

I/584819/2024

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

No. Labr/ 1212 / (LC-IR)/22015(16)/7/2024

Date : 12-12-2024

ORDER

WHEREAS an industrial dispute existed between M/s. Ravi Foods Private Limited and their workmen Sri Krishanu Patitundi & 6 Others Represented by West Bengal Medical & Sales Representatives' Union, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947) ;

AND WHEREAS the workmen have filed an application under section 10(2A) of the Industrial Dispute Act, 1947 (14 of 1947) to the Second Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 21.07.1997 ;

AND WHEREAS the said Second Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 27.11.2024 in case No. VIII-04/2024 under section 10(2A) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide e-mail dated 03.12.2024 ;

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,



Assistant Secretary

to the Government of West Bengal

No. Labr/ 1212 /1(6)/(LC-IR)/ 22015(16)/7/2024

Date : 12-12-2024

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

1. M/s. Ravi Foods Private Limited.
2. Sri Krishanu Patitundi & 6 Others Represented by West Bengal Medical & Sales Representatives' Union.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO 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/ 1212 /1(3)/(LC-IR)/ 22015(16)/7/2024

Date : 12-12-2024

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal , N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 03.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.



Assistant Secretary

Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No. VIII- 04/2024

Under Section 10(2A) of The Industrial Disputes Act, 1947

Sri Krishanu Patitundi & 06 Others

Represented by West Bengal Medical & Sales Representatives' Union

Petitioner

Vs.

M/s. Ravi Foods Private Limited

Opposite Party

Date: 27.11.2024

J U D G E M E N T

This case has been received on reference from the Labour Department, West Bengal for disposal of the dispute under Section 10(2A) of The Industrial Disputes Act, 1947 between the abovementioned parties and the Labour Department has framed the following issues for adjudication:-

- 1. Whether the termination of service of 07 workmen namely Sri Krishanu Patitundi, Sri Manabendra Biswas, Sri Prabir Jana, Sri Parimal Rawani, Sri Priyokit Ghosh, Sri Debjyoti Chakraborty & Sanwar Hossain w.e.f. January*

2022 by the management of the M/s. Ravi Foods Private Limited, Sankrail, Kandua is justified

2. If not, what relief are they entitled to?

Record shows that after receiving the said reference, notices in Form No. D2 were served upon both sides and both sides attended this Tribunal for adjudication and on 09.09.2024 the Ld. Advocate of the OP company filed a petition praying for retiring from this case as the OP company did not make any contact with him and thereafter neither the OP company nor any other representative of the OP company appeared in this case and the OP company has not filed its written statement in this case and the petitioner already had filed their written statement, copy of which was served to the OP company and as the OP company did not appear later on, the case was heard *exparte* against the OP company.

The case of the petitioner, in short, is that the OP company operates two divisions namely Duke and Non-Duke for selling biscuits and confectionaries almost all over the country and the Sales Promotion Employees are appointed by the company issuing Offer Letters and holding interview.

The petitioner further submits that the OP company gave appointment to the 07 workers of the petitioner's Union by issuing offer letters by violating the Sales Promotion Employees (Condition of Service) Act, 1976 and according to the said Act, the OP company did not issue any appointment letters to those 07 workers to deprive of the benefits of bonus, provident fund, ESI and others and due to unemployment those workers were compelled to join the said company and performed their works with utmost sincerity and diligence but the OP company did not give them legitimate statutory benefits for which the said workmen repeatedly demanded the said benefits from the OP company and then the said workers formed one Council under WBMSRU and then being

furious for formation of the said Council, the OP company suddenly transferred workman Krishanu Patitundi from Kolkata to Hyderabad and then transferred rest of the said 07 workmen and then as the said workmen did not go on transfer, the OP company terminated their services and the OP company did not follow the statutory condition prior to retrenchment and then the Union referred the matter to the Labour Commissioner, Government of West Bengal but the matter was not settled and then this case has been referred by the Labour Department to this Tribunal for disposal and on these grounds the petitioner has prayed for reinstatement of the services of 07 workmen and setting aside the order of illegal retrenchment and payment of full back wages with consequential reliefs.

Decision with reasons

In order to prove the case the petitioner has examined himself as the PW1 and proved some documents.

In this case, one Sanwar Hossain is one of the workmen and he has claimed that he was an employee of the OP company and later on he was dismissed from service by the OP company but the petitioner has not produced and proved any document to show that said Sanwar Hossain was appointed by the OP company and then he was dismissed from service by the OP company.

The OP company has only proved one certificate as Exhibit- 04 series and that certificate was given by the proprietor of Raj and Company and in that certificate it is not mentioned that said Sanwar Hossain was an employee under the OP company and he was appointed by any offer letter by the OP company and this certificate issued by said Raj and Company **alone** cannot legally prove that the OP company appointed said Sanwar Hossain as employee by an offer letter.

