

I/470849/2024

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

No. Labr/. 21 . / (LC-IR)/ 11L-87/17

Date: 05/01/2024

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 1261/(LC-IR)/IR/11L-87/2017 dated 28/12/2017 the Industrial Dispute between M/s K LH Innoventures Ltd.(LESSEE of Urdu Daily AABSHAAR), 10, Government Place (East), Kolkata - 700069 and Md. Wajid, Asadullah Ansari, Munnam Parvez and Javed Akhter represented by Indian Journalists Association 249, Bepin Behari Ganguly Street, 1st Floor, Kolkata - 700012 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fifth Industrial Tribunal, West Bengal.

AND WHEREAS the said Fifth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 29/12/2023 in case no. VIII-01/2018 on the said Industrial Dispute vide memo no Dte/5th IT/163 dated - 29/12/2023.

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

ANNEXURE

(Attached herewith)

By order of the Governor,

Sd/-
Assistant Secretary
to the Government of West Bengal

1/470849/2024


(2)

No. Labr/ 21/1(5) (LC-IR)

Date: 05/01/2024

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

1. M/s K LH Innoventures Ltd. (LESSEE of Urdu Daily AABSHAAR), 10, Govt. Place (East), Kolkata - 700069.
2. Md. Wajid, Asadullah Ansari, Munnam Parvez and Javed Akhter, C/o. Indian Journalists Association 249, Bepin Behari Ganguly Street, 1st Floor, Kolkata - 700012.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Assistant Secretary

No. Labr/ 21/2(2) (LC-IR)

Date: 05/01/2024

Copy forwarded for information to:

1. The Judge, Fifth Industrial Tribunal, West Bengal with reference to his Memo No.Dte/5th IT/163 dated - 29/12/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.


Assistant Secretary

Before the 5th Industrial Tribunals, Kolkata

Case No. VIII-01/2018

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

M/s. KLH Innoventures Ltd.
(LESSEE of Urdu daily AABSHAAR),
-VS-
Md. Wajid,
Asadullah Ansari,
Munnam Parvez.

A W A R D D A T E D , 29/12/2023



This Industrial Dispute between M/s. KLH Innoventures Ltd. (LESSEE of Urdu daily AABSHAAR), 10, Govt. Place (East), Kolkata – 700069 and its workmen, Md. Wajid, Asadullah Ansari, Munnam Parvez and Javed Akhter represented by Indian Journalists Association 249, Bepin Behari Ganguly Street, 1st Floor, Kolkata- 700 012 has been referred by the Labour Department, Labour Commissionarate (I.R.) Branch, N.S. Buildings, 12th Floor, 1, K.S. Roy Road, Kolkata – 700001, to the 7th Industrial Tribunal Vide No. Labr./1261/(LC-IR)/IR/11L-87/17 , dated Kolkata, the 28th December, 2017 under Notification No.3115-IR/IR/3A-6/59, dated 21/06/1960, for adjudication upon the under-mentioned following issues. Thereafter, the case record again transferred before this Tribunal Vide G. O. No. Labr./699/(LC-IR)/23099/15/2019, dated 26/07/2019 for the purpose of adjudication.

ISSUES

- (1) Whether the termination of service of Md. Wajid, Asadullah Ansari, Munnam Parvez and Javed Akhter by way of refusal of employment w.e.f. 08.11.2014 by the management of M/s. KLH Innoventures Ltd. (LESSEE of Urdu daily AABSHAAR), is justified?
- (2) What relief, if any, the workmen are entitled?

Initially after receiving the reference from the Government the Ld. Judge of the 7th Industrial Tribunal at issued notice to both the parties for their appearance but continuous non-appearance of the parties the then Ld. Judge of the 7th Industrial Tribunal had disposed of the case on 06.06.2018 by passing a no dispute award. Thereafter, the aggrieved workmen had appeared before this Tribunal and filed a Misc. Case No.VIII-01/2018 and after hearing the contents of the workmen of this case the then Judge of the Ld. 7th Industrial Tribunal had allowed said Misc. case by restoring the original case in its own file. Due to non-appearance of the OP/Company the case was finally fixed for ex-parte hearing on 03.06.2019. Thereafter, the case record was transferred before this Tribunal by the then Ld. Judge of the 7th Industrial Tribunal vide Order No. 16 dated 01.08.2019. This Tribunal also issued notice to both the parties for their appearances. The workmen appeared before this Tribunal on 02.09.2019 but none was appeared on behalf of the Company on that day as well as on the next date i.e. on 07.11.2019 and also no


Q. Akhter
29.12.2023
Judge,
5th Industrial Tribunal,
Govt. of West Bengal

(2)

step was taken on behalf of the Company for which Ld. Predecessor of this Tribunal had fixed the case for ex-parte hearing on 09.12.2019. Hence the case proceeded ex-parte against the Company.

