

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

No. Labr./ 1152 / (LC-IR)/22015(16)/546/2019

Date : 03/12/24

ORDER

WHEREAS an industrial dispute existed between (1) M/s. NICCO Corporation Ltd., NICCO House, 2, Hare Street, Kolkata- 700001, (2) M/s. Oriental Nicco Projects (P) Ltd., IT Lagoon, 1203-04, Plot E2/1, E.P. , Sector-V, Salt Lake City, Kolkata- 700091 & (3) Sri Vinod Kothari, PCS of 1006 to 1009, Krishna Buildings, 224, AJC Bose Road, Kolkata -700017 and their workman Sri Bablu Maity, S/o. Late Ashwini Maity, Village- Chandpur, Paschim Para, P.O. Sonarpur, Dist- South 24 Parganas , Kolkata- 700150 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14 of 1947) to the Seventh Industrial Tribunal specified for this purpose under this Department Notification No. 101- IR dated 2.2.12;

AND WHEREAS the said Seventh Industrial Tribunal has submitted to the State Government its Award dated 13.11.2024 in Case No. 52 of 2015 on the said Dispute vide E-mail dated 13.11.2024.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes 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/ 1152 /1(7)/(LC-IR)/22015(16)/546/2019

Date : 03/12/24

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

1. M/s. NICCO Corporation Ltd., NICCO House, 2, Hare Street, Kolkata- 700001.
2. M/s. Oriental Nicco Projects (P) Ltd., IT Lagoon, 1203-04, Plot E2/1, E.P. , Sector-V, Salt Lake City, Kolkata- 700091.
3. Sri Vinod Kothari, PCS of 1006 to 1009, Krishna Buildings, 224, AJC Bose Road, Kolkata -700017
4. Sri Bablu Maity, S/o. Late Ashwini Maity, Village- Chandpur, Paschim Para, P.O. Sonarpur, Dist- South 24 Parganas , Kolkata- 700150.

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/ 1152 /2(3)/(LC-IR)/ 22015(16)/ 546/2019

Date : 03/12/24

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal, N. S. Building, 3rd Floor, 1, K. S. Roy Road, Kolkata - 700001 with reference to his E-mail dated 13.11.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.



Assistant Secretary

IN THE SEVENTH INDUSTRIAL TRIBUNAL, WEST BENGAL
New Secretariat Buildings, Kolkata

Present :
Miss Yogita Gaurisaria,
Judge, Seventh Industrial Tribunal, West Bengal

Case No. 52 of 2015
Under Section 2A(2) of the Industrial Disputes Act, 1947

Sri Bablu Maity
S/o. Late Ashwini Maity,
Village- Chandpur, Paschim Para
P.O. Sonarpur, Dist- South 24 Parganas
Kolkata- 700150

.... Applicant

---versus---

1. M/s. NICCO Corporation Ltd.
NICCO House,
2, Hare Street, Kolkata- 700001

..... Opposite Party

2. M/s. Oriental Nicco Projects (P) Ltd.
IT Lagoon, 1203-04, Plot E2/1,
E.P. , Sector-V, Salt Lake City,
Kolkata- 700091
3. Sri Vinod Kothari, PCS of
1006 to 1009, Krishna Buildings,
224, AJC Bose Road, Kolkata -700017

.... Added Opposite Parties

This Award delivered on Wednesday, the 13th Day of November, 2024

AWARD

The instant case has been initiated on 17.09.2015 on filing of an application under section 2A(2) of the Industrial Disputes Act, 1947 as amended, by the workman Sri Bablu Maity of Village- Chandpur, Paschim Para, P.O. Sonarpur, Dist- South 24 Parganas, Kolkata- 700150 against the employer M/s. NICCO Corporation Limited challenging the termination of

his service by the company M/s. NICCO Corporation Limited by way of refusal of employment with effect from 17.06.2014 praying for declaring the same as illegal and unjustified and also for re-instatement in service with full back wages and consequential benefits thereto including bonus.