Hence, I hold that the petitioner has not produced any offer letter and termination letter of Sanwar Hossain issued by the OP company and accordingly I hold that the petitioner has failed to prove that said Sanwar Hossain was appointed by the OP company by offer letter or appointment letter. Accordingly I hold that the said Sanwar Hossain is not entitled to get any relief as per claim of the petitioner in this case and the claim of Sanwar Hossain in this case is dismissed ex parte against the OP company.

The exhibited documents of this case show that the workman Krishanu Patitundi was appointed by an offer letter of the OP company on 01.01.2007 and he was dismissed from service by a letter of the OP company dated 03.01.2022 and other documents show that the OP company praised the performance of said Krishanu and gave him one special increment for outstanding performance and his salary was revised and he was promoted as Area Sales Executive and then by a letter dated 20.12.2021 by the OP company, he was transferred to Hyderabad from Kolkata and then by a letter dated 03.01.2022 he was dismissed from service as he did not obey the transfer order.

So it is clear that said Krishanu Patitundi worked from 01.01.2007 to 03.01.2022 and he was a permanent and promoted staff.

The exhibited documents of this case show that the OP company appointed worker namely Manobendra Biswas by one offer letter on 03.08.2015 as Territory Sales in-Charge and by email dated 07.01.2022 the OP company transferred him from Ranaghat to Bankura and then on 11.01.2022 the OP company asked him to give explanation regarding his work within 13.01.2022 but by a letter dated 10.01.2022 the OP company terminated his service and by email dated 11.01.2022 the workman requested the OP company to consider the said order of transfer.

So it is clear that from 03.08.2015 to 10.01.2022 this worker worked in the OP company.

The exhibited documents of this case show that the OP company appointed worker namely Parimal Rawani on 08.07.2019 as Territory Sales-in-Charge and by a letter dated 01.06.2020, the OP company terminated his service w.e.f. 01.07.2020.

The Offer Letter for Parimal Rewani mentions that his probation period was 06 months from 08.07.2019 but his termination letter mentions that he has been terminated w.e.f. 01.07.2020 i.e., after completion of the probation period and the termination letter only mentions that as his overall performance was not upto the expectations, he was dismissed by the OP company but the termination letter does not specifically mention the reason for not satisfaction of his overall performance.

The exhibited documents of this case show that the OP company appointed worker namely Prabir Kumar Jana on 21.06.2014 as Territory Sales-in-Charge but the petitioner Union has not produced the termination order of this worker and it is not possible to know when he was terminated from service but as by a verified petition the Union has claimed that he was also terminated from service and as the OP company has not contested this case, I hold that he was terminated from his service by the OP company.

The exhibited documents of this case show that the OP company appointed worker namely Priyajit Ghosh on 10.10.2019 as Territory Sales -in-Charge and by a letter dated 01.06.2020 the OP company terminated his service w.e.f. 01.07.2020 on the ground of unsatisfied overall performance but this termination letter does not mention the reason of unsatisfied overall performance and after completion of the probation period he was terminated from service.

The exhibited documents of this case show that the OP company appointed worker namely Debjyoti Chakraborti on 02.01.2020 as Territory Sales -in-Charge and by a letter dated 01.06.2020 the OP company terminated his service w.e.f. 03.06.2020 on the ground of unsatisfied overall performance but this termination letter does not mention the reason of unsatisfied overall performance.

The PW1, Sasanka Mouli Roy has deposed in this case by filing an affidavit-in-chief and he has deposed regarding the entire contents of the affidavit-in-chief before this Tribunal and he has proved some documents as Exhibit- 02 series to 04 series.

The evidence of the PW1 remains unchallenged because the OP company has not contested this case.

The abovementioned letters of termination issued by the OP company prove that without making any enquiry regarding the alleged circumstances as per the case of the OP company, the OP company has dismissed the services of all the abovementioned 06 workers whimsically and illegally and the OP company has not followed the *Principles of Natural Justice*.

In this case the OP company has given letter of offer to all the said workers for their appointment in the OP company and the OP company has not issued any letter of appointment to them and according to Section 5 of The Sales Promotion Employees (Conditions of Service) Act, 1976, the OP company has to mandatorily issue appointment letters to the employees concerned and according to Rule 22 (1) of The Sales Promotion Employees (Conditions of Service) Rules, 1976, Form- A has to be issued as the letter of appointment to the employees concerned and according to Section 9 of The Sales Promotion Employees (Conditions of Service) Act, 1976, for violation of Section 5 of this Act, the OP company has to be punished with fine.

