08.2002 the then Learned Presiding Officer of this Tribunal fixed 11.09.2002 for hearing on merit on all issues in respect of Union No.2. Accordingly, the said Union No.2 started to continue the proceeding of this case but subsequently it was found that disruption/interruption of the proceeding caused due to lack of presence of the Union No.2 in the proceeding of this case for a considerable period. Ultimately, one person namely Sukhendu Goswami claiming himself as the Vice President of the Union No.2 appeared by filing Vakalatnama but the said person Sukhendu Goswami has failed to justify his *locus standi* on behalf of the Union No.2 in this case.

In the judgment passed by the Hon’ble High Court, Calcutta of the matter in between Dipak Industries Ltd. and another and State of West Bengal and others (Appeal from original order No.271 of 1972, dated 11th October, 1974) a decision of the Division Bench of the Madras High Court in the Kandan Textiles Ltd. v. The Industrial Tribunal, Madras and others, (AIR 1951 Madras 616) has been discussed as follows – “Where writ petition for quashing the Award of Tribunal was asked for *inter alia* on the ground of lack of authority of the union to represent the workman before the Tribunal. In that case the cause of workman was taken up by the union and the company challenged the capacity of the union to represent the general body of the workers or any section of the workman before the Tribunal. It was held that in such case it was incumbent on the union by production of the relevant records to positively establish the fact that the union was entitled to represent and that it was as a matter of fact representing the aggrieved workers before the Tribunal and it was further held that mere finding of the Tribunal that the union was registered under the Trade Union Act and, therefore, would represent the workers under S. 36(1) of the Industrial Disputes Act was not correct. It was further held that inspite of the locus standi of the union being challenged neither the president, nor the secretary, was able to produce any minute book or document showing that at the meeting of the workers there were any record showing the origin or existence of the union. Reliance on the certification of registration under the Trade Union Act is not conclusive proof of its real existence. It may simply raise a presumption to this effect. In the fact of that case it was held that union failed to produce any documentary evidence inspite of its locus standi being directly challenged. It was held that the union had no *locus standi* and the whole reference was bad in law and unsustainable. It was further observed that the unions of these kinds may be created by mere letter-heads and self designation and the said award was quashed.”

In the said judgment the Hon’ble High Court, Calcutta has been pleased to observe that – “*But when the dispute is espoused or sponsored by a union, it seems to have been uniformly held by the judicial decisions which has been referred to by the parties and mentioned herein before. That when the authority of the union is challenged by the employer it must be proved by production of material evidence before the Tribunal, to which such a dispute has been referred, that the union has been duly authorized either by a resolution of its members or otherwise that it has the authority to represent the workmen whose cause it is espousing. Mere fact that the said union is registered under the Indian Trade Union Act is not conclusive proof of its real existence or the authority to represent the workmen in the reference before the Tribunal.*

.....
.....

Therefore, in such circumstances it became incumbent on the respondent – union to produce material and documentary evidence to show it has the requisite authority to represent the dismissed 174 workmen of the appellant.”

In view of the facts and circumstances as it has been arisen in this case, it is found that the principle as discussed in the above judgment of the Hon’ble High Court, Calcutta, is very much applicable to the fact of this case and thus there should not be any hesitation to hold that Mr. Sukhendu Goswami, so called or self designated Vice President of Union No.2 has no locus standi to proceed with this case. Apart from that, the fact remains that the said self designated Vice President of the Union has failed to submit clarification containing answers to five points as mentioned in the body of the order dated 05.01.2024.

Considering the facts and circumstances and in view of the above discussion, I find that there is no valid ground to allow the petition dated 07.04.2022 and the same is not allowed.

In view of the entire facts and circumstances it is clear that Union No.2 i.e. Agarwal Hardware Works Workers' Union has no existence. In such situation, this Tribunal has no other alternative but to pass No Dispute Award in this case.

Thus, it is found that an industrial dispute is no longer in existence in between M/s. A.H.W. Steels Ltd. and the Union No.2 i.e. Agarwal Hardware Works Workers' Union and thus there is a situation for passing No Dispute Award under Rule 22 of the West Bengal Industrial Dispute Rules, 1958.

Accordingly, and in terms of Rule 22 of the West Bengal Industrial Disputes Rules, 1958 as amended till date, this Tribunal holds that the instant **Industrial Dispute** being Case No. **VIII-41/1999** instituted on **31.03.1999** is **no longer in existence, between the parties.**

The aforesaid constitutes the **No Dispute Award** passed by this Tribunal in the instant Case No. **VIII-41/1999**, which stands disposed of forthwith.

In view of letter No.Labr./944(3)/(LC-IR)/22016/7/2024 dated 13.09.2024 of the Assistant Secretary, Labour Department, I.R. Branch, Government of West Bengal, New Secretariat Buildings, 12th Floor, the PDF copy of the Award be sent to the Labour Department, Government of West Bengal through e-mail ID(wblabourcourt@gmail.com) for information.

Dictated & corrected by me

Judge

Judge
3rd Industrial Tribunal
Kolkata
30.10.2024