

I/585887/2024

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

No. Labr/ 1224 / (LC-IR)/22015(16)/82/2024

Date : 13-12-2024

ORDER

WHEREAS an industrial dispute existed between M/s. SKS Microfinance Limited, having its Secunderabad Office at Maruti Mansion, 2-3-578/1, Kachi Colony, Nallagutta, Minister Road, Secunderabad – 500003 and Kolkata Office at Gobinda Bhawan (2nd Floor), Nayapatty, Salt Lake, Sector-V, Kolkata - 700102 and their workman Sri Sudip Mondal, Vill + P.O. – Kalidaspur, P.S. Gosaba, South 24 Parganas -743378, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947) ;

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Eighth 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 Eighth Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 04.10.2024 in case No. 04/2014 under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide e-mail dated 11.12.2024 ;

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/ 1224 /1(5)/(LC-IR)/ 22015(16)/82/2024

Date : 13-12-2024

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

1. M/s. SKS Microfinance Limited, having its Secunderabad Office at Maruti Mansion, 2-3-578/1, Kachi Colony, Nallagutta, Minister Road, Secunderabad – 500003 and Kolkata Office at Gobinda Bhawan (2nd Floor), Nayapatty, Salt Lake, Sector-V, Kolkata - 700102.
2. Sri Sudip Mondal, Vill + P.O. – Kalidaspur, P.S. Gosaba, South 24 Parganas -743378.
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/ 1224 /1(3)/(LC-IR)/ 22015(16)/82/2024

Date : 13-12-2024

Copy forwarded for information to :-

1. The Judge, Eighth Industrial Tribunal, N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 11.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary

In the matter of an industrial dispute between M/s. SKS Microfinance Limited, having its Secunderabad Office at Maruti Mansion, 2-3-578/1, Kachi Colony, Nallagutta, Minister Road, Secunderabad – 500003 and Kolkata Office at Gobinda Bhawan (2nd Floor), Nayapatty, Salt Lake, Sector-V, Kolkata - 700102 and their workman Sri Sudip Mondal, Vill + P.O. – Kalidaspur, P.S. Gosaba, South 24 Parganas -743378 has been initiated due to an application filed by Sri Sudip Mondal U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 against M/s. SKS Microfinance Limited as stated above. On the basis of both the written statements this Tribunal has framed the following issues on 07.04.2021 for the purpose of adjudication of the case.

Before the Eighth Industrial Tribunal: West Bengal
Present Sri Amit Chattopadhyay,
Judge,
Eighth Industrial Tribunal,
West Bengal.
A W A R D

Dated 04.10.2024

an industrial dispute between M/s. SKS Microfinance Limited, having its Secunderabad Office at Maruti Mansion, 2-3-578/1, Kachi Colony, Nallagutta, Minister Road, Secunderabad – 500003 and Kolkata Office at Gobinda Bhawan (2nd Floor), Nayapatty, Salt Lake, Sector-V, Kolkata - 700102 and their workman Sri Sudip Mondal, Vill + P.O. – Kalidaspur, P.S. Gosaba, South 24 Parganas -743378 has been initiated due to an application filed by Sri Sudip Mondal U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 1947 against M/s. SKS Microfinance Limited as stated above. On the basis of both the written statements this Tribunal has framed the following issues for adjudication of the case.

I S S U E (S)

- (1) Is the application filed by the applicant Sri Sudip Mondal maintainable in law?
- (2) Is the application maintainable under Section 10(1B)(d) of the Industrial Disputes Act, 1947 after the introduction of provision 2A(2) of the Industrial Disputes Act (Amendment) 2010?
- (3) Is the application suffers from Territorial Jurisdiction of the Learned Tribunal?
- (4) Is there any scope of condoning the delay in filing this application beyond the statutory period as prescribed in the Act?
- (5) Whether the whether the domestic enquiry initiated against the applicant is held to be valid or not?
- (6) Was the applicant on the Roll of the company on 04.07.2011?
- (7) Is there any scope of adjudication of the termination of service in absence of termination of service?
- (8) Whether the termination of service of the applicant by way of refusal of employment w.e.f. 04.07.2011 is justified?
- (9) To what relief, if any, is the applicant entitled to?