So it is clear that the OP company has violated the mandatory provision of Section 5 of The Sales Promotion Employees (Conditions of Service) Act, 1976, and this is nothing but an example of unfair labour practice under the colourable exercise of the employer's rights.

The OP company did not comply with the conditions precedent to retrenchment of workman according to Section 25- F of The Industrial Disputes Act, 1947 at the time of termination of service of the said workers. Hence, I hold that the said six workers were not retrenched according to Section 25- F of The Industrial Disputes Act, 1947.

The Ld. Advocate for the petitioner has submitted the following decisions of the Hon'ble Supreme Court for consideration in this case :-

- i) *The Hon'ble Supreme Court has held in a case namely Narottam Chopra Vs. Presiding Officer as reported in 1988(36) BLJR page 636 that if the services of an employee are terminated in violation of Section 25-F of The Industrial Disputes Act, 1947, the order of termination is rendered ab initio void and the employee is entitled to continuity of service alongwith his back wages.*
- ii) *The Hon'ble Supreme Court has held in a case namely Promod Jha and Ors. Vs. State of Bihar and Ors. as reported in Indian Kanoon in case no. – Appeal(Civil 4157) of 2000 that payment of tender of compensation after the time when the retrenchment has taken affect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind would result in nullifying the retrenchment and compliance of clauses (a) & (b) of Section 25 strictly*

as per the requirement of the provision is mandatory and compliance with Clause (c) is directory.

- iii) *The Hon'ble Supreme Court has held in a case namely Anoop Sharma Vs. Executive Engineer, Public Health, Division No. 01, Panipath (Haryana) as reported in (2010)2 Supreme Court cases(L & S) page 63 that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) & (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.*
- iv) *The Hon'ble Supreme Court has held in a case namely Raj Kumar Vs. Dir. of Education and Ors. In Civil Appeal No. 1020 of 2011 reported in Indian Kanoon that the retrenchment of the appellant from his service is bad in law and the company is directed to reinstate the appellant at his post alongwith back wages and consequential benefits from the date of termination of service.*

So in view of the above decisions of the Hon'ble Supreme Court regarding non-compliance of Section 25-F of The Industrial Disputes Act, 1947 and in view of the materials on record of this case, I hold that the OP company has not complied with Section 25-F of The Industrial Disputes Act, 1947 at the time of retrenchment of the six workers.

As the OP company did not comply with Section 25-F of The Industrial Disputes Act, 1947, the OP company is directed to pay compensation of Rs. 1,00,000/- each to the abovementioned six workers

There is no cogent evidence on record to show that after termination of his service the six workers had been working elsewhere for their gain.

In view of the abovementioned decisions of the Hon'ble Supreme Court, the materials on record of this case and the abovementioned discussion on the basis of the materials on record, I hold that without any justified cause and without any fault of the six workers, the OP company terminated their services.

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 according to Section 25 U of The Industrial Disputes Act, 1947, for committing unfair labour practice 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.*"

The above conduct of the OP company sufficiently proves that by way of victimisation and not in good faith but in the colourable exercise of the employer's rights according to the *Fifth Schedule under The Industrial Disputes Act, 1947*, the OP company has committed unfair labour practice to terminate the six workers of this case.

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 six workers. Instead, the OP company is directed to pay compensation to the workers for exercising unfair labour practice upon the workers.

As the OP company has committed unfair labour practice to terminate the six workers of this case, the OP company has to pay Rs. 3,00,000/- each as compensation to the six workers.

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 services of the six workers without any lawful excuse.

In view of the above discussions made on the materials on record I hold that the said six workers have to be reinstated in their previous posts and as there is no proof to show that after termination of their services they used to work elsewhere for money, I hold that they are entitled to get full back wages alongwith consequential benefits.

Hence it is,

ORDERED

That the case no. VIII-04/2024 under Section 10(2A) of The Industrial Disputes Act, 1947 is allowed ex parte against the OP company with a compensation of Rs. 6,00,000/- (Rs. 1,00,000/ each to six workers) and Rs. 18,00,000 (Rs. 3,00,000/- each to six workers) total Rs. 24,00,000 (Twenty Four Lakhs) to be paid to the six workers by the OP company within 30 days from this date of order.

It is hereby declared that the orders of termination passed by the OP company against the six workers are illegal, invalid, baseless and unjustified.

The OP company is directed to reinstate the six workers namely Krishanu Patitundi, Manabendra Biswas, Prabir Kumar Jana, Parimal Rawani, Priyaji Ghosh and Debjyoti Chakraborty in their previous posts and previous places of work **immediately**.

The OP company is directed to pay the full back wages alongwith consequential reliefs from **the dates of terminationof the abovementioned workers** still 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 six workers 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
2nd Industrial Tribunal, Kolkata