Case of the Applicant/ Workman

The facts of the case of the Workman as per his Application in a nutshell is that he was permanent employee of the company M/s. NICCO Corporation Ltd., NICCO House, 2, Hare Street, Kolkata- 700001. He was appointed on 02.02.1990 as Messenger-cum-Courier man but no appointment letter was issued to him by the said Company though the applicant workman made several requests for issuing appointment letter. The applicant was in continuous employment since 02.02.1990 to 16.06.2014 in the said company and was drawing monthly consolidated salary since 1990 to July, 2013. The said company least bothered to pay statutory dues like P.F., ESI, etc. and as and when such demand was raised, it was declined with threat of termination. However, the company being afraid of penal consequences granted other components of salary and obtained registration under E.P.F. & Misc Provisions Act for the applicant from August, 2013. The applicant subsequently submitted a written complaint before the EPFO, R.O., Kolkata for his EPF/EPs eligibility with effect from 02.02.1990 based on several documents of his employment with O.P. no.1 and accordingly after hearing the parties, the Learned EPF Commissioner passed an order being No. R-Ex/WB/5525/CA/CC-VI/RO/KOL/3559(i) dated 20.03.2015 directing the opposite party company for payment of his EPF contribution since 02.02.1990. As per the said order of EPFC, the opposite party no.1 company sent a letter being No. NIC/P-13A/2015/ 287 dated 23.06.2015 issued by

The National Insulated Cable Co. of India Ltd Employees Provident Fund enclosing a cheque for a sum of Rs. 3,56,788/- as provident fund. The workman used to receive a meagre amount of Rs. 8,000/- per month as salary as on 16.06.2014 through voucher which is far below the Statutory Minimum Wages for one who rendered 23 years of continuous service in the company. The applicant has unblemished record of service. He was diligent, honest and there is no black spot or any allegation against him by the management of the company till his illegal and unjust termination of service by way of refusal of employment on and from 16.06.2014. On 17.06.2014, when the applicant went to join his duty, the Vice-President and the Corporate Vice President did not allow the applicant to join his duty. The applicant had rendered an uninterrupted service with the company since his joining and such unforeseen and forced termination of service came as a bolt from the blue and even the salary for the month of June, 2014 remained unpaid till date. The management of the said company without showing any reason refused the applicant to join his duty with effect from 17.06.2014. He raised strong protest against such illegal action of the management and demanded to allow him to resume his duty but the company terminated the service of the applicant with effect from 17.06.2014 illegally and in violation of the provisions of law and also in violation of the principles of natural justice. He made several calls at the office of the company and requested the management i.e. the Vice President and the Corporate Vice President for re-instatement in his service and further demanded to convey the reasons of termination in writing but all were in vain. When all persuasions, approaches and demands fell flat due to the adamant attitude of the management, the applicant made a written demand to the company by his letter dated 24.07.2014 with the demand for re-instatement in service with full back wages. Though the said letter was duly received by the said company, but the said company did not care to give any reply of the same nor allow him to join his duty. Such un-called for, illegal, unjustified and arbitrary action of the company threw the applicant into prolonged unemployment and starvation with the members of his family.

The further case of the Applicant/ Workman as per his application is that the company has not issued any charge-sheet nor shown any cause and no domestic enquiry was held before the said termination and even the company did not issue any termination letter though the company refused the applicant to join his duty and the applicant had not been offered any opportunity of hearing before the termination of service. The applicant was terminated from service of the company in violation of Sec. 25F of the Industrial Disputes Act, 1947. The applicant despite making sincere efforts could not be gainfully employed elsewhere and as such, the applicant alongwith family members are suffering not only financially but also mentally. The applicant by his letter dated 05.08.2014 raised an industrial dispute before the Labour Commissioner, Govt. of West Bengal to intervene in the matter. The Conciliation Officer convened a number of joint meetings on several dates but due to adamant attitude of the management, the matter could not be settled. Therefore, the applicant has no other way but to seek relief before the Learned Tribunal as provided in Section 2A(2) of the Industrial Disputes Act, 1947. His last drawn salary stood at Rs. 8,000/- per month. The Applicant/ workman prayed for holding termination from service by way of refusal of employment of the applicant/ workman with effect from 17.06.2014 by the company is totally illegal, unjust, malafide amounting to invalid, improper and inoperative and further prayed to grant him the relief of reinstatement with full back wages and incidental benefits including bonus and other incidental reliefs as deemed fit and proper including interest and costs.

