

I/581538/2024

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

No. Labr./ 1153 /(LC-IR)/22015(16)/7/2022

Date : 03/12/24

ORDER

WHEREAS an industrial dispute existed between M/s. Gloster Limited and Smt. Salma Begam & 4 Others legal heirs of their workman Late Naimullah Ansari regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

AND WHEREAS Salma Begam & 4 Others legal heirs of 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 Second Industrial Tribunal specified for this purpose under this Department Notification No. 101- IR dated 2.2.12;


AND WHEREAS the said Second Industrial Tribunal has submitted to the State Government its Award dated 13.11.2024 in Case No. 05/2015 on the said Dispute vide E-mail dated 14.11.2024.

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/ 1153 /1(5)/(LC-IR)/22015(16)/7/2022

Date : 03/12/24

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

6. M/s. Gloster Limited
7. Smt. Salma Begam & 4 Others legal heirs of the workman Late Naimullah Ansari.
8. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
9. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11<sup>th</sup> Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
10. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


  
Assistant Secretary

No. Labr/ 1153 /2(3)/(LC-IR)/ 22015(16)/ 7/2022

Date : 03/12/24

Copy forwarded for information to :-

4. The Judge, Second Industrial Tribunal, N. S. Building, 3<sup>rd</sup> Floor, 1, K. S. Roy Road, Kolkata - 700001 with reference to his E-mail dated 14.11.2024.
5. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
6. Office Copy.

  
Assistant Secretary

**Before the 2<sup>nd</sup> Industrial Tribunal, Kolkata**

**Present : Shri Partha Sarathi Mukhopadhyay, Judge**

**2<sup>nd</sup> Industrial Tribunal, Kolkata**

**Case No. 05/2015**

**Under Section 2A(2) of The Industrial Disputes Act, 1947**

**Salma Begam & 04 Others as substituted legal heirs of the  
deceased petitioner Naimullah Ansari**

**Petitioners**

**Vs.**

**M/s. Gloster Limited**

**Opposite Party**

**Date: 13.11.2024**

**J U D G E M E N T**

The case of the petitioners, in short, is that their predecessor deceased Naimullah Ansari was a permanent employee under the

OP company since 01.06.2003 as Khalasi in the Launch and thereafter he was appointed in the mill in the Finishing Department of the OP company w.e.f. 22.10.2014 without giving any notice of condition of service and he used to give protest to such posting and then suddenly on 09.03.2015 the OP company issued one notice of termination with some false allegations and without any hearing or enquiry and he requested repeatedly the OP company for his reinstatement in vain and then he raised the problem before the Labour Department of West Bengal in Uluberia and without getting any relief there, he has filed this case before this Tribunal and at the time of termination he used to get daily wages of Rs. 400/- per day and he was on leave from 21.01.2015 to 09.02.2015 and after the said termination he was not gainfully employed elsewhere and the said order of termination was illegal. Hence, the petitioners have filed this case praying for relief as mentioned in the written statement.

The OP company has contested this case by filing a written statement denying therein all the material allegations in the petition of the petitioner.

The OP company has submitted in its written statement that the case is not maintainable in its present form and law and the deceased petitioner was initially appointed as an employee to work in the launch owned by the OP company and thereafter the service of launch was stopped and the OP company gave service to him on 20.02.2014 in the Finishing Department of the OP company but he was absent from 08.11.2014 without any information to the OP company and then on 25.11.2014 the OP company asked him to join his duty but he did not join and in spite of several correspondences made by the OP company to him, he did not join his service and holding that he had no intention to continue his employment and left his service on his own accord voluntarily, the OP company by a letter dated 19.03.2015 terminated his service and asked him to collect his final dues and he did not work continuously for one year in between 20.03.2014 to 19.03.2015 and the OP company gave him another opportunity to join his service as per the written statement of the OP company and the

service of the deceased petitioner was not terminated and he himself left his service and all the allegations of the deceased petitioner are false and accordingly this OP company has prayed for dismissal of this case.

