

Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No. VIII- 44/2013

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

Sri Ram Kumar Bhuiyan

Petitioner

Vs.

M/s. Ludlow Jute & Specialities Limited

Opposite Party

Date: 17.12.2024

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 dismissal of Sri Ram Kumar Bhuiyan by the Management*

of M/s. Ludlow Jute & Specialities Limited w.e.f. 27.09.2010 is justified.

2. *If not, what relief is he entitled to?*

The case of the petitioner, in short, is that in 1986 he was appointed in the OP company as Labourer and he was allowed to do clerical nature of job alongwith his manual work as machine operator in the spinning department and he was also allowed to perform the duties of the time-keeper from 2008 but his pay slips indicate his designation as clerk and as the time-keeper he used to record the attendance of the contract labourers and the workmen of the mill in the spinning department in "A" shift, "B" shift and "C" shift and daily he used to record attendance of about 350 heads in "A" shift, about 270 heads in "B" shift and about 230 heads in "C" shift and during discharging his duties he had to rely upon the other workmen engaged in the shift as per usual practice but the OP company issued one vague chargesheet against him to victimise him and the petitioner never admitted any allegation in the chargesheet and he was not provided opportunities to offer statement for his defence due to non-supply of the alleged documents and on the alleged date the petitioner marked '*Hazira*' of one N. Dusanta Rao and some other workmen on the basis of version of the workmen who were present there and the *Sardar* and without holding any domestic enquiry and without giving the workman to give proper opportunities to defend his case the OP company dismissed him from service by a letter dated 27.09.2010 on false allegations and then the petitioner referred the matter to the Assistant Labour Commissioner for conciliation and the OP company attended the said conciliation hearing and then the Labour Department referred the case to this Tribunal for adjudication of dispute and the petitioner has no source of income to maintain himself and his family and he was not gainfully employed elsewhere after his termination. Hence, the petitioner has filed this case praying for declaration that the dismissal order dated 27.09.2010 is illegal and unjustified and he has prayed for reinstatement with full back wages and other consequential benefits.

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 in 1986 the petitioner worked as a trainee in the spinning department of the OP company and on 17.03.1987 he was employed as a casual worker and he was promoted to a clerk in 2009 and posted as time-keeper and since then he used to work as the time-keeper only and it was his duty to record the attendance of the workmen in the daily attendance register and after receiving chargesheet from the OP company the petitioner submitted his reply and he was dismissed from service on 27.09.2010 for his misconduct and all the allegations of the petitioner are totally false.

Hence, the OP company has prayed for dismissal of the case.

Decision with reasons

Issue nos. 1 & 2

Both the issues are taken up together for the sake of convenience.

In order to prove the case the petitioner has examined one witness and proved some documents while the OP company has examined three 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 examination of the witnesses has been started on 15.02.2016 when the OP company examined witness namely Debabrato Bhowmick. So it is clear that from 15.02.2016 examination of the witnesses has started 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.

In this case the petitioner has examined himself as the PW1 and he has filed his affidavit in chief in respect of his evidence but the OPW1 to the OPW No. 03 have not filed their affidavit in chief in respect of their evidences in chief in this case but deposed in this case.

As the OPW 1 to the OPW3 have not filed their affidavit in chief, 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 Code of Civil Procedure, 1908 and Rule 24 of the West Bengal Industrial Disputes Rules, 1958.

However, the OPW1 to the OPW3 have proved some documents in their examination in chief and they have been cross-examined and such type of evidences of the OPW1 to the OPW3 will be considered legally in this case.

Admittedly the petitioner was the permanent worker of the OP company at the time of his dismissal and since 1986 till his dismissal on 27.09.2010, he had worked in the OP company.

The main allegation of the OP company against the petitioner for his dismissal from service is that the petitioner used to work as the time-keeper also at the relevant time and he had to mark the attendance of all the workmen in the attendance register in the OP company but on 15.08.2010 he marked attendance of one worker namely N. Dusanta Rao in the attendance register though he was absent on that date and he also made some wrong time of work of said N. Dusanta Rao on different dates in the attendance register.

