

I/468181/2023

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

No. Labr/1140/(LC-IR)/22015(16)/536/2018 Date: 28/12/2023

ORDER

WHEREAS an industrial dispute existed between M/s. Bata India Ltd., 6A, S.N. Banerjee Road, Kolkata - 700013 and their 04 (four) workmen represented by the Bata Temporary Shop Workmen Union, 102, S.N. Banerjee Road, Kolkata - 700014 regarding the issue, being a matter specified in the Third schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workmen have filed an application under section 10 of the Industrial Dispute Act, 1947 (14 of 1947) to the First Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the First Industrial Tribunal heard the parties under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

AND WHEREAS the First Industrial Tribunal has submitted to the State Government its Award dated 12/12/2023 in case no. VIII - 20/2013 under section 10 of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. Dte/1st IT/152 - L. T. dated 19/12/2023.

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,

sdt

Assistant Secretary
to the Government of West Bengal

1/468181/2023


:2:

No. Labr/. 1140 .1/(5)/(LC-IR)

Date: 28/12/2023

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

1. M/s. Bata India Ltd., 6A, S.N. Banerjee Road, Kolkata - 700013.
2. Bata Temporary Shop Workmen Union, 102, S.N. Banerjee Road, Kolkata - 700014.
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/. 2/(2)/(LC-IR)

Date/2023

Copy forwarded for information to:-

1. The Judge, First Industrial Tribunal West Bengal, with respect to his Memo No. Dte/1st IT/152 dated 19/12/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.


Assistant Secretary

In the matter of an Industrial Disputes exists between M/s Bata India Limited , 6A, S. N. Banerjee Road, Kolkata – 700 013 and their 04 (four) workmen represented by the Bata Temporary Shop Workmen Union, 102, S. N. Banerjee Road, Kolkata – 700 014.

G.O. No. 383 - I.R./IR/11L - 47/07(B), dated 09.04.2013

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 12.12.2023

Case No.: VIII – 20/2013

The instant case has initiated on receipt of a copy of G. O. No. 383 – I.R./IR/11L – 47/07(B), dated 09-04-2013 from Labour Department, Government of West Bengal referring an Industrial Dispute between M/s Bata India Limited, 6A, S. N. Banerjee Road, Kolkata – 700 013 and their 04 (four) Workmen represented by the Bata Temporary Shop Workmen Union, 102, S. N. Banerjee Road, Kolkata – 700 014 for adjudication the issues being referred by the Government of West Bengal before this Tribunal.

THE CASE OF THE UNION

The case of the Union in a nutshell is that Bata India Limited, the Company under reference employed numerous persons in all over India as well as at Barasat in West Bengal for selling their various products, for maintaining shops.

It is further stated that some supervisors on behalf of the Company under reference have been used to recruit employees for this purpose being enacted with said power after taking proper interview and those workmen were directly supervised by the management and shop manager and they used to get salary/wages directly from the Company. It is further stated rather alleged that the Company under reference have their own benefit and just to deprive the workmen from the legitimate dues designated them as Temporary Job Hands though they have to perform all jobs like permanent jobs and the Company also covered some of these employees under the Provident Fund Scheme and ESI Act as per their whims and choice. The name of the 04(four) workmen for whom the instant case has been initiated on behalf of their Union under reference are Tuhin Ghosh, Goutam Biswas, Partha Sarathi Ghosh and Subhashis Bose have been transferred from one shop to another and there is/was no break of service / and every workman completed 240 (two hundred forty) working days in every Calendar year and finally these workmen were lastly removed from the Barasat – I Working Shop, since they became the eye sore of the management as and when they pray for legitimate demands on behalf of the Union and as a result of such grievances, management without issuing any notice or paying any salary in lieu



of notice and without any reason had refused them to enter the shop premises situated at Barasat (Barasat-I) on 13.11.2009.

On asking, the shop manager verbally informed these workmen and the union in respect of their termination from the service w.e.f. 13.11.2009.

It is further alleged that the management did not complete the bounden of the provision of Section 25F of the Industrial Dispute Act 1947 before implicating the said termination for which union immediately wrote a letter to the shop manager and asked him to reinstate these workmen with full back wages but no positive result has got. So, finding no other alternative the petitioner Union raised an Industrial Dispute before the Assistant Labour Commissioner, 8 K. B. Basu Road, Barasat, North 24 Parganas on 17.11.2009, where several joint conferences were held to solve the dispute but no settlement could be arrived due to adamant and non cooperative attitude of the management. Lastly the Assistant Labour Commissioner send a failure report to the Government. Hence the instant case.

THE CASE OF THE COMPANY

On the other hand the case of the Company as filed along with notes of arguments is in brief that 04 (four) Workmen as stated above were Temporary Hands attached to the Bata Shoes Stores on the basis of exigencies of work and/or recruitment on Daily Wage basis. Management of the Company under reference as matter of policy has discontinued the system of engaging Temporary Hands and since engagement of all these Temporary Hands were purely temporary basis on recruitment of job, their recruitment automatically be an end as and when the management decided to discontinue the system of engagement of Temporary Hands which was done in a phased manner. The Company under reference denied that before discontinuation information of the Temporary Hands worked for 240 days in preceding 12 (twelve) months and accordingly they were not paid any compensation as required under the Industrial Dispute Act.

In view of the above facts and circumstances the Government has been pleased to frame some issues for adjudication of this Tribunal as follows:

ISSUES

- 1) Whether the termination of service by way of refusal of employment of the 04 (four) workmen namely Shri Tuhin Ghosh, Shri Gotam Biswas, Shri Partha Sarathi Ghosh and Shri Subhashis Bose w.e.f. 13.11.2009 by the management is justified?
- 2) What relief, if any, are the workmen entitled to?



In support of the case of the Union under reference for 4 (four) Workmen, the Union has cited following witnesses namely 1) Tuhin Ghosh as PW-1 and 2) Pran Kumar Chatterjee as PW-2. In addition to the oral documents the Union has filed the following documents to substantiate their demands.

- 1) Photocopy of letter dated 17.11.2009 addressed to the Assistant Labour Commissioner, North 24 Parganas by the Union under reference which has been signed by the 4 (four) workmen Tuhin Ghosh, Goutam Biswas, Partha Sarathi Ghosh and Subhashis Bose in their personal capacity on the letter head pad of the union under reference. Marked as Exhibit – 1.
- 2) Photocopy of letter dated 09.04.2012 addressed to the Deputy Secretary to the Government of West Bengal, Writers' Buildings, to the Labour Commissioner, Government of West Bengal, N. S. Buildings by Pran Kumar Chatterjee designated himself as Working President of the union under reference marked as Exhibit – 1/1.
- 3) The photocopy of letter dated 19.03.2012 addressed to the Deputy Labour Commissioner, Government of West Bengal, office at Barrackpore, North 24 Parganas, Kolkata – 700 123 by the then Working President Mr. Pran Kumar Chatterjee. Marked as Exhibit –1/2.
- 4) The photocopy of letter dated 09.09.2009 addressed to all the Shop Managers / Area Sales Manager(whole sale depot) in the State of West Bengal regarding revision of daily rates of minimum wages in respect of Salesman / Depot Salesman / Sales Assistant and in respect of Shop Assistants / Packers by one Asutosh Ghosh designated himself as Senior Manager – Personnel & I.R. Marked as Exhibit – 2.
- 5) The Photocopy of letter addressed to the Inspector, Shop & Establishment Act, Government of West Bengal, office at Barasat, North 24 Parganas by the Union under reference in respect of Bata Temporary Shop Employees of Bata India Limited at Barasat (Shop Branch) which have been received by the said office on 23.03.2010. Marked as Exhibit – 3.
- 6) The photocopy of letter dated 24.03.2011 addressed to the Shop Inspector, Shop & Establishment Act, Government of West Bengal, Barasat, North 24 Parganas (2 sheets) regarding the violation of instruction of the Deputy Secretary, I.R. Branch, Labour Department, Government of West Bengal, Writers Buildings by the Bata Managment i.e. M/s Bata India Limited in respect of notification of the management to the effect that contractor labours and employees are not the employee of M/s Bata India Limited. Marked as Exhibit – 3/1 and 3/2.



- 7) The photocopy of letter dated 23.03.2010 addressed to the Shop Inspector, Shop & Establishment Act, Government of West Bengal, Barasat, North 24 Parganas regarding Bata Temporary Shop Employees of Bata India Limited of Barasat (Shop Branch) by the then Working President Pran Kumar Chatterjee. Marked as Exhibit – 4.
- 8) The photocopy of letter dated 10.01.2011 addressed to the Assistant Labour Commissioner, Government of West Bengal, Barasat regarding illegal termination of 4 (four) temporary shop employees at Barasat Bata Shop (Rail Gate -12) by the Bata Management i.e. M/s Bata India Limited from 13.11.2009 without any notice, interim relief and other benefits under the system of law of Shop and Establishment Act by the then General Secretary Pradip Chakraborty, which is marked as Exhibit – 5.

It is revealed from the Exhibit – 5 that the letter was received by the Assistant Labour Commissioner, Barasat on 10.01.2011 but signatories have put their signatures in respect of dates as 11.01.2011.

- 9) The photocopy of letter dated 01.04.2010 to the Deputy Labour Commissioner, Government of West Bengal, North 24 Parganas (received on 09.04.2010 by Mr. Pran Kumar Chatterjee, Working President of the union under reference regarding termination of 04 (four) temporary employees w.e.f. 13.11.2009. Marked as Exhibit – 6.
- 10) The photocopy of letter dated 11.03.2010 addressed to the Assistant Labour Commissioner, Labour Department, Government of West Bengal, Barasat, regarding illegal termination of work by one Subhashis Sensharma, Assistant Manager – Personnel and Retail East. Marked as Exhibit – 7.
- 11) **The photocopy of letter dated 23.03.2010 addressed to the Managing Director, Bata India Limited, Bata House, situated at Haryana, Gurgaon by the then Working President Pran Kumar Chatterjee, the union under reference. Marked as Exhibit – 8.**
- 12) The photocopy of letter dated 11.03.2010 to the Assistant Labour Commissioner, Government of West Bengal, Barasat regarding illegal termination of 04(four) temporary shop employees of Barasat Bata Shop by the then Working President, the union under reference. Marked as Exhibit-9.
- 13) The photocopy of letter dated 21.12.2009 of Assistant Labour Commissioner, Government of West Bengal, Barasat regarding arrangement to settle the dispute before closing the shop at Barasat Bata Shop by the General Secretary Pradip Chakraborty, the union under reference. Marked as Exhibit – 10.



- 14) The photocopy of letter dated 01.12.2000 addressed to the Superintendent of Police, Barasat regarding picketing programme on and from 14.11.2009 before 02 (two) shops of Barasat by Pradip Chakraborty, General Secretary, the union under reference. Marked as Exhibit – 11.
- 15) The photocopy of letter dated 19.11.2009 addressed to the Labour Commissioner, Government of West Bengal, N. S. Buildings regarding termination of 04(four) temporary staff of Barasat Bata Shop by 04(four) employees on the letter head pad of union under reference. Marked as Exhibit -12.
- 16) The photocopy of letter dated 13.11.2009 to the Assistant Labour Commissioner, Barasat regarding picketing before Barasat Bata Shop (2 sheets) by Pradip Chakraborty, General Secretary of the union under reference. Marked as Exhibit – 13 (2 sheets).
- 17) The photocopy of Attendance Sheet of Barasat Shop of Bata India Limited from 02.11.2009 to 15.11.2009 of 04(four) temporary hands. Marked as Exhibit – 14.
- 18) The photocopy of letter dated 13.11.2009 to the S.D.O., Barasat regarding picketing before Barasat Bata Shop by Pradip Chakraborty, General Secretary, union under reference. Marked as Exhibit – 15 (2 sheets).
- 19) **The photocopy of letter dated 05.04.2013 on the letter head of Bata Retail East Chain, 6a, S. N. Banerjee Road, Kolkata - 700 013 addressed to T Rama Rao, Jatna, Khurda, Orissa regarding salary of March 2013 as per order of Hon'ble High Court, Orissa with the photocopy of the cheque being disbursed on behalf of Bata India Limited. Marked as Exhibit – 16.**
- 20) **The photocopy of memorandum regarding temporary hands of Trichur Shop due to surplus being discontinued. Marked as Exhibit – 17.**
- 21) The photocopy of letter dated 21.06.2013 to Labour Commissioner, Government of West Bengal, N. S. Buildings regarding the benefits of the Union members under reference of temporary Bata shop employees by the General Secretary of Union under reference. Marked as Exhibit – 18.
- 22) The photocopy of letter dated 10.11.2012 to Assistant Labour Commissioner, Kolkata (South), N. S. Buildings regarding benefits of the Union under reference by the General Secretary Pradip Chakraborty, Union under reference. Marked as Exhibit – 19.



- 23) The photocopy of letter dated 16.11.2009 to the Manager – Personnel and Administration, Bata India Limited , Kolkata – 700 013 regarding arrangement of settlement of their job in previous position by the 04 (four) workmen along with forwarding of General Secretary, the union under reference. Marked as Exhibit – 20.
- 24) The photocopies of pay sheets of the temporary hands of Bata India Limited for the shop of Barasat from 02.02.2009 to 15.02.2009 of 04 (four) workmen (18 sheets). Marked as Exhibit – 21.
- 25) The photocopies of pay sheets of the temporary hands of Bata India Limited for the shop of Barasat from 08.09.2008 to 02.09.2009 of 04 (four) workmen (15 sheets). Marked as Exhibit – 22.
- 26) The photocopy of affiliation fees of membership of the union under reference under the Indian National Trinamool Trade Union Congress, dated 02.05.2017. Marked as Exhibit – 23.
- 27) The photocopy of registration of union under reference under Trade Union Act 1926 issued on 05.02.2010 by the Registrar of Trade union, Government of West Bengal. Marked as Exhibit – 24.
- 28) The name of Office Bearer with address of Pradip Chakraborty, General Secretary of the Union under reference (photocopy). The photocopy of members list of the union under reference with their address, working shop, year of service, P.F., if any, along with signatures of the members thereon (5 sheets). Marked as Exhibit – 25.
- 30) The photocopy of annual return for the year 2017 (4 sheets) of the union under reference. Marked as Exhibit – 26.

On the other hand the Company under reference to counter and defend the case has brought one witness named as follows:

- 1) Subhasish Sen Sharma, Manager H.R. of Bata India Limited as OPW-1.

In addition to the above the Company has filed some documents which have been exhibited and marked as follows:

- 1) The photocopy of pay wages of temporary hands marked as A series (A - A6).
- 2) The photocopy of letter of authority issued by Statute Attorney of Bata India Limited dated 10.06.2022. Marked as Exhibit – B.



Now let us scan the evidences on record of both parties.

PW-1 Tuhin Ghosh in his examination-in-chief has stated the case of the Union. He has filed some payslips to prove his case which has been marked as Exhibit – A series (7 sheets). But in his cross examination he has admitted that he did not file any paper to show that any of the workmen had worked in the Company for a continuous period of 240 days in any of the year.

It is also evident from his evidence that the instant case has been initiated at the instance of Bata Temporary Shops Workmen Union not by the Permanent Employees Union of Bata.

It is also evident from his cross examination that Bata authority has stopped engaging in temporary hands in their any shops.

PW-1 categorically has admitted that he did not file any document to show that he continuously worked under Bata or he was transferred from shop to shop by the Company or any paper to show that he himself has applied ever to the Company seeking leave and he also failed to show that any officer to any shop of Bata was authorised to engage any employee in various shops.

Lastly he admits that 4 (four) workmen used to work in the Company as temporary hands.

It is also proved that at the relevant point of time that no interview was held.

PW-1 also failed to show that their services was/were ever terminated by Bata Company.

PW-2 Pran Kumar Chatterjee in his examination-in-chief has corroborated the evidences of PW-1 who also has failed to prove the case of the Union.

PW-2 claims that he worked in the Bata shop as temporary hand from the year 1970 to 1976 and he became a permanent employee of Bata India Limited on 07.07.1976.

PW-2 has failed to show that the temporary hands of Bata Shop are the members of their Union.

PW-2 has also admits that no permanent employee or ex-permanent employee of Bata shop can be a member of the Union under reference. But they can be office Bearer. But he has failed to produce any paper to substantiate his contention as he claimed himself permanent employee of Bata India and he is the Working President of the union under reference.



PW-2 also failed to show that system of running the Bata Shop with the help of temporary hands is still in existence and he also admits that since 2007 he did not visit any Bata Shop and therefore, he could not say the present procedure of running a Bata shop.

PW-2 has also failed to prove that one of the workmen has worked 240 days in any year.

PW-2 admits that no pay sheet is issued for temporary hands without mentioning quantum of wages against the working days.

Lastly PW-2 admits that he could not submit any document to show that 4 (four) workmen have received wages for 240 days as temporary hands for the year on and from 2008 – 2009.

On the other hand the Company has produced on Subhasish Sen Sharma, the Manager HR of Bata India Limited who has denied the case of Union and stated the case of the Company.

Mr. Sharma firmly says that 4 (four) workmen connected with the present order of reference were temporary hands and have never worked 240 days in any year and their requirement was purely based on the temporary requirement of work and businessman and after the said period is over their attachment with the Company automatically used to come to an end. The Company never terminated their services.

From the cross examination of Mr. Sharma it is revealed no appointment letter has issued for temporary hands attached to the Bata shop as generally they are appointed on verbal terms and conditions by the Store Manager or District Manager, who used to recruit them as per their businessman requirement without taking any direction or permission from the higher authority.

In a specific question Mr. Sharma has stated the temporary hands used to recruit for maximum 2-3 months only from time to time.

Mr. Sharma could not say whether the temporary hands would be given any pay slip for their payment.

According to CW-1 the temporary hands are time based worker though he could not file any such documents to justify the statement.

From the arguments advanced by the parties both oral and in Black and White, it is fact the status of the 4 (four) workmen, who are connected with the present reference are temporary hands and they did not work 240 days in any year.



In support of the fact the Company has filed so many judgements in respect of fate of this temporary hands as held by the Supreme Court, which are as follows:

- 1) State of Uttar Pradesh & Others vs Rekha Rani (2011) 11 Supreme court Case 441 (para 13 of 444).
- 2) Sitaram vs Motilal Nehru Farmers Institute (2008) 5 SCC 79-80.
- 3) Jaipur Development Authority vs Ram Sahai & Anothers 2006 (11) Supreme Court Case 684 (Para-8 of Page-688).
- 4) Badal Prasad vs State (NCT of Delhi) and Another 2012 SCC Online Del 4868 Page 11.
- 5) Case No. VIII – 48/2008 before the 2nd Industrial Tribunal, Kolkata, G.O. No. – 1140 IR dated 04.11.2010 in between Bata India Limited vs. Kaushik Dey & 36 Others (agreement for outsourcing Sales and Marketing Services) in respect of Bata India Limited, dated 01.09.2008.

On the other hand the contention of Written Notes of Arguments of workman as filed by the Union under reference is that the Working President of the Union WW-2 had produced some pay sheets which has been marked as Exhibit-22 (with objection) whereby it is shown that Tuhin Ghosh, Subhashis Bose, Partha Sarathi Ghosh and Goutam Biswas had worked more than 240 days of work on and from 29.12.2008 to 02.11.2009, but the Union could not satisfy this Tribunal regarding the objection as raised by the Company. So, these cannot be considered as proved document.

At the end, after consideration of evidences of both sides and the documents of both sides as well as observation of Hon'ble Supreme Court in various cases it is no doubt that these employees have been exploited under unfair labour practices, which preventing them from presenting themselves at their place of working for some days so that they cannot get the facility of 240 days of working in order to defeat the mandatory provision of 25F of Industrial Disputes Act 1947

So, considering this factum I am of opinion these workmen should be given a compensation of Rs. 1,00,000/- (Rupees one lakh) only each to be paid by the Company.

In sum, the case succeeds as per observations made above.



Hence it is

ORDERED

that the instant case being No. VIII – 20/2013 be and the same is allowed on contest but without cost.

Each employee is entitled to get compensation of Rs. 1,00,000/- (Rupees one lakh) only to be paid by the Company for their serious financial crisis being suffered by them during the course of time.

This is my AWARD.

The Company is directed to comply the above award in its right spirit within 3 months from the date of receipt of this Award, in default the Union under reference on behalf of the Workmen shall have the liberty to put the Award in execution as per provision of law being enforced in this respect.

The AWARD be sent to the Government.

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)
Judge

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