A proceeding under Section 10(1B)(d) initiated against the Company challenging the legality of the order of termination with effect from 04.07.2011 issued to Sri Sudip Mondal. Prior to Termination, Sudip Mondal was issued show cause notice dated 29.06.2011 incorporating therein the allegations leveled against him.

The allegations leveled against him in the said show cause notice dated 29.06.2011 are as follows:

“It has been observed that due care is not being taken by you while discharging your job responsibilities. Allegations of taking loan payout amount from the safe vault has been made against you along with other employees, which is a serious misconduct. In the safe vault of Ghatakpur Branch an amount of Rs. 5,03,395/- was kept on 24th June, 2011, but on last Mondal that is on 27th June, 2011 the total amount of Rs. 5,03,395/- was totally missing from the safe vault.

After verification by the local Police Station you were arrested along with others and taken into the Police Custody on 27th June, 2011 and you are taken produced in the District Court on 28th June, 2011 for hearing. As a responsible employee you are responsible for this. This act of yours is policy violation. This act of yours is a gross policy violation.

You are hereby informed that any procedural or behavioral lapse or both, on the part of any official of the Company while discharging the official responsibilities or any deviation from the Company Policies curing the same is a serious misconduct as per the rules and regulations of the Company.”

Sri Sudip Mondal was given opportunity to submit his explanation to the Show Cause Notice.

Since the concerned workman in his written statement had challenged the validity of the domestic enquiry instituted against him, as per the settled position of law, the said point has been taken as a preliminary point.

A notice of enquiry dated 08.07.2011 was issued to Sri Sudip Mondal fixing the date of Enquiry on 16.07.2011.

It appears that Sri Sudip Mondal did not reply to the Show Cause Notice dated 29.06.2011.

Sri Sudip Mondal did not attend the Enquiry and accordingly the Enquiry was held ex-parte. The reason of absence in the instant case is the enquiry to have been conducted ex-parte. An enquiry which is an ex-parte in nature is required to be adjudged on the touchstone of notice. In other words, it is to be considered whether the concerned person has got the constructive knowledge or the notice about the dates of the enquiry and whether in spite of his knowledge he did not co-operate with the Enquiry Officer by participating in the said enquiry. Recently this aspect has been considered by the Hon'ble Supreme Court in the case of SBI –vs- Hemant Kumar [JT 2011(4)SC 81] wherein the Hon'ble Court has held as follows:

“We are of the view that both the reasons assigned by the Tribunal for condemning the departmental enquiry as defective are completely untenable. The principles of natural justice cannot be stretched to a point where they would render the in house proceedings unworkable.”

In another judgment the Hon'ble Supreme Court had made it abundantly clear that if a person fails to appear in spite of notice, the Enquiry Officer is justified in holding the same to be ex-parte. Reference maybe made to the case of Chairman-cum-Managing Director, Coal India Ltd. & Ors. –Vs- Ananta Saha (JT 2011 (4) SC 252) wherein it has been held as follows:

“IN the instant case proceedings were held ex-parte against the delinquent as he failed to appear in spite of notice and such a course of Enquiry Officer was justified.”

Stands taken by Sri Sudip Mondal in his evidence before Learned Tribunal are contradictory besides being frivolous. The material portion of his evidence are reproduced below:

“I say that no Enquiry was held and the purported Enquiry, the Enquiry Officer acted as one-eyed man of the Management and gave me no adequate opportunity to defend myself against the false and fabricated charges as purportedly leveled against me.”(in chief).

His evidence further runs:

“I say that on Enquiry Report was every given to me however such a purported Report has been given to me by the Opposite Party along with the documents in this case on October 07, 2015 as such I was not given any opportunity was given to represent in respect of the same.” (in chief).

In his evidence he has further stated as follows:

“I say that no Domestic Enquiry was ever held and the purported enquiry as pleaded to have been held was in violationZ of law and the principles of natural justice.” (in chief).

Sudip Mondal prays that the domestic enquiry held to be invalid. He has admitted that he has received the Show Cause Notice dated 29.06.2011 from the Opposite Party Management and according to him, his signature is appearing on the Show Cause Notice (Exhibit-A).