The brief facts of the written statement of the workmen represented by the Indian Journalist Association which is as follows:-

That the present workmen of this case were the employee of the present O.P. Company in different capacity such as Reporters and Calligraphers and they were in service on and from 14.01.2000, 01.10.2000, 01.10.2000 and 01.06.2011 respectively and they were the members of the Indian Journalist Association having its office at 249, Bepin Behari Ganguly Street. All the aforesaid four workmen were summarily terminated from their job by the Management of the Company on 07.11.2014 without complying any provision of law. That the Union referred above by its letter dated 21.05.2015 reported the entire facts to the Deputy Labour Commissioner. It has been reported by them that the presence of Union was very much known Md. Nezamuddin the previous Management of AABSHAAR known as Lessor as mentioned in the indenture of lease dated 11.05.2013. The Management had asked the aforesaid employees to file alternative employment and payment will not be made after October 2014 and in fact the Management had refused the employment of all the employees and admitted that due to financial loss they refused the employment. The above statement of the Management is not correct and the newspaper- AABSHAAR is publishing daily since November 2014 with newly appointed persons which is clear instance of victimization to deprive the employees from their trade union guides and legal dues payable as per law. The Management is running the establishment which total disregard to the Industrial Disputes Act as well as the Shops & Establishment Act. In the indenture of lease dated 11.05.2013 in its Clause -6 it has mentioned that the lessee herein agree to absorb the existing staffs of the lessor with the condition that there will be no brake of service of the existing staffs which is bad in law. It is also the case of the present union that the allegation made in Company's letter dated 19.02.2015 are totally false. In the lease agreement dated 11.05.2013 it is clearly mentioned that the employees are permanent employees and cannot be terminated verbally in view of the same. The present workmen were verbally terminated from their service on 07.11.2014 by the Management which was effected on 08.11.2014, and accordingly the concerned workmen faced illegal termination in violation of Section 25F of the Industrial Disputes Act. The Company never issued any charge-sheet against the present workmen for which they did not get any opportunity to rebut the management's case and no domestic enquiry took place against them. The workmen had intimated the dispute to the Indian Journalist Association on 08.11.2014 on which the Association by a letter dated 08.01.2015 intimated the fact to the Hon'ble Minister-in-Charge. Thereafter, the Association moved the matter before the Labour Commissioner by a letter dated 16.02.2015. The Management of the Company by their letter dated 19.02.2015 admitted the fact that they had terminated the workmen as it was not possible for them to continue their business function and finally the Management by their letters dated 18.08.2015 and 16.06.2016 addressing to the Deputy Labour Commissioner and Assistant Labour Commissioner by admitting the fact that they had not taken any initiative to withdraw their stand of terminating policy of the workmen. The Association by


29.12.2023
Judge,
5th Industrial Tribunal
Govt. of West Bengal

their letter 23.08.2016 rebutted the Company's earlier representation and by a letter dated 20.12.2016 jointly signed by the concerned workmen addressing to the Company's Editor by asking him to take back them in the job after releasing all back wages but unfortunately by a letter dated 14.04.2017 the Management raised some false and fictitious claim by passing its earlier stand with regard to illegal termination of service. The conciliation proceeding took place on several times but failed due to the dubious act of the Management for which the conciliation officer sent its failure report to the appropriate Government and the same were referred before the Ld. Tribunal. Now, by filing this written statement the concerned workmen pray for passing an award setting aside the order of termination given on 07.11.2014 with effect from 08.11.2014 and also pray for reinstatement of the concerned workmen with full back wages along with other consequential relief.

It appears from the case record that the Opposite Party i.e. the Management of M/s. KLH Innoventures Ltd. after receiving of both the Tribunals did not appear before any other Tribunal and in spite of availing so many chances they did not turn up in this case for which the predecessor of this Tribunal was pleased to fix the case for ex parte hearing vide its order No. 19 dated 07.11.2019.