Case of the Opposite Party(ies)

The company OP no.1 filed their written statement on 03.02.2016 interalia stating that the applicant remained absent from his duty on and from 17.06.2014 in the transferee-company (to whom a division of O.P. no.1 has been transferred).

The Company OP no.1 made an application before this Tribunal on 03.03.2016 for adding M/s. Oriental Nicco Projects Ltd. as a party to the dispute. The same was allowed vide order dated 30.08.2017. The added party OP no.2 filed their written statement on 20.12.2017 and interalia stated in paragraph 5 that

the name of the Applicant Babloo Maity was not mentioned in the transferred employees' list and had the name of the Applicant been mentioned in that list, he would have been the liability of the OP no.2 from and onward the date of entering into the agreement and such fact has been deliberately concealed by OP no.1 from the Tribunal and as such, by this act, the OP no.1 not only harassed OP no.2 but misguided this Ld. Tribunal.

The opposite party no. 1 company by filing application stated that O.P. no.1 company is under liquidation. Therefore, the Liquidator was made a party to the instant case on the application of the applicant/ workman vide order dated 29.01.2021. The office of this Tribunal received the written submission from the Official Liquidator on 25.07.2019 which is reflected in order dated 26.07.2019 wherein they have stated that any claim, if so adjudged to be paid to the applicant the same shall be subject to priority basis.

Accordingly, following issues were framed on 08.03.2021--

- (I) Whether the instant case is maintainable both in its facts and in law ?
- (II) Whether the termination of service of the Applicant Sri Babloo Maity by way of refusal of employment w.e.f. 17.06.2014 is justified or not ?
- (III) Whether the applicant is entitled to get re-instatement in service with full back wages and consequential benefits, if any ?
- (IV) To what other relief(s) , if any, is the Applicant entitled to ?

Since the Opposite Parties were absent, this Tribunal took up the hearing of the case ex-parte.

The applicant tendered his evidence on 31.03.2021 on affidavit and Sri Babloo Maity was examined as PW-1 and the following documents were marked as Exhibits no. 1 to 10 :-

<u>Sl. No.</u>	<u>Description</u>	<u>Exhibit No.</u>
1.	List of Documents dated 16.09.2015	Exbt-1
2.	Copy of note to CKC/CDD/AKB dated 23.07.2002	Exbt-1 /1
3.	Note regarding increase of salary dated 05.08.2004	Exbt-1/2
4.	Cash Voucher dated 04.09.2003	Exbt-2
5.	Cash Voucher dated 07.02.2003	Exbt-2/1

6.	Cash Voucher dated 30.04.2012	Exbt-2/2
7.	Cash Voucher dated 24.04.2010	Exbt-2/3
8.	Cash Voucher dated 22.04.2013	Exbt-2/4
9.	Copy of service voucher dated 26.02.2014	Exbt-3
10.	Authorisation letter to Babloo Maity dated 24.03.2005	Exbt-4
11.	Letter of Demand of justice dated 24.07.2014	Exbt-5
12.	Receipt of Speed Post	Exbt- 5/1
13.	Workman's letter to Labour Commissioner regarding termination of service dated 05.08.2014	Exbt-6
14.	Workman's Written Statement before Asstt. Labour Commissioner dated 17.11.2014	Exbt-7
15.	Letter to workman by the National Insulated Cable Company of India Ltd. Employees' Provident Fund dated 23.06.2015 regarding the settlement of Provident Fund Account alongwith photocopy of cheque	Exbt-8
16.	Proof of employment and final Settlement of Babloo Maity submitted by Babloo Maity dated 24.04.2015	Exbt-9
17	Copy of the proceedings u/sec. 7A of Employees' Provident Funds & Misc. Provisions Act, 1952 (collectively)	Exbt-10

The case proceeded ex-parte. The case was taken up for ex-parte argument.