Sri Sudip Mondal admitted that he has received the letter regarding Domestic Enquiry dated 08.07.2011 (Exhibit-B) and it bears his signature.

On the point of validity of Domestic Enquiry the Enquiry Officer O.P.W.-1 was examined and in her evidence she has stated that Sudip Mondal was given full opportunity to defend his case in the Enquiry.

She further stated that the Notice of Enquiry was issued to Sri Mondal to appear before the Enquiry but who did not attend the Enquiry Proceedings and the Enquiry was proceeded ex-parte.

The material portions of the Evidence of O.P.W.-1 are quoted below:

I. He was given all the opportunities to defend himself;

- II. Notice was issued against him to appear before the Enquiry process but he did not attend the Enquiry proceeding. The Enquiry was proceeded ex-parte.
- III. Applicant Sri Sudip Mondal did not explain his absence in Enquiry before me.
- IV. It is also not a fact that I violated principle of natural justice.

From the evidence of Sri Sudip Mondal this are emerged first, that there was no Enquiry' secondly, Sri Mondal has stated that The Enquiry Officer has acted as one-eyed man; thirdly, if there was no Enquiry the question of alleging the Enquiry Officer terminating him as one-eyed man does not arise; Fourthly, it is apparent that the evidence of Sudip Mondal are far from the truth; fifthly, if it is the contention that there was no Enquiry then there does not arise any question of illegality of Domestic Enquiry; sixthly, the stand taken by Sri Sudip Mondal are itself contradictory and false and presumptive.

The admitted situation are as follows:

- I) Sudip Mondal received the Show Cause Notice;
- II) Sudip Mondal received the Notice of Enquiry;
- III) Sudip ondal did not attend the Enquiry;
- IV) Sudip Mondal did not explain any reason in not attending the Enquiry.

In such a satiation the Enquiry Officer proceeded the Enquiry ex-parte.

It is an undisputed fact that Sri Sudip Mondal, the concerned workman in spite of having knowledge of the date or enquiry did not attend the proceedings without any cogent reason and as such the enquiry was held ex-parte. It is trite law that when the delinquent person did not attend the enquiry proceeding in spite of having knowledge, he cannot allege violate of principles of natural justice. Reference may be made to the case of Indra Bhanu Gaur – Vs- Committee, Management of M.M. Degree College and others (2003 ASCW 5959) wherein the Hon'ble Apex Court held as follows:

We find that there was total lack of cooperation from the appellant as the factual background highlighted above would go to show. Ample opportunity was granted to the appellant to place his case. He did not choose to do so. It is only person, who was ready and willing to avail of opportunity given can make a grievance about denial of any opportunity and not a person like the appellant who, despite repeated opportunities given and indulgence shown, exhibited defiance and total in difference in extending cooperation.

Therefore, on that score the appellant cannot having any grievance.”

In another case of pepsu Road Transport Corporation –vs- Rawel Singh [2208 (4) Scale1] the Hon'ble Apex Court held as flows:

“14.To us, it is not a case of not extending an opportunity to the employee but no availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the enquiry was vitiated being violated of natural justice.”

In the case of Board of Directors, H.P.T.C. and Another –Vs- K.C. Rahi (2008 LLR 449) the Hon'ble Apex Court has held as follows:

..... It would clearly show that he knew that a departmental enquiry was initiated against him, yet he chose not to participate in the enquiry proceedings at his own risk. In such event plea of principles of natural justice is deemed to have been waived and he is stopped from rising the question of non-compliance of principle of natural justice.

It is therefore respectfully submitted that Sri Sudip Mondal was afforded opportunities to present himself before the enquiry proceedings but he did not avail the same. Under this circumstances, specially considering the materials on record both oral and documentary the decision of the Enquiry Officer to hold the enquiry proceeding ex-parte cannot be held to be an unjustified one. The Enquiry Officer has given reason report / finding on a totality of the facts and circumstances the Management prays for an order holding the enquiry proceedings under consideration to be a valid one.