Considering the materials on record the following issues have been framed in order to arrive at a decision:-

1. *Whether the termination of service of the deceased petitioner as per the letter of the OP company dated 19.03.2015 is justified?*
2. *Whether the deceased petitioner is covered by The Industrial Disputes Act, 1947 in respect of maintainability of the present case and protection of the workman and nature of the dispute as being industrial dispute?*
3. *Whether the substituted petitioners are entitled to get any relief arising out of this case?*

### **Issue Nos. 1 to 3**

All the issues are taken up together for consideration for the sake of convenience.

### **Decisions with reasons:**

In order to prove the case the substituted petitioner namely Salma Begam has examined herself as the PW 1 and proved some documents while the OP company has examined five witnesses and proved some documents.

### **Regarding Affidavit in Chief:-**

According to Rule 24 of the West Bengal Industrial Disputes Rules, 1958, a Tribunal has power to consider reception of evidence taken on affidavit according to the Code of Civil Procedure, 1908 while trying a labour dispute.

Order 18 Rule 4 of the Code of Civil Procedure, 1908 is related to evidence in chief in the form of affidavit. As per this provision evidences in chief in the form of affidavit can only be in relation to the fact or facts required to be proved by the parties and the examination in chief of a witness shall be **only** on an affidavit as per order 18 Rule 4 of the Code of Civil Procedure and each witness of both sides has to submit affidavit in chief in respect fact or facts required to be proved in a case as evidence and this is a mandatory provision and without any affidavit in chief of any witness of any of the parties, his evidence in chief in court only in respect of the fact or facts and circumstances cannot be considered legally as per this provision.

The provisions of Order 18 Rule 4 of the Code of Civil Procedure, 1908 has come into force **w.e.f. 01.07.2002** and it is concerned with evidences of the witnesses of both sides in chief only by affidavit and **it is not concerned with the proof of documents in chief and cross-examination of the same witness by the other side** and if a witness does not submit his evidences in chief

by affidavit, his evidences in chief cannot be considered legally as per Order 18 Rule 4 of the Code of Civil Procedure, 1908 but if he proves any document in his examination in chief, that will be considered legally and his cross-examination will also be considered legally.

In this case, on **09.10.2018**, examination of the witnesses was started when the PW1 has deposed in this Tribunal by filing her affidavit-in-chief in respect of her statements. So it is clear that after 01.07.2002, said examination of the witnesses has started in this case and accordingly Order 18 Rule 4 of the Code of Civil Procedure, 1908 and Rule 24 of the West Bengal Industrial Disputes Rules, 1958, have to be mandatorily followed at the time of examination of the witnesses in this case.

The PW1 has filed affidavit-in-chief in respect of her evidence and proved some documents and she has been cross-examined.

The OPW1 has filed affidavit-in-chief in respect of his evidence and proved some documents and he has been cross-examined.

But the OPW No. 2 to OPW No. 5 have not filed their affidavit-in-chief in respect of their evidences and proved some documents and they have been cross-examined.

As the OPW No. 2 to OPW No. 5 have not filed their affidavit-in-chief in respect of their evidences, their oral evidences-in-chief before this Tribunal regarding the facts and circumstances of this case cannot be considered legally because they have violated the

mandatory provisions of Order 18 Rule 4 of the CPC and Rule 24 of the WBID Rules, 1958 by not filing affidavit in chief in respect of their evidences but they have proved some documents in chief and they have been cross-examined and accordingly their cross-examinations and evidences in chief in this Tribunal regarding proof of documents can be considered legally.

From the Written statements and evidences of both sides, it has been admitted and proved that the deceased petitioner at first worked in the OP Company in the launch owned by the OP company and after closure of the said launch service the OP company gave him service as the calendar operator in the mill of the OP company in the Finishing Department w.e.f. 20.02.2014.

In the written statement of the deceased petitioner, it is submitted that since 01.06.2003 the petitioner used to work as *Khalasi* in the OP company's launch as permanent staff but in the written statement of the OP company, the OP company has not submitted the date wherefrom the deceased petitioner used to work in the said launch though the OP company has admitted in its written statement that initially the deceased petitioner used to work in the launch of the OP company. So it is held that since 01.06.2003 the deceased petitioner used to work as permanent *Khalasi* in the launch of the OP company because the OP company did not deny the said date 01.06.2003.