The OP company has proved one Charge sheet dated 19.08.2010 against the petitioner and this chargesheet shows that on that date he was suspended and he was asked to show cause as to why disciplinary action will not be taken against him according to the standing order.

The OP company has also proved the letter dated 20.08.2010 sent by the petitioner praying for time for filing show cause and by letter dated 21.08.2010 the OP company gave him time for filing show cause.

Then the OP company has also proved one letter dated 02.09.2010 sent to the petitioner for giving reply in respect of some questions as mentioned in that letter and the OP company has proved one letter dated 04.09.2010 sent by the petitioner praying for time for giving reply and by a letter dated 05.09.2010 the OP company gave him time of 72 hours for giving said reply and the OP company has proved another letter dated 07.09.2010 sent by the petitioner to the OP company praying for time for giving reply and by letter dated 14.09.2010 the OP company informed him that his prayer for time cannot be accepted.

The OP company has proved one letter dated 27.09.2010 to show that as the petitioner admitted the charges, there is no necessity to hold any domestic enquiry and accordingly by this letter the OP company dismissed him from service from 27.09.2010.

According to law, there is a difference between chargesheet and charge, and in chargesheet the allegations *in toto* are explained but in the articles of charges, every allegation with date, time and place of offence have to be specifically mentioned and how the said allegations have been committed and the concerned violation of the service rules or standing order in respect of each allegations has to be mentioned specifically and clearly so that the offender may easily understand the allegations completely to give reply to the said charges.

In this case the OP company has produced only the chargesheet dated 19.08.2010 but has not produced and proved any charges labelled against the petitioner and in order to start any departmental enquiry or any other enquiry, the said articles of charges have to be given to the offender but in this case no such steps has been taken by the OP company against the petitioner, and this is a serious defect in the case of the OP company in respect of the dismissal of the petitioner.

In the dismissal order dated 27.09.2010, the OP company has mentioned that as the petitioner has admitted the **charges** against him labelled by the OP company, there is no necessity to hold any domestic enquiry against the petitioner and accordingly on 27.09.2010 the OP company dismissed the petitioner from his service.

So the OP company has claimed that as the petitioner admitted the charges labelled against the petitioner by the OP company, the OP company has dismissed him on 27.09.2010 **but in this case the OP company has not produced any oral or documentary evidence or reply of the petitioner to show that the petitioner himself admitted the charges labelled against him by the OP company.**

The OP company has also not proved any document to show that in writing the petitioner admitted the chargesheet dated 19.08.2010 labelled by the OP company against the petitioner. Moreover, even the petitioner had admitted the chargesheet in writing, the OP company could not dismiss him from service legally because admission of the chargesheet by the offender has no legal value and it is to be seen as to whether the offender has admitted the charges labelled legally against the offender by his employer.

So it is proved that the OP company has not produced any document to show that the petitioner admitted the charges or chargesheet labelled against him in writing.

The OPW, Debabrata Bhowmick has stated in his cross-examination that the alleged incident took place on 15.08.2010 and he does not know the written statement of the OP company and the contents of the chargesheet and he cannot say if any domestic enquiry was held after filing of the chargesheet against the petitioner and there is no document to show that the enquiry proceedings and enquiry reports were given to the petitioner and he cannot say at all if any opportunity of personal hearing was given to the petitioner before his dismissal.

All the above cross-examinations of this witness for the OP company are against the case of the OP company.

The OPW Prakash Manna has stated in his cross-examination that no domestic enquiry was conducted by the OP company against the petitioner and before issuing the chargesheet the OP company made one preliminary enquiry against the petitioner but the chargesheet does not mention that any enquiry was conducted against the petitioner and the OP company has not filed any document regarding said preliminary enquiry.