The workman Sudip Mondal filed a written notes of argument and submitted that upon prayer of the Opposite Party the Tribunal was pleased to hear issue No. 1 to 4.

1. Is the application filed by the applicant Sri Sudip Mondal maintainable in law?
2. Is the application maintainable u/s. 10(1B)(d) of the I.D. Act, 1947 after the introducing of the provision 2A(2) of the I.D. Act (Amended) 2010?
3. Is the application suffers from territorial jurisdiction of the Ld. Tribunal?
4. Is there any scope of condoning the delay in filing the application beyond the statutory period as prescribed in the Act?

Ld. Tribunal was pleased to hold the issue No. 1 to 4 in favour of the applicant in affirmative. Therefore, the question of maintainability of the case has got no leg to stand upon because of the fact that against the order of the Tribunal being order NO. 42 dated 16.02.2018 the Opposite Party M/s. Bharat Financial Inclusion Limited did not prefer any appeal against the order before the Hon'ble High Court, Calcutta. So the order passed by this Tribunal is binding upon the parties. Moreover, the Opposite Party did not submit anything or adduced any evidence that the case is not maintainable.

The applicant deals with point No. 5 to 7 of written notes of argument of applicant. He deals with Issues No. 2 which is "Is the application maintainable under Section 10(1B)(d) of the Industrial Disputes Act, 1947 after the introduction of provision 2A(2) of the Industrial Disputes Act (Amendment), 2010?"

The Industrial Disputes act, 1947 relates to matters as specified in Concurrent List of Constitution of India as such the both the sections viz. Section 10(1B)(d) and provision under Section 2A(2) are equally in vogue and as such the application of the applicant under Section 10(1B)(d) of the Industrial Disputes Act, 1947 is maintainable.

The issue No. 3, as framed, is "Is the application suffers from Territorial Jurisdiction of the Learned Tribunal?" The applicant submits that the Learned Eighth Industrial Tribunal has the

jurisdiction of South 24 Parganas. In Paragraph No. 3 of the amended written statement of the applicant it is stated that the applicant since his joining was posted continuously as Ghatakpukur Branch which is in the South 24 Parganas. Moreover, the applicant resides at Vill. & P.O. Kalidaspur, P.S. Gosaba, South 24 Parganas. Therefore, these two factors proves that this Learned Tribunal has jurisdiction to deal with this matter.

In W.P. No. 23859(W) of 2015; Shri Tapan Chatterjee Vs. The State of West Bengal & Ors. Honble High Court, Calcutta has held that if Kolkata extends to any District then the Tribunals of both the Districts will have concurrent jurisdiction. So, the conciliation machinery of Kolkata Jurisdiction will have jurisdiction of deal with this present case.

The issue No. 4, as framed relates to condonation of delay in filing this case. It is submitted that the time frame for filing of this case after receipt of Pendency Certificate is not mandatory and the delay in filling this case will not render the same as not maintainable and the delay may be condoned for the interests of justice.

I have carefully gone through the evidence of the parties as well as the order passed by this Court earlier vide order No. 42 dated 16.02.2018 wherein this Court have already decided the issue Nos. 1 to 4 in favour of the workman / applicant. Neither of the parties have preferred any appeal before the upper forum through the order passed by this Court is still existed because it was not set aside by any appellate authority. Now I have to see the issues no. 5 to 9 which speak as follows:-

- (5) Whether the whether the domestic enquiry initiated against the applicant is held to be valid or not?
- (6) Was the applicant on the Roll of the company on 04.07.2011?
- (7) Is there any scope of adjudication of the termination of service in absence of termination of service?
- (8) Whether the termination of service of the applicant by way of refusal of employment w.e.f. 04.07.2011 is justified?
- (9) To what relief, if any, is the applicant entitled to?