In his cross-examination, the OPW1, being the Manager, HR Department of the OP company, has admitted that **it is a fact that the deceased petitioner was a permanent employee under the OP company.**

So it is clear that the deceased petitioner was a permanent employee under the OP company.

Now it is to be considered as to whether the order or notice of termination dated 19.03.2015 issued by the OP company to the petitioner who was a permanent employee of the OP company is legal and valid according to The Industrial Disputes Act, 1947.

As admittedly the deceased petitioner was a permanent employee under the OP company according to the evidence of the OPW1, there is no **legal necessity** to prove completion of working for 240 days in a year by the deceased petitioner in the OP company during his lifetime and the substituted petitioners are not **legally bound** to prove completion of working for 240 days in a year by the deceased petitioner.

The Ld. Lawyer for the OP company has cited a series of decisions of the Hon'ble Supreme Court and High Courts but those decisions are not applicable in this case as the facts and circumstances of this case are different from the facts and circumstances of the cases discussed in those decisions of the Hon'ble Courts.

Admittedly the deceased petitioner worked since 01.06.2003 and by an order dated 19.03.2015 the OP company has terminated his service.

The PW1, Salma Begam has stated in her affidavit-in-chief that since 01.06.2003 the deceased petitioner used to work as a permanent employee as *Khalasi* under the OP company but on 22.10.2014 he was asked to work in the Finishing Department of the OP company without any notice and then by a letter dated 19.03.2015 the OP company dismissed his service and in her cross-examination she has stated that her husband was a *Khalasi* in the Launch of the OP company and the said Launch service was closed and the OP company gave him service in the Finishing Department of the OP company but he did not like the said work in the Finishing Department.



The PW1 has proved 07 documents in this case.

The OPW1, Chakrabrato Bandhopadhyay, the Manager, HRD Department of the OP company, has stated in his evidence in chief that initially the deceased petitioner was appointed as a Khalisi in the Launch of the OP company and then said Launch service was closed from 20.02.2014 and then the OP company gave service to the deceased petitioner as Calendar Operator in the mill in the Finishing Department of the OP company. But he did not attend his job since 08.11.2014 without any permission of the OP company and thereafter in spite of repeated letters sent by the OP company to him, he did not attend his work and then by a letter dated 19.03.2015 the OP company informed him that he had left his service on his own accord and asked him to collect his final dues and in the written statement filed in this case by the OP company, the OP company has stated that he can join his duty as the Calendar Machine Operator but he did not join.

In his cross-examination the OPW1 has stated that he has not filed the certified standing order of the OP company in this case and disciplinary action was also taken against the deceased petitioner and the letter dated 19.03.2015 is the document about punishment or action taken against him and in this letter it is mentioned that he abandoned his service **but the OP company did not make any enquiry regarding such abandonment of service** and the OP company did not issue any charge sheet against him.

The letter dated 19.03.2015 issued by the OP company to the deceased petitioner (Exhibit- 2 series and Exhibit- E/2) mentions that the OP company issued repeated letters to the petitioner to join his service but he did not join and then the OP company conclusively held that the petitioner was not interested in continuing his service and he himself had left and voluntarily

abandoned his service and the OP company asked the deceased petitioner to collect his dues.

So this letter dated 19.03.2015 does not specifically mention that the deceased petitioner was terminated from his service by the OP company. On the contrary, this letter mentions that the deceased petitioner himself had left and voluntarily abandoned his service in the OP company.

The written statement filed by the OP company also mentions specifically that the service of the petitioner was not terminated by the OP company and in para 21 of the said written statement, the OP company asked the deceased petitioner to join his duty in the OP company but he did not join.

This submission of the OP company is peculiar and ridiculous because by a letter dated 19.03.2015 the OP company has confirmly held that the deceased petitioner himself had left and voluntarily abandoned his service and the company asked him to collect his dues from the OP company. So what does it mean?