One Md. Wajid, one of the petitioners workman of this case has deposed in this case as P.W.-1 and one Mr. Shekhar Sengupta deposed as P.W.-2 and no other witnesses has been adduced evidence on behalf of the workman.

The letter dated 08.11.2014 is marked as Exhibit-1, copy of letter dated 08.01.2015 is marked as Exhibit-2, receipt copy of letter dated 16.02.2015 is marked as Exhibit-3, copy of Memo No. 277/4/15/LCC, dated 10.03.2015 is marked as Exhibit-4, copy of another letter 21.05.2015 is marked as Exhibit-5, copy of another letter dated 16.06.2016 is marked as Exhibit-6, another receipt copy of letter dated 23.09.2016 is marked as Exhibit-7, copy of another letter dated 20.12.2016 is marked as Exhibit-8, another letter 25.07.2017 vide its Memo No. 2083/4/15/LC/KOL (C) is marked as Exhibit-9, another receipt copy of letter dated 09.01.2017 is marked as Exhibit-10, another letter dated 09.08.2017 addressing to Mr. Irshadul Haque is marked as Exhibit-11, copy of Identity Cards of Md. Wajid are marked as Exhibit-12 and 12/A, copy of another Identity Card dated 17.01.2002 of Md. Wajid is marked as Exhibit-13, copy of 3 (three) certificates dated 21.12.2013, 21.07.2009 and 23.07.2008 are marked as Exhibit-14, 14/A and 14/B respectively and the copy of Statement of Provident Fund of Md. Wajid for the year 2011-2012 and of Munam Parvez for the year 2011-2012 and 2001 are collectively marked as Exhibit-15, 15/A and 15/B respectively.

One Mr. Shekhar Sengupta, the General Secretary of the Indian Journalist Association deposed as P.W.-2 and he has proved the letter dated 02.12.2015 duly written by him addressing to the then Deputy Labour Commissioner, N.S. Buildings, Kolkata, which has been marked as Exhibit-16.

P.W.-1 also adduced evidence on recall on 2 (two) dates i.e. on 23.11.2022 and on 07.07.2023 where he has proved one letter dated 19.02.2015 (Exhibit-17) and photocopy of Memo No. 989/4/15/14-LCC dated 17.09.2015 (Exhibit-18) and another photocopy of Memo

Qahm
29.12.2023
Judge,
5th Industrial Tribunal,
Govt. of West Bengal

No. 2083/4/15/LC/KOL. (C) dated 25.07.2015 (Exhibit-18/A). He also proved three photocopies of newspaper named AABSHAAR dated 14.06.2017, 20.07.2017 and 05.07.2018 (Exhibit-19, 19/A and 19/B respectively) and also proved nine photocopies of subscription receipts dated 29.12.2020, 29.12.2020, 29.12.2020, 27.12.2022, 27.03.2022, 08.02.2020, 18.03.2015, 31.01.2008 and 31.01.2005 issued by the then General Secretary of Indian Journalist Association in favour of Munnam Purvez, Md. Wajid and Asadullah Ansari (Exhibit-20) series, photocopy of two Aadhaar Cards of Md. Wajid and of Munnam Purvez collectively marked as Exhibit-21 series, three photocopies of Identity Cards duly issued by Indian Journalist Association are collectively marked Exhibit-22 series.

PW-1 also deposed on recall again on 28.12.2023 and proved the document i.e. the indenture of lease dated 11th May 2013 which has been marked as Exhibit-23.

It appears from the case records that the applicant No. 4 i.e. Javed Akhtar did not turn up in this case, so no relief has been applicable to him and the contesting workmen never stated that they are also contesting this case on behalf of the 4th workman namely Javed Akhtar. Moreover the present contesting workmen in their petition dated 30.10.2023 has been categorically stated to delete the name of the fourth workman namely Javed Akhtar from the record of the proceeding. Therefore, this Tribunal will not pass any effective order in respect of the workman namely Javed Akhtar.

Ld. Advocate on behalf of the applicant union has filed his written notes of arguments where it has been stated that the present case arose with the reference of the Government order No. Labr./1261/(LC-IR)/IR/11L-87/17, dated Kolkata, the 28th December, 2017 where the name of the present O.P. in the case i.e M/s. KLH Innoventures Ltd. LESSEE of Urdu Daily AABSHAAR and the name of the workmen including Javed Akhtar are present.

It is also argued by the Ld. Advocate for the workmen that the present applicants used to work in M/s. KLH Innoventures Ltd. as Kaligrapher and were employee there since 04.01.2000, 01.10.2000 and 01.10.2000 respectively till they are terminated from their service and they are also the members of the union namely Indian Journalists Association. These workmen suddenly terminated from their jobs by the Management of the Company on 07.11.2014 without complying any statutory provision of law and the union by their letter dated 21.05.2015 at narrated the entire facts to the Deputy Labour Commissioner. The Management has asked the workmen to find alternative employment immediately and also stated that payment will not be made to them after October 2013. The Management admitted the fact of refusal of employment of the present workmen due to financial reason. The present workmen asked assistance of the union by their letter dated 08.11.2014 against which the union by its letter dated 08.11.2015 addressed the grievances before the Minister-in-charge of the Government of West Bengal. The Management by its letter dated 19.02.2015 specifically admitted the fact of termination of the workmen and also by their letter dated 16.06.2016 addressing to the Assistant Labour Commissioner expressed to the fact of settlement of dispute with ex-employees and thereby admitted the fact of termination of the present workmen. Since the Management of the O.P. Company never challenged the dispute of the workmen pending before this Tribunal, hence the demand of the present workmen are proved and the present workmen are entitled to get their

Kalmr
29.12.2023
Judge,
5th Industrial Tribunal,
Govt. of West Bengal

(5)

relief as prayed for. Ld. Advocate for the workmen relies upon the decision reported in (2013) 10 Supreme Court Cases 324.

This Tribunal has gone through the reference order of the Government and also gone through the written statement and the evidence both oral and documentary of the applicant union and the documents exhibited by them and the written notes of arguments filed on behalf of the union.

Admittedly the present O.P. Company did not file any written statement on their behalf and also not contested the present case. On the contrary one of the workmen namely Md. Wajid has deposed in this case on behalf of the workmen as PW-1 and one Mr. Sekhar Sengupta, the General Secretary of the Indian Journalist Association has deposed in this case as PW-2. PW-1 Md. Wajid has proved the workmen case on behalf of the three workmen i.e. for himself and also for Munnam Purvez and Asadullah Ansari and he also proved several documents in support of their case from which it reveals that all the present three workmen were the employees' of the O.P. Company and they were doing the job of calligraphers. Now from Exhibit- 12/A it reveals that Md. Wajid was an employee of the newspaper namely daily AABSHAAR from Exhibit-13 it also reveals that one certificate was issued by the Editor of AABSHAAR in favour of Md. Wajit on 17.01.2002 declaring him as a calligrapher in their office. Thereafter, it reveals from Exhibit-14 that said Md. Wajid was working as a reporter of AABSHAAR and said Exhibit-14 is a certificate issued by AABSHAAR on 21.12.2013. From another documents which is a photocopy of identity card issued by AABSHAAR in favour of Munnum Parvez it reveals that Munnum Parvez was a calligrapher in that concern and it further reveals that Exhibits 15/A & 15/B which are the Employee Provident Fund Statement of Munnum Parvez for the year 2011-2012 and for year 2012-2013 from which it reveals that the name of the employer was AABSHAAR. From the photocopy of another document it reveals that Asadullah Anshari was also an employee of AABSHAAR. From Exhibit-17 which is a photocopy of the letter dated 19.02.2015 duly written by authorized signatory addressing to the Labour Commissioner it reveals that the O.P. Company has admitted that due to continuous and mounting financial losses it will not possible for them to continue the business and beyond October 2013 it would be not possible for them to pay salary to the employees and the employees were also requested to find alternative employment. From Exhibit-17 it is clear that all the present workmen were terminated from their job. From Exhibit-23 that is the indenture of lease dated 11th May 2013 it is clear before this Tribunal that the present OP, KLH INNOVENTURES Ltd. is a lessee who took the lease of the Urdu Morning Daily, AABSHAAR from the lessor i.e. Democratic Forum for National Integration and in paragraph-6 page- 4 of said indenture of lease dated 11th May 2013 it has been clearly mentioned that the lessee i.e. KLH INNOVENTURES Ltd. agreed to absorb the existing staff of the lessor which has been described in the schedule-B of said indenture of lease. From schedule-B of said indenture of lease dated 11th May 2013 it reveals that the present workmen were the staff of the lessor.

Sahw
29.12.2023

Judge,
5th Industrial Tribunal
Govt. of West Bengal

Now as per Section-2(oo) of the Industrial Disputes Act 1947, the terms "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 all reaching the age of superannuation if the contract of the employment between the employer and the workman concern 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 stipulation in that behalf contain therein ; or
- c) termination of the service of the workman on the ground of continued ill- health.

Admittedly in the present case none of the above grounds are applicable for the present of the workmen for termination of their service.

Now Section-25F of the Industrial Disputes Act 1947 which stipulates the conditions precedent to retrenchment of workmen which are as follows:-

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 of compensation which shall be equivalent to 15 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 [for such authority as may be specified by the appropriate Government by notification in the official gazette].

From the written statement of the present union which are represented by the present three applicant workmen it reveals that the O.P Company did not comply the provisions either of Section-2(oo) of the Industrial Disputes Act 1947 nor it complies the provisions of Section-25F of the said act. Admittedly the O.P. Company did not contest the present case by filing any written statement. Therefore, at present it is ascertain from the written statement of the present workmen as well as from their evidences both oral as well as documentary that the present three workmen were terminated from their service without following the provisions of Section-2(oo) or Section-25F of the Industrial Disputes Act 1947.

Accordingly, in the light of the above discussion this Tribunal finds and holds that the present workmen namely Md. Wajid, Asadullah Ansari and Munnum Parvez who are represented by Indian Journalist Association have been successfully able to prove their case by adducing ex-parte evidences and present case is decided in favour of the workmen namely Md. Wajid, Asadullah Ansari and Munnum Parvez on ex-parte against the O.P. Company i.e. M/s. **KLH** Innoventures Ltd. (LESSEE of Urdu Daily AABSHAAR).

Dalme
29.12.2023

Judge,
5th Industrial Tribunal
Govt. of West Bengal

Hence,

ORDERED

that both the issues are decided in favour of the workmen Md. Wajid, Asadullah Ansari and Munnum Parvez on ex parte but without cost. It is held by this Tribunal that the termination of service of Md. Wajid, Asadullah Ansari and Munnum Parvez was illegal, invalid, arbitrary and unjustified and the same is quashed and it is also held that the workmen namely Md. Wajid, Asadullah Ansari and Munnum Parvez are entitled to be reinstated in their services with full back wages/additional wages and also with other consequential benefit arising there from w.e.f. the date of their illegal termination. Accordingly the Management of M/s. **KLH** Innoventures Ltd. (LESSEE of Urdu Daily AABSHAAR) is hereby directed to reinstate the aforesaid workmen namely Md. Wajid, Asadullah Ansari and Munnum Parvez in their posts w.e.f. 08.11.2014 and the Management of **KLH** Innoventures Ltd. (LESSEE of Urdu Daily AABSHAAR) is also hereby directed to give their arrear salaries along with other consequential benefits immediately as early as possible. This order and direction of this Tribunal is in view of the order of the reference having No. . Labr./1261/(LC-IR)/IR/11L-87/17 , dated Kolkata, the 28th December, 2017 under Notification No.3115-IR/IR/3A-6/59, dated 21/06/1960, duly signed by the then Assistant Secretary to the Government of West Bengal, Labour Department, Labour Commissionerate (I.R) Branch, N.S. Building, 12 Floor, 1 No. Kiran Sankar Roy Road, Kolkata-700 001, and this order to be treated as an award of this Tribunal on ex parte. There is no order to cost.

It is also directed that necessary number of copies of this judgement and award be sent to the Ld. Additional Chief Secretary, to the Government of West Bengal, Labour Department, N.S. Building, 12 Floor, 1 No. Kiran Sankar Roy Road, Kolkata-700 001.

Dictated & Corrected by me

[Signature]

Judge
Fifth Industrial Tribunal
Dated:29.12.2023

Judge,
5th Industrial Tribunal
Govt. of West Bengal

Kaunal Saman

Judge
Fifth Industrial Tribunal
Kolkata
Dated; 29.12.2023

Judge,
5th Industrial Tribunal
Govt. of West Bengal