The Ld. Advocate for the Applicant/ Workman argued that though he was the permanent employee of the opposite party company but the company with ulterior motive did not cover him under the EPFO. He made several demands to the company for statutory coverage under P.F. & ESI and as and when he made such demand, the company threatened him that he will be terminated from the service. So, he made a written complaint in this respect before the EPFO on 22.05.2014 through his learned advocate. After receiving the notice of hearing from the EPFO, the Vice President and Corporate Vice President with vindictive attitude did not allow him to join his duty i.e. he was refused to join his duty.. The Enforcement Officer of the EPFO instituted a case against the opposite party no.1 company under section 7A of the EPF & Misc Provisions Act. The above Vice President participated in the sand hearing and after hearing the Regional Provident Fund Commissioner passed an order on 20.03.2015 (Ext-10) and inter alia, directed the company to pay a sum of R 3,56,788 to the applicant. As per the said order, the applicant vide his letter dated 24.04.2015 made a demand to the company for payment of the said amount (Ext-9). Accordingly the company paid

the said amount to the applicant by cheque vide covering letter dated 23.06.2015 (Ext-8).

The Ld. Advocate for the Workman further argued that the workman categorically stated that he was not gainfully employed elsewhere after his illegal termination and inspite of making sincere efforts, he could not secure any job and passing his days in distress along with his family members in these hard days.

The Ld. Advocate for the Applicant/ Workman further argued that "Retrenchment" means termination by the employer of the service of a workman for any reasons whatsoever, otherwise than as a punishment inflicted by way of disciplinary action".

The Ld. Advocate for the Applicant/ Workman furthermore argued that the company terminated the service of the workman in violation of section 25F of the Industrial Disputes Act, 1947. There are some conditions that no workman employed in any industry shall be retrenched by the employer until the workman has been given one month's notice in writing including the reasons for retrenchment and the retrenchment compensation. But, in this case, nothing has been complied with and the Workman in the evidence clearly stated and proved the same.

The Ld. Advocate or the Applicant/ Workman further argued that the Opposite Party no.1 did not give any opportunity of hearing to the Workman before awarding the punishment which amounts to capital punishment in labour law parlance.

The Ld. Advocate or the Applicant/ Workman further argued that the principles of natural justice is an integral part of the right to equality enshrined under Article 14 of the Constitution of India and any law made or action taken by the employer must be fair, just and reasonable. Article 21 of the Constitution of India includes Right to Livelihood. The order of termination of service of employee visits with civil consequences of jeopardising not only on his livelihood but also the carrier and livelihood of the dependents. Therefore, before taking any action putting an end to the tenure of the service of the employee, fair play is

required but the company did not care of the same. In this respect, the Ld. Advocate for the Workman relied on the judgment delivered by the Hon'ble Apex Court reported in (1993) 67 FLR 111 (SC) (3 JJ) (D K Yadav –vs– JMA Industries Ltd.).

The Ld. Advocate or the Applicant/ Workman further argued that there is mandatory provision in the Industrial Disputes Act, 1947 that at the time of retrenchment, the employer has to comply Sec. 25F thereof. The section postulates three conditions to be fulfilled by the employer. It is now settled position of law that considering the negative language used in Sec. 25F of the said Act, the said Section imposes a mandatory duty on the employer which is a condition precedent to the retrenchment of workman. Therefore the contravention of the mandatory requirements of the said section invalidates the retrenchment of the Applicant/ Workman and renders the termination of the service of the Applicant/ Workman as void ab-initio and submitted that there are catena of decisions in this regard. The Ld. Advocate for the Workman further argued that the same reveals from the evidence of the PW-1 that the company OP no.1 did not comply with the mandatory provisions of Sec. 25F of the said Act. He further argued that though the Written Statement is not required to be looked into by the Tribunal inasmuch as the same not proved by the evidence by the company but still no glance through the same, it will reveal that the Opposite Company did not whisper anything as to compliance by them of the said mandatory provision.

The Ld. Advocate for the Applicant/ Workman argued that in sum total of the submissions made by him, the termination of the service of the applicant/ workman was in clear violations of the provisions of law and principles of natural justice.