If the OP company has not terminated service of the deceased petitioner by letter dated 19.03.2015, then why the OP company held conclusively that the deceased petitioner himself had left and abandoned his service and asked him to collect his dues, and such type of direction for collection of dues is passed when an employee is terminated from his service. So there is no legal hesitation to hold that the said letter dated 19.03.2015 issued by the OP company is a letter of termination of service of the deceased petitioner.

The OP company has spoken about abandonment of service by the deceased petitioner in the said letter dated 19.03.2015 but the OP company has not produced any document or letter sent by the deceased petitioner to the OP company to show that the said

deceased petitioner himself abandoned his service in the OP company. Only oral statement regarding abandonment of service by a letter dated 19.03.2015 cannot be held to be the cogent evidence to show abandonment of service.

The OP company has mentioned two grounds as ground of termination of service of the deceased petitioner in the letter dated 19.03.2015 -- one is absence of the deceased petitioner in duty for a long time while another is abandonment of service by the deceased petitioner himself.

Regarding absence of the deceased petitioner in duty, the OP company issued some letters to him for joining his duty but he did not join in his duty. The OP company should have started disciplinary action or domestic enquiry after giving Charge Sheet to him for making an enquiry regarding his long absence in duty according to the legal procedures and then the OP company should have decided regarding termination of service of that petitioner but the OP company did not follow such legal procedures.

Regarding abandonment of service by the deceased petitioner himself, the deceased petitioner did not orally or in writing inform the OP company regarding abandonment of his service by him, but peculiarly in the letter dated 19.03.2015 the OP company itself, without making any proper enquiry, held confirmly that the deceased petitioner himself had left and abandoned his service. Such type of opinion of the OP company is nothing but whimsical and illegal.

The OP company has not filed any paper in this case to show that one disciplinary action was taken against the deceased petitioner by the OP company for his absence in duty and admittedly the OP company did not issue any Charge Sheet against the said deceased petitioner.

Admittedly since 01.06.2003 the deceased petitioner used to work as a *Khalasi* in the launch of the OP company and due to closure of the said launch service the OP company asked the deceased petitioner to work in the Finishing Department of the OP company from 20.02.2014 and admittedly he worked there for some days.

Now the substituted petitioners have taken a plea that no notice was given to the deceased petitioner for such change of service and that was an unfair practice by the OP company. But as admittedly the deceased petitioner worked for some days from 20.02.2014 in the Finishing Department of the OP company due to closure of the launch service of the OP company, the substituted petitioners cannot challenge at present the said job of the deceased petitioner in the Finishing Department of the OP company by saying that no notice was served to the deceased petitioner for joining in the Finishing Department of the OP company because the substituted petitioners are **estopped now** by **the Law of Estoppel** to challenge the said joining in the said Finishing Department of the OP company.

In his further cross-examination the OPW1 has stated that no domestic enquiry was held after giving charge sheet to the deceased petitioner by the OP company.

The OPW2, Surendra Barik has stated in his cross-examination that he has not filed any paper to show that he has been working as sardar at present and he did not write any letter to the OP company informing that the deceased petitioner had not been attending duty.

The OPW 3, Nilkanta Swain has stated in his cross-examination that he has not filed any paper to show that he had been working as sardar in the OP company and he **orally** reported the higher authority regarding absence of the deceased petitioner.

The OPW 4, Sailendra Kumar Singh has stated in his cross-examination that there is no paper to show that the OP company gave training to the deceased petitioner for his work in the Finishing Department of the OP company.

The OPW 5, Smt. Krishna Hazra has stated in her cross-examination that she has no knowledge about the contents of the papers filed by her in this Tribunal.

So considering the entire materials on record I find that the deceased petitioner was a permanent employee under the OP company but no disciplinary action was started against him and no domestic enquiry was held against him and no charge sheet containing allegation of absence from duty was made against him but by violating the Principle of Natural Justice and the Service Rules, the OP company terminated his service by a letter dated 19.03.2015 most illegally, arbitrarily and without any justification by holding that he himself had left and abandoned his service.

There is no cogent evidence on record to show that after termination of his service the deceased petitioner worked elsewhere for his gain and after death of the deceased petitioner the present substituted petitioners have been working elsewhere for their gain.

In this case the deceased petitioner has prayed for reinstatement of his service alongwith full back wages and other consequential reliefs but as the deceased petitioner has expired during pendency of this case, the substituted petitioners are not entitled to get an order of reinstatement in the service of the deceased petitioner, but the substituted petitioners are entitled to get full back wages and other consequential reliefs from 19.03.2015.

Admittedly the deceased petitioner was a permanent employee under the OP company and no disciplinary action was started against him by the OP company before terminating his service and accordingly the OP company had to comply Section 25-F of The Industrial Disputes Act, 1947 at the time of termination of service of the deceased petitioner on 19.03.2015 but there is no cogent proof to show that the OP company complied with the said mandatory provisions of Section 25-F of The Industrial Disputes Act, 1947 and accordingly I hold that the OP company has caused serious injustice and harassment to the deceased petitioner by deliberately violating Section 25-F of The Industrial Disputes Act, 1947.

Accordingly the OP company is directed to pay Rs. 100000/- as compensation to the substituted petitioners equally for violating Section 25-F of The Industrial Disputes Act, 1947.

According to Section 25-T of The Industrial Disputes Act, 1947, “*no employer or workman or a Trade Union shall commit any unfair labour practice and if done, he will be punishable with imprisonment for a term which may extend to 06(six) months or with fine which may extend to Rs. 1000/- or with both*”, according to Section 25-U of The Industrial Disputes Act, 1947.

The above conduct of the OP company sufficiently proves that in the colourable exercise of the employer’s rights and under the guise of the management policy, the OP company has victimised the deceased petitioner whimsically and illegally without any legal grounds by terminating his service most illegally though he was a permanent employee.

Hence, I hold that according to the *Fifth Schedule under The Industrial Disputes Act, 1947*, the OP company has committed

unfair labour practice to terminate the deceased petitioner of this case from service.

Section 25-U of The Industrial Disputes Act, 1947 is criminal in nature because it mentions about imprisonment and fine but in this case no criminal procedure is followed against the OP company for committing unfair labour practice upon the petitioner. Instead, the OP company is directed to pay compensation to the substituted petitioners for exercising unfair labour practice upon the deceased petitioner.

As the OP company has committed unfair labour practice to terminate the deceased petitioner of this case, the OP company is directed to pay Rs. 500000/- as compensation to the substituted petitioners equally.

The Industrial Disputes Act, 1947 was brought on the Statute Book with the object to ensure **social justice** to both the employer and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties and on the **Principle of Beneficial Legislation**, this Act has been created but in this case the OP company wilfully, whimsically and illegally has terminated the service of the deceased petitioner without any lawful excuse.

In view of the above discussions made on the above materials on record, I hold that the substituted petitioners are entitled to get full back wages alongwith consequential benefits from 19.03.2015.

Hence it is,

**ORDERED**

That the case no. 05/2015 under Section 2A(2) of The Industrial Disputes Act, 1947 is allowed on contest against the OP company with a compensation of Rs. 5,00,000/- and Rs. 1,00,000/- total

Rs. 6,00,000/- (Rs. Six Lakhs) to be paid to the substituted petitioners namely Salma Begam, Nawab Ansari, Arshi Sabha, Amirullah Ansari and Anwari Begam equally within 30 days from this date of order.

It is hereby declared that the order of termination dated 19.03.2015 passed by the OP company against the deceased petitioner is illegal, invalid, baseless and unjustified.

The OP company is directed to pay the full back wages alongwith consequential reliefs from 19.03.2015 till the date of payment with a compound interest of 10% per annum on the entire arrear amount of back wages and consequential reliefs to the substituted petitioners equally within 30 days from this date of order.

Let this Judgement and Order be treated as an Award.

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

The case is disposed of today.

Dictated & corrected by me.

Judge

(Shri P.S. Mukhopadhyay)  
Judge  
2<sup>nd</sup> Industrial Tribunal, Kolkata.