The OP company has not produced any evidence to show that during the said alleged preliminary enquiry the petitioner himself was present and he was given opportunity to defend himself.

This OPW Prakash Manna has further stated in his cross-examination that the OP company has not filed the reply made by the petitioner in this Tribunal.

All the above cross-examinations of the above witnesses namely Manna are against the case of the OP company.

The OP company has proved some letters issued by the petitioner to the OP company praying for time but the OP company has not produced and proved any reply given by the petitioner to the OP company in respect of the allegations of the OP company and **most importantly the OP company has not produced any document in this case to show that the petitioner himself admitted the chargesheet or charges labelled by the OP company against him.**

As the OP company has mentioned in its dismissal order dated 27.09.2010 that as the petitioner himself admitted the chargesheet the OP company dismissed him from his service, so proof of the said written admission of chargesheet by the petitioner is a must to be proved in this case according to the claim of the OP company but the OP company has not proved the said written admission of the petitioner in this case.

Accordingly, I hold that the said dismissal order dated 27.09.2010 is totally illegal, invalid, unjustified, whimsical, and arbitrary and it cannot be relied upon at all legally.

The petitioner of this case as the PW1 has filed his affidavit in chief and proved some documents and in his affidavit in chief he has stated about the contents of his written statement filed in this case and in his cross-examination he has stated that at present he does not do any work elsewhere and his two sisters help him to run his family at present and sometimes he works as a helper of some persons.

There is no important answers of the petitioner in his cross-examination which can vanish the case of the petitioner.

In his written statement the petitioner has stated that after dismissal of his service he had no source of income to maintain himself and his family and he

was not gainfully employed at any point of time in any place after his dismissal and in his affidavit in chief he has stated that he has no source of income after his dismissal he was not gainfully employed elsewhere and has been suffering from severe economic crisis as there is no scope to earn money for maintaining himself and his family members and in his cross-examination he has stated that at present he does not do any work elsewhere and his two sisters help him to run his family and sometimes he works as helper of some persons.

So he has pleaded and proved that after his dismissal, he was not gainfully employed anywhere but in his cross-examination he has stated that **sometimes he works as helper of some persons.**

So in his cross-examination the petitioner has stated that **sometimes he works as helper of some persons** but the OP company has not cross-examined him further to know whether he works daily as helper of some persons or what amount he gets as helper of another persons or whether that amount is sufficient to maintain himself and his family or whether that amount per month was like the equal amount which he used to get as wages/salary per month from the OP company.

So this statement of the petitioner in his cross-examination to the point that sometimes he works as helper of some persons cannot be conclusively accepted to prove that he was gainfully employed after dismissal of his service.

So from the abovementioned materials on record it is proved that the OP company did not submit any articles of charges in respect of the alleged allegations against the petitioner and the OP company did not hold any domestic enquiry in respect of the said allegations and the OP company held one preliminary enquiry against the petitioner in respect of the said allegations but there is nothing to prove that the OP company called the petitioner to attend the said preliminary enquiry or the petitioner himself attended the said preliminary enquiry and the OP company has not produced and proved the reply of the petitioner regarding his admission of the allegations made against him by the OP company on the basis of which the OP company dismissed him

from service and the OP company has not produced any cogent evidence to prove that after his dismissal the petitioner was gainfully employed elsewhere.

It is the case of the OP company that as the petitioner made false attendance of one worker in the attendance register, it was a misconduct for which chargesheet was submitted against him and finally he was dismissed from his service **but the OP company has not produced any service rules or standing order to prove that if any worker makes false attendance of another worker in the attendance register, it is an example of great misconduct for which the offending worker can be dismissed from service.**

The Hon'ble Supreme Court has held in a case namely Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam as reported in AIR 2009 SC page 309 that *an employee employed on part-time basis but under control and supervision of the employer is a workman and he is entitled to benefit of continuous service under Section 25-B and protection under Section 25-F of The Industrial Disputes Act, 1947.*