The Ld. Advocate for the Applicant/ Workman prayed for holding the termination of service of the Applicant/ Workman by way of refusal of employment by the O.P. no.1 company with effect from 17.06.2014 as totally illegal, unjust, malafide amounting to invalid, improper and inoperative and further prayed to grant him the relief of reinstatement with full back wages and

incidental benefits including bonus and other incidental reliefs as deemed fit and proper including interest and costs.

The point of determination therefore would be to examine whether the Applicant/ Workman has succeeded in establishing his case by way of cogent and consistent evidence and to further examine in the light of facts emerging out of evidence, if the Applicant/ Workman herein is entitled to any relief(s) as prayed for and the extent thereof.

The evidence of the PW-1 remained uncontroverted. In his statement and deposition, the applicant stated that he was in employment since 02.02.1990 and performed his duties upto 16.06.2014 ie. till his illegal and unjustified termination from service. His last drawn salary was Rs. 8000/- per month has been clearly stated in paragraph 3 and 12 of his statement. The documents exhibited also fortifies the same.

The workman categorically stated and deposed that he was not gainfully employed elsewhere after his illegal termination and inspite of making sincere efforts he could not secure any job and passing his days in distress along with his family members in this hard days.

The case of the Applicant/ Workman has been substantiated by evidences both oral and documentary.

This Tribunal finds that the applicant/ workman is workman within the definition of “workmen” as envisaged under section 2(s) of the Industrial Disputes Act, 1947. The Applicant/ Workman has established by way of cogent evidences that the instant case is maintainable before this Tribunal and further that this Tribunal has jurisdiction to adjudicate the issues raised by the Applicant/ Workman in terms of the provisions of the Industrial Disputes Act.

Sec. 25F, Sec. 25FF & Sec. 2(o) of Industrial Disputes Act, 1947 is reproduced hereinbelow for sake of convenience and reference.

Sec. 25F. Conditions precedent to retrenchment of workmen-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month 's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days 'average pay [for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

25-FF. Compensation to workmen in case of transfer of undertakings.

- Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to or that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of section 25-F, as if the workman had been retrenched:

Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if-

(a) the service of the workman has not been interrupted by such transfer;

(b) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before the transfer; and

(c) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

The OP no.2 categorically stated that the name of the Applicant/workman was not in the list of transferred employees and that the OP no.1 misguided and harassed the OP no.2 as well as this Tribunal by resorting to such false stand.

Sec. 2(oo) lays down definition of “retrenchment”

Sec.2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

(a)voluntary retirement of the workman; or

(b)retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.

This Tribunal finds that the company has not complied with the mandatory provision of Sec 25F and did not pay the required compensation amount as envisaged u/sec. 25F(b) nor complied Sec. 25F(a) nor Sec. 25F(c) which are prerequisites to retrenchment.

The Tribunal also finds that the case of the applicant/ workman also does not fall within the proviso to Sec. 25FF of the Industrial Disputes Act, 1947.

The Hon'ble Supreme Court in the judgment reported in (1993) 67 FLR 111 (SC) (3 JJ) (D K Yadav –vs-- JMA Industries Ltd.) inter alia held -

“Section 25F prescribes mandatory procedure to be followed before the retrenchment becomes valid and legal and violation thereof visits with invalidation of the action with consequential results.”

“ Article 21 of the Constitution clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman, fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice.”

The Hon'ble Apex Court further held-

“Application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily affecting the rights of the concerned person. No decision must be taken which will affect the right of any person without first being informed of the case and be given him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of natural justice. It is not so much to act judicially but to act fairly, namely, the procedure adopted must be just, fair and reasonable in the particular circumstances of the case.

3.2. The procedure prescribed for depriving a person of livelihood must meet the challenge of Article 14 of the Constitution and such law would be liable to be tested on the anvil of Article 14. The procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of the Article. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates.....”

Besides other evidences and exhibits, the concrete evidences i.e. exhibit-9 & 10 are also on record which reveals that the applicant/ workman was undoubtedly a workman and was a permanent one and was in continuous service.

The evidence of the workman remained unchallenged and uncontroverted. I find no reason to go otherwise and I am inclined to hold that the applicant/ workman has been able to prove his case and further hold that termination of service of the Applicant/ Workman namely Sri Babloo Maity by the O.P. no.1 by way of refusal of service on 17.06.2014 is illegal,

unjustified and that the Applicant/ Workman is entitled for reinstatement with full back wages and consequential reliefs, etc.

Considering all as stated hereinabove from the unchallenged evidence both oral and documentary evidence of the workman, I am of the opinion that the applicant/ workman has succeeded to prove the case beyond all reasonable doubt and therefore he is entitled to the reliefs as prayed for.

The termination of the service of the Applicant/ workman is hereby set aside as being illegal and void ab-initio. The applicant/ workman shall be deemed to be in continuous service till date. The Applicant/ workman is held entitled for reinstatement with full back wages and consequential benefits thereto. In the instant case, the O.P. no.1 company since is in liquidation at present and as such, the practical joining of the Applicant/ Workman of the Applicant/ Workman in the O.P. no.1 company is not possible; however, holding the re-instatement of the Applicant/ Workman in the service with full back wages and consequential benefits thereto. As such, this Tribunal is of the view to grant full back wages from the date of illegal termination to till the date of the Award @ Rs. 8,000/- being the last drawn salary and also consequential benefits thereto like annual increment, bonus, etc thereto with costs of Rs. 75,000/- . The Tribunal further directs that the Company shall also pay compensation of Rs 1.5 Lac to the workman for mental agony and unnecessary harassment to the Applicant/ workman arising out of the instant litigation. The back wages on calculation from 17.06.2014 to till date @ Rs. 8,000/- per month at the minimum amounts to Rs. 10,00,000/- (125 months @ Rs. 8,000/- per month). The Applicant/ Workman is also entitled for other benefits like annual increments, bonus, gratuity, etc. This Tribunal feels inclined to grant additional lump sum Rs. 2,00,000/- on account of said other benefits like annual increments, bonus, etc. besides the benefits of gratuity. The O.P. no.1 company since in

liquidation, as such, this Tribunal also finds it necessary to decide the point of gratuity payable to the Applicant/ Workman. The gratuity on calculation although stands to Rs. 1,61,538/- for the 35 years of service which is rounded to Rs. 1,61,000/- on the said account of gratuity to which the Applicant/ Workman is entitled and the same be paid to the Applicant/ Workman besides other dues.

The Official Liquidator through Written Statement received by this Ld. Tribunal on 25.07.2019 which is reflected in order dated 26.07.2019, stated that any claim, if so adjudged to be paid to the applicant the same shall be subject to priority basis.

In sum, the case succeeds.

Hence, it is

ORDERED

that the instant case being Case No. 55/2015 under Section 2A(2) of the Industrial Disputes Act, 1947 be and is hereby allowed exparte against the Opposite Parties with costs of Rs. 75,000/-. The cost of Rs. 75,000/- is to be paid by Opposite Party no.1. The Tribunal further directs that the Company to also pay compensation of Rs 1,50,000/- to the workman for mental agony and unnecessary harassment to the Applicant/ workman arising out of the instant litigation.

The termination of the service of the Applicant/ workman is hereby set aside as being illegal and void ab-initio. The applicant/ workman shall be deemed to be in continuous service till date. The Applicant/ workman is held entitled for reinstatement with full back wages and consequential benefits thereto. The back wages on calculation from 17.06.2014 to till date @ Rs. 8,000/- per month at the minimum amounts to Rs. 10,00,000/- (125 months @ Rs. 8,000/- per month). The Applicant/ Workman is also entitled for other benefits like annual increments,

bonus, etc. as such, in addition, this Tribunal grants additional lump sum amount of Rs. 2,00,000/- on account of said other benefits like annual increments, bonus etc.

This Tribunal further grants a lump-sum amount of Rs. 1,61,000/- on account of gratuity to be paid to the Applicant/ Workman besides all other dues as awarded.

The aforesaid shall constitute as Award passed ex-parte.

The copies of the Award be sent to the concerned authorities including Opposite Party no. 3 for information and necessary action thereupon.

Dictated & Corrected by me

Judge

(Yogita Gaurisaria)
Judge
Seventh Industrial Tribunal
Kolkata
13.11.2024