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

### **ORDER**

WHEREAS under the Government of West Bengal, No. Labr/1982-IR/I.R./11L-220/99 0rder Labour Department the Industrial Dispute between 19.10.2001 Braithwaite Burn and Jessop Construction Company Limited, 27 R.N. Mukherjeee Road, Kolkata - 700001 and their workman Sri Tarun Ghoshal, Vill- Gaipur Singhee Para, P.O. — Goborganga, regarding the issue Dist. - North 24 Pgs, Pin - 743252 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 Judge, First Industrial Tribunal, West Bengal.

AND WHEREAS the First Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 19/12/2023 in case No. VIII - 241/2001 on the said Industrial Dispute vide memo no. Dte/1<sup>st</sup> IT/156 dated 22/12/2023.

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,

Assistant Secretary to the Government of West Bengal

(2)

No. Labr/!!!! 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. Braithwaite Burn and Jessop Construction Company Limited, 27 R.N. Mukherjeee Road, Kolkata - 700001.
- 2. Sri Tarun Ghoshal, Vill- Gaipur Singhee Para, P.O. -Goborganga, Dist. - North 24 Pgs, Pin - 743252.
- 3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
- 4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11<sup>th</sup> Floor, 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 reference to his Memo No. Dte/1st IT/156 dated 22/12/2023.

2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Assistant Secretary

Diparton Sandup (xxp)

E-Receipt No.-4176219
Deie--28-12:33

Government of West Bengal Directorate of Industrial Tribunal New Secretariat Buildings, 2<sup>nd</sup> Floor 1, Kiron Sankar Roy Road, Kolkata – 700 001. AS (WKB)

Day 26/12/23

No. Dte/1917/156

Dated : 22/12/2023

From:

Sri Uttam Kumar Nandy, Judge,

First Industrial Tribunal.

Directorate of Industrial Tribunal

New Secretariat Buildings, Ground Floor

1, Kiron Sankar Roy Road,

Kolkata - 700 001.

To

220 1506) 170/2013

The Principal Secretary,

Labour Department,

Government of West Bengal

New Secretariat Buildings, 12th Floor

1, Kiron Sankar Roy Road,

Kolkata - 700 001.

Sub.

Award in case No. VIII – 241/2001.

Sir,

I am sending herewith 06(six) copies of the AWARD passed by me in Case No. VIII – 241/2001 u/s 10 in the matter of an Industrial Dispute exists between M/s Braithwaite Burn And Jessop Construction Company Limited (A Government of India undertaking, 27 R. N. Mukherjee Road, Kolkata – 700 001 and their Workman Sri Tarun Ghosal, ViII – Gaipur Singhee Para, P.O. – Goborganga, Dist. – North 24 Parganas, Pin – 743 252.

Yours faithfully

(Uttam Kurnar Nandy) Judge, First Industrial Tribunal Kolkata

JUDGE

WEST BENGAL

Enclosure:

06(six) copies of Award

in Case No. VIII - 241/2001

A.D. · ·

269- ADS(MKB) 07-11-2023

7572-1105/LAB



In the matter of an Industrial Disputes exists between M/s Braithwaite Burn And Jessop Construction Company Limited (A Government of India undertaking, 27 R. N. Mukherjee Road, Kolkata – 700 001 and their Workman Sri Tarun Ghosal, Vill – Gaipur Singhee Para, P.O. – Goborganga, Dist. – North 24 Parganas, Pin – 743 252.

G.O. No. 1982-I.R./IR/11L – 220/99 dated 19.10.2001
BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

### **PRESENT**

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

Date of Order: 19.12.2023

Case No.: VIII - 241/2001

The instant case has been initiated on receipt of Government Order No. 1982-I.R./IR/11L – 220/99 dated 19.10.2001 from the Labour Department, Government of West Bengal, referring an industrial dispute exists between M/s Braithwaite Burn And Jessop Construction Company Limited (A Government of India undertaking, 27 R. N. Mukherjee Road, Kolkata – 700 001 and their Workman Sri Tarun Ghosal, Vill – Gaipur Singhee Para, P.O. – Goborganga, Dist. – North 24 Parganas, Pin – 743 252 for adjudication the present dispute u/s 10 of the Industrial Disputes Act upon the following issues:

### **ISSUES**

- 1) Whether the management was justified in terminating the service of Shri Tarun Ghosal with effect from 06.05.2000?
- 2) What relief, if any, is the Workman entitled to?

## WORKMAN's CASE

The case of the workman in short is that he joined the Company under reference in January 1986 as Driver at their office at 27 R. N. Mukherjee Road, Kolkata- 700 001.

Thereafter he was transferred from office to Second Hooghly Bridge site. The Workman takes a plea to the effect that in 1990 a tripartite agreement was held between the Company and their workmen represented by the Union before the Joint Labour Commissioner and Conciliation Officer, West Bengal, wherein the following 2 (two) conditions were accepted and agreed along with other:



A list of workmen presently engaged in BBJ at Second Hooghly Bridge site, who are on Muster Roll as on 31-12-1989 will be prepared by the management in consultation with the Union. Such list will be prepared within next three months effective from 01-09-1990 as per seniority, skill, experience, education, age and medical fitness.

7(c) After completion of the 2nd Hooghly Bridge, the management will make every effort to maintain continuity of services of such listed workmen.

This will be done by transferring such workman to Brahmapurta Bridge construction site or any other site that would be available on ......"

Now it is the allegation of the workman that the company after violating that tripartite agreement of 1990 the company retrenched the present workman along with others on 29.09.1993.

It is further alleged by the workman that he was appointed on 01.12.1993 as Vehicle Driver to drive Ambassador Car No. WBA 5180 from Kolkata to Brahmaputra Bridge site, Jogighopa Assam by the Deputy Manager (Personnel) to report to the Resident Manager B. B. P. Site who issued appointment letter being No. RM/3028/432 dated 07.12.1993 to the workman as Vehicle Driver on and from 07.12.1993.

It is further alleged that the site manager retrenched the workman on and from 26.05.1995. At that time the workman received wages through voucher. Thereafter, the workman was further officially appointed as "Gantry Operator" from 08.07.1996 by letter dated 27.08.1996 issued by site-in-charge of the company for the construction work site at Second Hooghly Bridge, Princep Ghat, Kolkata and even then the workman was instructed verbally to drive the Company's vehicle used by Shri Chandan Ganguly, Managing Director of B.B.J. Construction Limited who allegedly in February 2000 treated the workman badly by manhandling and also by using filthy language in which the workman have brought the matter to the union vide letter dated 08.03.2002 and surprisingly the workman found that the workman himself along with other workmen were declared surplus by a notice dated 06.05.2000 advising them to collect payment in full and final settlement pertaining to the retrenchment from Hooghly Bridge site office though subsequently all retrenchment workmen reinstated on and from 08.05.2000 but the present workman was not allowed to resume his duties rather one new Driver was appointed in place of the present workman.

The workman requested all the concern to allow him to resume his duties by letter dated 29.08.2000, 18.11.2000, 23.02.2001 and 16.03.2001 but in vain rather the company by management declared the names of 7 (seven) workmen as permanent except the present workman and that apart the management appointed 2 (two) new Drivers instead of allowing the present workman to work.

Thereafter the present workman raised the matter before Labour Commissioner, Government of West Bengal on 20.03.2001 but no settlement could be arrived at due to adamant attitude of the management. Ultimately the present reference has been made. The petitioner workman prays relief as per prayer.



# COMPANY'S CASE

On the other hand the case of the company is that company has denied all the material allegations being put personally before any authority or commonly against the company by the workman and contended inter-alia to the effect that due to peculiar feature of the company's activities company was unable to appoint and maintain employees on its permanent rolls and therefore the workman's services ceased to be required after completion of the proposed project or relevant project work.

The company claims the modus operand of such employment/termination situation comes squarely within Section 2(oo)(bb) of the Industrial Disputes Act 1947.

The Company admits the spell of the service of the workman on and from 27.08.1996 to 06.05.2000 along with others.

The company also admits that the workman was appointed as a Gantry Operator for construction of the Second Hooghly Bridge but claims that the appointment was temporary in nature and the service was terminable automatically since the specific job is over.

The Company further claims that the workman in a series of appointments for various jobs the workman proved himself to be dishonest and had a very bad past record and it is further claimed by the Company that the driving duties of the workman was incidental to his main job.

The company denies that from office to Second Hooghly Bridge site was a place of transfer of the workman, rather it was a new appointment.

Company further denies that the tripartite settlement of 1990 is irrelevant as guideline for determination of the present case as it was in force till 31.12.1999 whereas the service of the workman engaged at Second Hooghly Bridge project was terminated on 06.05.2000 when such settlement was not in vogue.

The company further denies that the workman was terminated on 29.09.1993 as the issue referred clearly mentions cut off date as 06.05.2000.

Company admits that by letter dated 29.08.1996 issued by site-in-charge of the Company the workman was further officially appointed as Gantry Operator from 08.07.1996 for their construction work site at Second Hooghly Bridge, Princep Ghat, Kolkata.

The Company admits the issuance of notice dated 06.05.2000 as there was no further work for the workmen and out of which 10 of them received their payments in full and final settlement except the present workman.



The Company denies the reinstatement in project work on and from 08.05,2000.

The Company further denies the workman was in the category of and designated as Gantry Operator and was not connected with the post of Driver.

The Company prays that the workman is not entitled to any relief as prayed for.

## **ISSUES**

- 1) Whether the management was justified in terminating the service of Shri Tarun Ghosal with effect from 06.05.2000?
- 2) What relief, if any, is the Workman entitled to?

# Decision with reason

In support of the case the petitioner Workman has examined himself as PW-1 that apart he has cited the following documents:

- 1) Photocopy of Identity Card of the Workman. Marked as Exhibit -1.
- 2) Photocopy of settlement between Company and Union. Marked as **Exhibit -2**.
- 3) Photocopy of Service Certificate of the Workman dated 29.09.1993. Marked as Exhibit -3.
- 4) Photocopy of appointment letter dated 01.12.1993. Marked as Exhibit -4.
- 5) Photocopy of appointment letter dated 07.12.1993 in prescribed form. Marked as **Exhibit 4/1**.
- 6) Photocopy of appointment letter date 27.08.1996. Marked as Exhibit -5.
- 7) Photocopy of Service Certificate dated 19.09.1996. Marked as **Exhibit -5/1**.
- 8) Photocopy of Workman's letter dated 08.03.2000 to Union. Marked as **Exhibit 6**.
- 9) Photocopy of Company's notice dated 06.05.2000. Marked as Exhibit -7.
- 10) Photocopy of Workman's letter dated 29.08.2000 to Company. Marked as **Exhibit 8**.
- Photocopies of Workman's two letters dated 23.02.2001 and dated 16.03.2001. Marked as **Exhibit 9 & 9/1**.
- Photocopies of Workman's letters to the Company dated 18.11.1999 (three copies). Marked as **Exhibit 10, 10/1** & **10/2**.
- Photocopy of Workman's letter dated 29.03.2001 to Human Rights Cell. Marked as **Exhibit 11**.
- Photocopy of letter dated 19.04.2001 from Home Department t the Labour Commissioner, Kolkata. Marked as **Exhibit 12**.
- Photocopy of conciliation memo dated 12.06.2001 issued by Assistant Labour Commissioner. Marked as **Exhibit 13**.



On the other hand, to counter the claim of the Workman some oral and documentary evidences have also been adduced by the Company as follows:

- 1) Sri Sankar Chatterjee, Chief Manager (Personnel & Administration), Braithwaite Burn and Jessop Construction Company Ltd. as CW-1.
- 2) Sri Samir Kumar Sen, Deputy Manager (Personnel & Administration), Braithwaite Burn and Jessop Construction Company Ltd.as CW-2.
- 3) Sri Chandra Sekhar Sinha, the Proprietor of Globe Detectives as CW-3.
- 4) Mr. Imran Ahmed, Field Investigator of Globe Detectives as CW-4.

That apart Company has filed some copies of documents as per list which have been marked as follows:

- 1) Photocopy of a notice of termination dated 06.05.2000. This is marked as **Exhibit-A**.
- 2) Photocopy of certificate dated 20.06.2003 issued by the Project Manager (Works). This is marked as **Exhibit-B**.
- Photocopies of receipts in support of payment of termination benefits by three workmen. These are marked as **Exhibit-C**, **C/1 & C/2**.
- 4) Photocopy of money order coupon showing tender of Rs. 5,000/- to the Workman. This is marked as **Exhibit-D**.
- 5) Photocopy of Company's letter dated 06.12.2004 to the Post Master. This is marked as **Exhibit-E**.
- 6) Photocopy of Master Roll cum Wage sheet for April, 2000 (2 pages) Marked as **Exhibit** –**F** (collectively).
- 7) Photocopy of Wage sheet of Workman for the period 01.05.2000 to 06.05.2000. This is marked as **Exhibit-F/1**.
- 8) Photocopy of letter dated 31.03.2017 issued by Globe Detectives to the Company. This is marked as **Exhibit-G**.
- 9) Photocopy of letter dated 01.06.2009 issued by Globe Detectives to the Company. Marked as **Exhibit -H**.
- 10) Photocopy of Company's letter dated 12.07.2001 issued by the Assistant Labour Commissioner, Government of West Bengal. This is marked as Exhibit-I.

### Decision with Reason:

From the evidence of PW-1 it is revealed that PW-1 joined as Driver in the company in January 1996 at their office at 27 R. N. Mukherjee Road, Kolkata – 700 001, where from he was transferred to the office of the 2nd Hooghly Bridge site and he was retrenched on 19.09.1993 but he could not specifically stated that he had served the company from 1986 to 1993. Then again he was given an appointment letter on 01.12.1993 followed by another appointment letter on 07.012.1993 and subsequently he was retrenched on and from 26.05.1995. Even then he was allowed to perform

his duty as usual continuously by the management of the Company and again he was given another appointment letter on 27.08.1996 to perform his duty as Gantry Operator from 08.07.1996 for the construction work being going on at 2nd Hooghly Bridge, Princep Ghat, Kolkata by the company.

Then he was again retrenched along with other workmen on 06.05.2000.

It is demanded in his evidence by the PW-1 that he rendered his service continuously up to 06.05.2000 and he rendered continuous service much more than 240 days in every year.

He was given notice to collect the payment of full and final settlement pertaining to retrenchment from the office of S.H.B. site.

It is stated by PW-1 that he has been enjoying interim relief being granted in favour of him.

PW-1 demanded that in the appointment letter it was not mentioned in anywhere as to when construction project will be ended and for that the company's contention is not correct particularly when termination comes within the purview of retrenchment as per Industrial Disputes Act 1947.

From PW-1's cross examination it is also revealed that PW-1 Shri Tarun Ghosal got appointment on Hooghly Bridge in 1986.

PW-1 admits that he was driver of the company but he used to drive the vehicles at different places under the instruction of the company.

PW-1's Identity Card has been marked as Exhibit-1. PW-1's service certificate issued by the company on 29.09.1993 has been marked as Exhibit-3 and his appointment letter dated 01.12.1993 has been marked as Exhibit-4 and his another copy of appointment letter dated 07.12.1993 has been marked as Exhibit-4/1 and his service certificate dated 27.08.1996 and 19.09.1996 have been marked as Exhibit-5 & 5/1.

That apart Shri Tarun Ghosal PW-1 was re-crossed on 03.06.2022 on prayer of the company from where it is revealed the company has tried to expose to the effect that after termination allegedly on and from 06.05.2000 this workman was gainfully employed elsewhere but it was not proved or which can suggest that the workman was gainfully employed elsewhere after he has been allegedly terminated.

STRIAL TRIB

On the other hand Sri Sankar Chatterjee, Chief Manager (Personnel & Administration) of the Company has stated in his chief that the company had given appointment letter to the applicant on 27.08.1996 offering employment being purely temporary employment from 08.07.1996 as Gantry Operator in the project of 2<sup>nd</sup> Hooghly Bridge.

CW-1 demands that any other appointment letter except 27.08.1996 are beyond scope of reference but could not claim these appointment letters are false and manufactured. According to CW-1 the service of the workman was dispensed with on 06.05.2000.

CW-1 denies all other statements of the workman.

It is admitted that the workman Tarun Ghosal did not collect money in respect of compensation for retrenchment being refused by the workman.

CW-1 admits that Exhibit – 1, 3, 4/1 and 5/1 which prove that the workman was a Vehicle Driver. He also admits that like the vehicles drivers the Gantry Operators used to record their attendance in the office of the 2nd Hooghly Bridge and it is evident from the master roll cum wage sheet of the workman on and from 01.04.2000 to 30.04.2000 in SI. No. 2 shows the designation of the workman has been noted therein as 'Driver'. Even it is also seen in the wage sheet of the workman on and from 01.05.2000 to 06.05.2000 wherein the designation of Tarun Ghosal, the workman has been noted as driver which has been marked as Exhibit – F/1. But he denies that the workman worked as Driver after appointment as Gantry Operator.

CW-1 cannot say whether the workman used to record his attendance as Gantry Operator during the period on and from 08.07.1996 to 06.05.2000 at the office of the 2nd Hooghly Bridge.

CW-1 further admits the truthfulness of the Exhibit-1, Exhibit -3, Exhibit-4, 4/1, Exhibit -5 and Exhibit-5/1.

CW-2 Samir Kumar Sen, Deputy Manager (Personnel & Administration) of the Company.

CW-2 claims that the workman was appointed on temporary basis in the specific project job as Gantry Operator by appointment letter dated 27.08.1996 vide reference No. SIC/DKM/388/420.

CW-2 further claims that such temporary engagement was on hour basis@ Rs. 7/-per hour. Workman was terminated automatically by a notice dated 06.05.2000 and it was notified in the notice board dated 06.05.2000 marked as Exhibit-A. The workman was offered terminal benefit amounting to Rs. 2735/- and Rs. 5000/- by the Company by 2 (two) separate Money Orders vide Money Order receipts No. 2844 and 2845.

CW-2 claims that Company never assured the workman that he would be made permanent at any point of time.

CW-2 claims that the workman is gainfully employed elsewhere. But it is proved that company could not satisfy this Tribunal to the effect that the workman is was gainfully employed elsewhere after termination from his service.

CW-2 admits that from Exhibit-1 it appears that the workman was appointed in the site of 2nd Hooghly Bridge by the company w.e.f. 04.04.1986 and from this document it is not appeared that his service will be automatically ceased and/or terminated since the project of the said site will be completed.

CW-2 also admits the contents of Exhibit-3, 4/1 and 5/1.

CW-2 also admits like CW-1 that the workman Tarun Ghosal was described in the wage register/master roll as Driver.

CW-2 explains the word Gantry means a crane and drivers used to operate the same for carrying necessary articles required for the construction in the project from one place to the working site and Exhibit – 5 proves that the worker started functioning his work in the 2nd Hooghly Bridge site w.e.f. 08.07.1996 as Gantry Operator.

CW-2 further admits that Gantry is a special type of crane and the same is used to pull by the specialized workmen.

CW-2 further admits that Exhibit – A does not proves that it was issued to workman who was paid any amount as retrenchment compensation and he also admits that there is no note to that effect that the workman refused to accept the retrenchment compensation.

From Exhibit – B it is clearly mentioned that though the project was opened to vehicular traffic in October 1992 works mentioned in (ii) and (v) of first para was completed on 31.01.2000 and no individual official order was issued regarding the workman who was kept in site of 2<sup>nd</sup> Hooghly Bridge even after 31.01.2000 for the purpose of shifting of machineries and other related works.

Be it mentioned here that the workman Tarun Ghosal was working in the said site even after 31.01.2000.

CW-3 Shri Chandra Sekhar Sinha, Proprietor of Global Detective and CW-4 Mr. Imran Ahmed who worked for investigation being appointed by the company through Global Detectives to the effect whether the workman is/was gainfully employed after he was terminated from his service on and from 26.05.2000.

But I have already stated at the time of explanation of the evidence of CW-1that the company has miserably failed to prove by the electronic device with the help of investigating agency to the effect that the workman is/was gainfully employed elsewhere at any point of time after his termination. So, I find no necessity to explain



the same vividly as these were futile attempt of the company to drag the case for an indefinite period but could not succeeded. Be it mentioned that personal behaviour of Chandan Ganguly, being the man of management has not been focused at the time of evidence by the side of workman and Company also did not adduce any evidence about the personal character of the workman during working period.

At the time of argument Ld. Counsel for the company has again tried to draw my attention to the point that the case is not maintainable on various grounds which has been already decided by this Tribunal in favour of the workman but the company has failed to overrule the said decision of this Tribunal by any means whatsoever. But the Company has not denied the exhibited documents which prove that the workman had been working in the company under reference on and from 1986 to 26.05.2000.

Even it could not be proved by the company that service of the workman shall be terminated automatically by any statement or document whatsoever on which this Tribunal can rely upon. If that be so this Tribunal has no hesitation to consider the judgements of the Hon'ble Supreme Court filed by the side of the Workman.

- 1) The case between Tapas Kumar Pal vs Bharat Sanchar Nigam Limited & Another (2014) 15 SCC Page 313 Para-4.
- 2) Mohanlal vs Management of M/s Bharat Electronics Ltd. (1981) 3 SCC page 225 Para 16.
- 3) Gammon India Limited vs Niranjan Das (1984) 1 SCC Page 509 Para 2.
- 4) Jasmea Singh vs State of Hariyana & Another (2015) 4 SCC Page 458 Para-21, 22 & 23.
- Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Others (2013) 10 SCC Page 324 Para- 38,38.1,38.2, 38.3, 38.4, 38.5, 38.6 & 38.7.

In view of the aforesaid discussions with reasons I am constraint to hold that the workman has satisfactorily established that his case is not covered by anyone of the except or excluded categories and he rendered continuous service on and from 1986 to 26.05.2000 to the company and therefore, termination of his service would constitute retrenchment and this has been admitted by the company by sending the workman retrenchment compensation though the workman refused the same.

As pre condition for valid retrenchment has not been satisfied, the termination of service is ab-initio-void, invalid and inoperative. The workman must, therefore, be deemed to be in continuous service. (the same view was taken by the Hon'ble Supreme Court in the case of Mohanlal vs Management of M/s Bharat Electronics Ltd.)

WEST WEST

As I have already stated above to the effect that the workman had been working in the company under reference from 1986 to 26.05.2000 and the company could not prove anything against this factum I am of opinion the workman is entitled to get the order as prayed for.

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

Hence it is

#### **ORDERED**

That the instant case being No. VIII – 241/2001 be and same is allowed on contest. That the termination of service of the workman w.e.f. 06.05.2000 by the management of the company under reference was unjustified and bad in law and the management is hereby directed to reinstate the workman will full back wages and benefits from the date of termination to the date of reinstatement if he does not attained the age of superannuation.

This is my Award.

Let the Award be sent to the Government of West Bengal.

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

JUDGE FIRST INDUSTRIAL TRIBUMAL WEST BENGAL

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy) Judge

FIRST HIDI ISTO'AL TRICK MALE

