

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

No. Labr/. 30 . / (LC-IR)/22015(15)/92/2019 Date: 08/01/2023

ORDER

WHEREAS an industrial dispute existed between M/s. Eastern Paper Mills Limited, P-128, Lake Town, Block – A, North 24 Parganas, Kolkata - 700089 and their workmen Ashis Kumar Bose, Sri Dipak Kumar Sen, Sri Gora Chand Adhikari, Sri Sankar Das, Sri Joydeb Bhattacharjee, Sri Haridas Malo and Sri Debashish Banerjee, C/o. Sri Ashis Kumar Bose, 294, S.K. Deb Road, Kolkata - 700048 regarding the issue, 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 (14of 1947) to the Judge, Second Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, Second Industrial Tribunal, Kolkata heard the parties under section 10(2A) of the I.D. Act, 1947 (14of 1947).

AND WHEREAS Second Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(2A) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 1947), the Governor is pleased hereby to publish the said Award dated 20/12/2023 in case no. VIII-18 of 2008 as shown in the Annexure hereto vide memo no. Dte/2nd IT/153 dated – 20/12/2023.

ANNEXURE

(Attached herewith)

By order of the Governor,


Sdt
Assistant Secretary
to the Government of West Bengal

No. Labr/ 30/1(5) / (LC-IR)

Date : 08/01/2024

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

1. M/s. Eastern Paper Mills Limited, P-128, Lake Town, Block – A, North 24 Parganas, Kolkata - 700089.
2. Ashis Kumar Bose, Sri Dipak Kumar Sen, Sri Gora Chand Adhikari, Sri Sankar Das, Sri Joydeb Bhattacharjee, Sri Haridas Malo and Sri Debashish Banerjee, C/o. Sri Ashis Kumar Bose, 294, S.K. Deb Road, Kolkata - 700048.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. 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.

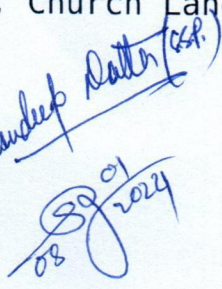

Assistant Secretary

No. Labr/ 30/2(2) / (LC-IR)

Date : 08/01/2024

Copy forwarded for information to:-

1. The Judge, Second Industrial Tribunal, West Bengal, with respect to his Memo No. Dte/2nd IT/153 - L.T. dated – 20/12/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.


Assistant Secretary

Deputy Secy / Sandeep Datta (Asst.)
08/01/2024

Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No. VIII- 18 of 2008

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

- 1. Sri Ashis Kumar Bose**
- 2. Sri Dipak Kumar Sen**
- 3. Sri Gora Chand Adhikari**
- 4. Sri Sankar Das**
- 5. Sri Joydeb Bhattacharjee**
- 6. Sri Haridas Malo**
- 7. Sri Debasish Banerjee**

Address: C/o. Sri Ashis Kumar Bose,
294, S.K. Deb Road, Kolkata – 700048

..... **Applicants**

-Vs-

M/S. Eastern Paper Mills Limited.

Address: P-128, Lake Town, Block- A
North 24 Parganas, Kolkata - 700089

----- **Opposite Party.**

Date: 20.12.2023

J U D G E M E N T

This case has been received from the Labour Department, Government of West

Bengal, I.R. Branch, Writers Buildings, Kolkata – 700001 for disposal of this case under section 10(2A) of the Industrial Disputes Act and the Labour Department has framed the following issues for disposal of this case —

1. Whether refusal of employment of Sri Ashis Kumar Bose, Dipak Kumar Sen, Gora Chand Adhikari, Sankar Das, Joydeb Bhattacharjee, Haridas Malo and Debashis Banerjee by the management of M/s. Eastern Paper Mills Limited w.e.f. 27.12.2006 is justified.
2. To what other relief, if any, are the workmen entitled?

The case of the petitioners as per their written statement, in short, is that since their joining in the OP company they worked there and they were made permanent and they were made eligible for Provident Fund, ESI and other benefits by the OP company but on 27.12.2006 suddenly the OP company restrained the petitioners to enter the office by locking the door of the office from inside and since no notice or explanation was given by the company to them for this matter, they approached the Director of the company to join in their duties but the management did not allow them to join and the management did not pay legal dues to the petitioners and on 19.03.2007 they raised one dispute before the Labour Department but nothing was settled there and then the Labour Department referred the dispute to this Tribunal for disposal and on the abovementioned grounds the petitioners have prayed for their reinstatement in service and back wages with consequential reliefs with a declaration that the termination of the petitioners was illegal. Hence this case.

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

The OP company submits that on 18.09.2004 an agreement was entered into by the OP company and the four recognised unions representing the workmen and the said agreement is binding upon all the said parties and according to the order of the Hon'ble High Court, Calcutta, the OP company issued cheques to all the petitioners on 07.11.2007 according to their dues and the petitioners encashed the said amount and upto 31.08.2000 the company paid the salary and other dues to the petitioners and from July 1996 the OP company stopped their production in their office and no workmen were engaged on and after the said date and only a skeleton group of ex employees were directed to do any odd jobs on contractual and no work no pay basis, and no register of attendance of the said workers was maintained and on 15.12.2006 the Board of Directors of the company decided that as there was no production, there was no necessity for those ex employees to do any odd jobs from 27.12.2006.

The OP company has further submitted in its written statement that as per the order of the Hon'ble Supreme Court and the Hon'ble High Court, Calcutta, the OP company has paid all the dues to the petitioners by cheques and with false allegations the petitioners have again filed this case against the OP company and the case is not maintainable in law. Hence the OP company has prayed for dismissal of this case.

DECISION WITH REASONS

In order to prove their case the petitioners have examined one witness as the PW1 and proved some documents and the OP 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 respect of the fact or facts and circumstances cannot be considered legally as per this provision.

The provision 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 the PW 1 has deposed before this Tribunal from 28.05.2009 and the

three Opposite party witnesses have deposed since 08.12.2009 but all the above mentioned four witnesses of both sides i.e. the PW 1, the OPW 1, the OPW2 and the OPW 3 have not submitted their affidavit in chief according to Rule 24 of The West Bengal Industrial Disputes Rules, 1958, and Order 18 Rule 4 of the Code of Civil Procedure, 1908 and accordingly the evidences in chief of the abovementioned four witnesses cannot be considered legally as they have violated the abovementioned Rule 24 of The West Bengal Industrial Disputes Rules, 1958, and Order 18 Rule 4 of the Code of Civil Procedure, 1908 but their cross-examinations and proof of documents have to be considered legally according to the abovementioned provisions.

Record shows that six petitioners filed this case but on 13.05.2010 by filing a petition and deposing before this Tribunal on 16.06.2010, the petitioner Haridas Malo has stated that he has received the full and final settlement amount from the OP company and accordingly he has no further claim in this case and he has prayed for deleting his name from the cause title of the case as one of the petitioners of this case and that prayer has already been allowed by the erstwhile Tribunal and at present five petitioners have been contesting this case.

The OPW 3 Sri Ashok Shanti Majumdar has deposed in examination in chief and cross-examination and his cross-examination was not completed and he was not further cross-examined by the OP company because the OP company submitted before this Tribunal that the said OPW 3 has expired. So the evidence of the OPW 3 is lying incomplete and according to the law, the incomplete evidence of any witness cannot be considered legally and it has no legal value.

EVIDENTIARY VALUE OF THE STATEMENTS OF THE WITNESSES AND DOCUMENTS

According to written statement of the petitioners, they were the employees of the OP company and from 27.12.2006 the OP company did not allow them to join in their duties and all the petitioners received some money from the OP company but the above payment was made without any statutory obligations and against the dues of all the petitioners and the same was paid under pressure and the petitioners took the said money only to maintain their family and the OP company illegally terminated their services.

According to the written statement of the OP company, on 18.09.2004 one agreement was entered into by the OP company and four (04) unions of the workers and according to the orders of the Hon'ble High Court, Calcutta and the Hon'ble Supreme Court all the petitioners were paid their dues on 07.11.2007 and the OP company stopped their production on and from July, 1996 and the case of the petitioners is a totally false one.

The PW1, Ashis Kumar Bose, who is one of the petitioners of this case, has deposed on behalf of himself and other petitioners of this case.

Admittedly, all the petitioners were employees of the OP company.

Now it is to be seen as to whether on 27.12.2006 the OP company refused the petitioners to join in their duties and illegally terminated their services in this way.

Admittedly all the petitioners have received the cheques dated 07.11.2007 in respect of some money from the OP company.

Admittedly according to the orders of the Hon'ble High Court, Calcutta and the Hon'ble Supreme Court, the petitioners have accepted some money from the OP company by cheques dated 07.11.2007 and they have encashed the said amount.

The PW1, who has deposed on behalf of himself and the rest of petitioners, has stated that he was not a member of the Eastern Paper Mills Unions. So the question arises if all the petitioners of this case were not the members of the Eastern Paper Mills Unions, why they have accepted the said money on 07.11.2007 from the OP company.

The Exhibit A and Exhibit B mention that according to the order of the Hon'ble Supreme Court and the orders of the Hon'ble High Court, Calcutta, the OP company paid the abovementioned amount to all the petitioners of this case on 07.11.2007 and admittedly the petitioners had knowledge about the said orders of the Hon'ble Supreme Court and the Hon'ble High Court, Calcutta and the petitioners did not challenge the said orders before any higher authority. So it is to be held that the petitioners had no grievance against the said orders passed by the Hon'ble Supreme Court and the Hon'ble High Court, Calcutta.

In para 8 of their written statement, the petitioners have admitted the fact of receiving money from the OP company.

According to para 9 of the written statement of the petitioners, the petitioners have alleged that the above payment was made without any statutory obligations and against the dues of the workmen and the same was paid under pressure and the petitioners took the said money only to maintain their family but this para 9 of their written statement does not **specifically** mention that the said

cheques dated 07.11.2007 were false and forged or fabricated for this case by the OP company and the petitioners have made no other allegations against the said payment by the said cheques in para 9 of their written statement and they have only stated that the said payment was paid under pressure and it was not paid according to any statutory obligations and it was not the dues of the workmen.

The Exhibit C dated 18.09.2004 is the agreement between the OP company and four (04) Eastern Paper Mills Limited Workmen Unions and by this agreement both parties agreed that all dues calculated upto 01.04.1996 shall be paid according to the calculation already made and the cut off date was fixed to be 31.08.2000 and it shall be calculated on the basis of a comprehensive compensation package and the said package included basic salary, provident fund, bonus, dearness allowance and variable dearness allowances upto 31.08.2000 and payment of all gratuity as and when applicable.

By this agreement Exhibit C dated 18.09.2004 it was also agreed that all pending litigations shall be withdrawn forthwith and this withdrawal shall be treated as a settlement of those disputes.

So according to Exhibit C, all the pending litigations have to be withdrawn treating it as the settlement of those disputes and the dues from 01.04.1996 to 31.08.2000 was fixed to be calculated and the cut off was agreed to be 31.08.2000. So by these conditions as mentioned in the Exhibit C, it is proved that the cut off was fixed by both parties to be 31.08.2000 and it has also been admitted by the PW1 in evidence.

It is true that this (Exhibit C) does not mention any signatures of any of the petitioners of this case but the agreement was made between the OP company

and different workers unions and admittedly the petitioners were the employees of the Eastern Paper Mills Limited and the Hon'ble Supreme Court and the Hon'ble High Court, Calcutta directed the OP company to make the above payment to all the workers as **labour charge** and the petitioners accepted the said money according to the orders of the Hon'ble Supreme Court and the Hon'ble High Court, Calcutta.

In para 9 of their written statement the petitioners have not specifically mentioned **on which head** they did not receive money as dues.

On perusing the Exhibit D series, receipts of payment, I find that it has been written specifically that according to the orders of the Hon'ble Supreme Court and the Hon'ble High Court, Calcutta the petitioners received their respective money from Joint Special Officer appointed by the Hon'ble High Court, Calcutta **as full and final payment of settlement towards their past service rendered in the OP company** and it has been specifically stated that **they had no further claim whatsoever against past service rendered in the OP company** and all the receipts bears **signatures of all the petitioners** of this case.

The petitioners have not challenged these receipts of payment in their written statement by alleging that the said receipts are not genuine and the same are false and forged. So it is to be held that admittedly said receipts of payment are genuine and true.

The PW1 has stated in his cross-examination that when he put his signature on the document of full and final settlement he did not go through the contents of the documents as it was put before them at about 10:00 p.m. at night and a good number of employees were present to obtain the said money for which he

had no scope to go through the said document prior to putting his signature on the document but in their written statement the petitioners have not made such type of allegations to the point that at about 10:00 p.m. at night they signed on the said receipt and they had no opportunity to go through the contents of the said documents.

In his further cross-examination the PW1 has admitted that the cheque was delivered to him in presence of the Special Officer by a Union representative and many Union members were present at that time and that cheque was handed over to him in the presence of the Joint Managing Director.

In his cross-examination PW1 has further stated that at the time of receiving the cheque the petitioner asked the Special Officer about the dues of the amount which was paid by cheque as full and final settlement but the special officer asked to accept the same and if there was any due, that will be considered afterwards but the petitioners have not mentioned these allegations in the written statement.

In its written statement the OP company has stated that the OP company stopped their production on and from July 1996 and there was no reasonable ground to run the OP company from 27.12.2006 and the registered office was maintained only for keeping the statutory records and for official communication.

The petitioners have not produced any cogent evidence to show that on 27.12.2006 the OP company was running when they went there to join their duty.

Admittedly the petitioners have accepted the 06 cheques from the OP company

according to the orders of the Hon'ble Supreme Court and the Hon'ble High Court, Calcutta and now they are alleging the they were not members of the Eastern Paper Mills Limited Unions, but if that so, why they have accepted the said money from the OP company according to the agreement dated 18.09.2004 between the OP company and 04 workers unions of the Eastern Paper Mills Limited and the petitioners have kept silence over this matter.

So considering the entire materials on record and the exhibited documents, I hold that the petitioners have made false allegation against the OP company by saying that on 27.12.2006 the OP company did not allow them to join their duties, and the receipts (Exhibit D series) specifically show that for bonus, gratuity, and service they have received money by those cheques and they encashed the said money and the petitioners have not produced any cogent evidence to show on what head they did not get any dues.

Moreover, the petitioners have not filed this case only for back wages and other consequential benefits. On the contrary they have prayed for reinstatement and declaration that their termination of service by the OP company is illegal.

The petitioners have not produced any cogent evidence to show that after 31.08.2000 they have worked in the OP company as employees. On the contrary, the Exhibit C proves that all dues payable to the employees from 01.04.1996 to 31.08.2000 has been calculated and the cut off was fixed to be 31.08.2000 and it means that after 31.08.2000 they were not employees of the OP company as they had no service according to Exhibit C after 31.08.2000 and according to Exhibit C, all the disputes have been settled between the OP company and unions of the OP company.

So it is a total false on behalf of the petitioners to claim that on 27.12.2006 they went to work in the OP company but the OP company did not allow them to join.

So considering the entire materials on record I hold that the petitioners are not entitled to get any relief as prayed for in this case against the OP company.

Hence, it is

ORDERED

that the Case No. VIII- 18/2008 under Section 10(2A) of The Industrial Disputes Act, 1947 is dismissed on contest against the OP company with cost.

Let this order and judgement 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
Judge
2nd Industrial Tribunal
West Bengal'

Judge
2nd Industrial Tribunal
20.12.2023

Judge
2nd Industrial Tribunal
West Bengal'