Here the question raised by the applicant Sudip Mondal regarding domestic enquiry but when he was shown the letter dated 08.07.2011 he admitted that he received this letter by signing which was marked Exhibit-B. He also admitted that he did not made any reply to the letters which has been marked Exhibit-A, B & C but voluntarily he stated that he admitted to give reply of Exhibit-C but O.P. Company refused the same. He also stated in his cross-examination that against the biased attitude of the Enquiry Officer he raised verbal objection but he did not file any written objection to that effect before the Enquiry Officer. He admitted he met Enquiry Officer and after the Enquiry he raised written objection against the proceeding against him before the management of the O.P. Company. He also admitted that he did not submit any written objection before the Enquiry Officer. Then says no written objection against the enquiry proceeding was submitted by him either before the management or the Enquiry Officer. He further admitted that he did not approach before the management in writing to hold enquiry against him afresh. He admitted that he is deposing in respect of the validity of domestic enquiry. He admitted that he did not send any letter to that effect that opportunities ought to have been

given by the Enquiry Officer to him to defend himself. He raised objection against the purported enquiry against him before the management after the enquiry.

O.P.W.-1 in her evidence stated that Sudip Mondal was given full opportunity to defend this case in the enquiry. Although, notice of enquiry was issued to Sudip Mondal to appear before the enquiry but he did not attend in the enquiry proceeding and the enquiry was proceeded ex-parte. The material points of the evidence of O.P.W.-1 are :-

- I. He was given all the opportunities to defend himself;
- II. Notice was issued against him to appear before the Enquiry process but he did not attend the Enquiry Proceeding. The Enquiry was proceeded ex-parte.
- III. Applicant Sri Sudip Mondal did not explain his absence in Enquiry before me.
- V. It is also not a fact that I violated principle of natural justice.

Considering the evidence and materials on record I am of the view that Sudip Mondal met enquiry officer but did not file any written objection against the biased attitude of the Enquiry Officer. So it is the gross negligence and derogatory attitude of Sudip Mondal in spite of receiving notice by putting his signature he did not face the domestic enquiry held by the Company. Therefore, the Company rightly terminated his service w.e.f. 04.07.2011.

In view of the above facts & circumstances the issues No. 5 to 9 are decided against the worker Sudip Mondal. Accordingly, it is held that the termination of service of the applicant Sri Sudip Mondal is justified and he is not entitled to get any other relief.

Accordingly, this case is disposed off on contest and this order is to be treated as an Award of this Tribunal.

Let the necessary number of copies of this judgment and award be sent to the Secretary, to the Government of West Bengal, Labour Department, New Secretariat Buildings, 12th Floor, 1 No. Kiran Shankar Roy Road, Kolkata – 700 001.

Dictated & Corrected by me

Judge

(Amit Chattopadhyay)
Judge
Eighth Industrial Tribunal,
Kolkata
04-10-2024

GOVERNMENT OF WEST BENGAL
 DIRECTORATE OF INDUSTRIAL TRIBUNALS
 NEW SECRETARIAT BUILDINGS
 BLOCK – 'A', 2ND FLOOR
 1, KIRAN SANKAR ROY ROAD
KOLKATA – 700001

Memo No. Dte./8th I.T./101/2024

Dated Kolkata, the 04-10- 2024

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From: Shri Amit Chattopadhyay,
 Judge,
 8th Industrial Tribunal,
 Kolkata – 1.

To : The Secretary to the
 Govt. of West Bengal,
 Labour Department,
 New Secretariat Buildings, 12th Floor,
 1, Kiran Sankar Roy Road,
 Kolkata – 700 001.

Sir,

I am sending herewith the Award passed in the matter of an industrial dispute between M/s. S.K.S Microfinance Limited, having its Secenderabad Office at Maruti Mansion, 2-3-578/1, Kachi Colony, Nallagutta, Minister Road, Secunderabad – 500003 and Kolkata Office at Gobinda Bhawan (2nd Floor), Nayapatty, Salt Lake, Sector-V, Kolkata - 700102 and their workman Sri Sudip Mondal, Vill + P.O. – Kalidaspur, P.S. Gosaba, South 24 Parganas -743378 has been initiated due to an application filed by Sri Sudip Mondal U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 against M/s. SKS Microfinance Limited being **Case No.04/2014 U/s. 10(1B)(d) of the I.D. Act, 1947** for information and necessary action.

Encl: As stated above.

Yours faithfully,

Judge,
 Eighth Industrial Tribunal,
 Kolkata
 04-10-2024