The Hon'ble Supreme Court has held in a case namely Management, W.B. India Limited Vs. Jagannath as reported in AIR 1974 SC page 1166 that *even a temporary workman if retrenched, has right to claim retrenchment compensation.*

The Hon'ble Supreme Court has held in a case namely Ramesh Kumar Vs. State of Haryana as reported in (2010) 2 SCC page 543 that *a casual employee if he has completed 240 days of service in preceding 12 months or not, then his service cannot be terminated without giving any notice or compensation in lieu of it in terms of Section 25- F of The Industrial Disputes Act, 1947.*

Admittedly the petitioner was a permanent worker under the OP company on the date of his dismissal from service on 27.09.2010 and on that date he was dismissed from service but there is nothing on record to prove that the OP company followed all the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947.

Hence, I hold that the petitioner was not legally retrenched under Section 25-F of the Industrial Disputes Act, 1947 causing serious injustice to the petitioner.

Accordingly, the OP company is directed to pay Rs. 3,00,000/- as compensation to the petitioner for violating Section 25-F of the Industrial Disputes Act, 1947.

The following decisions of the Hon'ble Supreme Court are discussed 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.

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 petitioner, the OP company terminated his service.

Accordingly, I hold that the petitioner is entitled to be reinstated in his previous service.

From the materials on record, it has been sufficiently proved that without any legal cause and with same false allegations the OP company has dismissed the service of the petitioner by violating the *Principles of Natural Justice*. Accordingly, I hold that in the colourable exercise of the rights of the employer, the OP company has victimised the petitioner and dismissed him from service most illegally.

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 petitioner 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 petitioner. Instead, the OP company is directed to pay

compensation to the petitioner for exercising unfair labour practice upon the petitioner.

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

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 petitioner without any lawful excuse.

In view of the above discussions made on the materials on record I hold that the petitioner has to be reinstated in his previous post and place and as there is no proof to show that after termination of his service, he was gainfully employed elsewhere, I hold that he is entitled to get full back wages alongwith other consequential benefits.

Hence it is,

ORDERED

That the case no. VIII- 44/2013 under Section 10 (2A) of The Industrial Disputes Act, 1947 is allowed on contest against the OP company with a compensation of Rs. 3,00,000 and Rs. 3,00,000/-, total Rs. 6,00,000/- (Six lakhs) to be paid to the petitioner by the OP company within 30 days from this date of order.

It is hereby declared that the order of termination dated 27.09.2010 passed by the OP company against the petitioner is illegal, invalid, baseless and unjustified.

The OP company is directed to reinstate the petitioner in his previous post immediately.

The OP company is directed to pay the full back wages alongwith other consequential relief from 27.09.2010 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 petitioner 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

I/593417/2025

Government of West Bengal
Labour Department, I. R. Branch
N. S. Building, 12th Floor, 1, K. S. Roy Road, Kolkata – 700001
No. Labr/ 28 /((LC-IR)/15011(12)/136/2022
Date : 08/01/2025

ORDER

WHEREAS an industrial dispute existed between M/s. Ludlow Jute & Specialities Limited and their workman Shri Ram Kumar Bhuiyan, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947) ;

AND WHEREAS the 2nd Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 17.12.2024 in Case No. VIII - 44/2013 on the said Industrial Dispute vide e-mail dated 19.12.2024 in compliance of u/s 10(2A) of the I.D. Act, 1947.

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/ 28 /1(5)/((LC-IR)/ 15011(12)/136/2022

Date : 08/01/2025

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

1. M/s. Ludlow Jute & Specialities Limited.
2. Shri Ram Kumar Bhuiyan.
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.

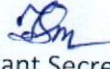

Assistant Secretary

No. Labr/ 28 /2(3)/((LC-IR)/ 15011(12)/136/2022

Date : 08/01/2025

Copy forwarded for information to :-

1. The Judge, 2nd Industrial Tribunal, N. S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 19.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary