

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

No. Labr/ 326 /(LC-IR)/22015(16)/26/2024

Date : 03.4.2024

ORDER

WHEREAS an industrial dispute existed between Shri Ram Ekbal Pandit, S/o Lal Bihari Pandit, Qtr. No. DT – 33/1, V.K. Nagar, P.S. – NTS, Durgapur, Dist.- Paschim Bardhaman, Pin - 713210 and his employer M/s Shibam Meltech Pvt. Ltd., Bamunara Industrial Estate, Durgapur, Dist.- Paschim Bardhaman, Pin - 713212 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 Ninth Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997;

AND WHEREAS the said Ninth Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 20.03.2024 in case No. X - 06/2023 under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide Memo No. 60 / I.T. dated 21.03.2024;

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,

Sd/-

Assistant Secretary

to the Government of West Bengal

No. Labr/ 326 /1(5)/(LC-IR)

Date : 03.4.2024

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

1. M/s Shibam Meltech Pvt. Ltd., Bamunara Industrial Estate, Durgapur, Dist.- Paschim Bardhaman, Pin - 713212.
2. Shri Ram Ekbal Pandit, S/o Lal Bihari Pandit, Qtr. No. DT – 33/1, V.K. Nagar, P.S. – NTS, Durgapur, Dist.- Paschim Bardhaman, Pin - 713210.
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.

Sd/-

Assistant Secretary

No. Labr/ 326 /2(3)/(LC-IR)

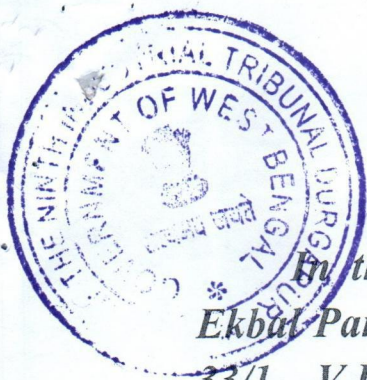
Date : 03.4.2024

Copy forwarded for information to :-

1. The Judge, Ninth Industrial Tribunal, Durgapur, Administrative Building, City Centre, Pin – 713216 with respect to his Memo No. 60 / I.T. dated 21.03.24.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary

H.A. (IT)
03/04/2024
Dibankar
03/04/2024



In the matter of Industrial Disputes between Mr. Ram Ekbat Pandit, S/O-Lal Bihari Pandit, resident of Qtr. No.DT-33/1, V.K.Nagar, P.S- NTS, Durgapur, Dist - Paschim Bardhaman, Pin - 713210 and M/S. Shibam Meltech Pvt. Ltd., situated at Bamunara Industrial Estate, Durgapur, Dist.- Paschim Bardhaman, Pin - 713212 .

Case No. X-06/2023 U/s 10(1B) (d) of Industrial Disputes Act,1947.

BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL, DURGAPUR.

PRESENT

SRI SUJIT KUMAR MEHROTRA,

JUDGE, 9TH INDUSTRIAL TRIBUNAL, DURGAPUR.

Ld. Advocates for the work applicant/workman – Mr. S. K.Panda & Smt.Anima Maji

Ld. Advocate for the M/S. Shibam Meltech Pvt. Ltd.– Ex-parte.

Date of Award :- 20.03.2024.

The instant case has been registered as a case U/S 10 (1B)(d) of the Industrial Disputes Act,1947 ((herein after referred to as the Act,1947), on the basis of an application filed by alleged retrenched workman against the employer O.P. for his reinstatement in service with all benefits.

The pith and substance of the workman's pleading case is that he was employed as a driver on 01.11.2008 and was a permanent employee of the O.P./establishment and that he used to perform jobs in unblemished manner continuously till the date of his illegal retrenchment on 30.09.2019.

It is further the pleading case of the workman that when on 30.09.2019 he went to join his duty he was not allowed by the security staff of the O.P/employer without any rhyme and reason. Thereafter, he

Sd/-
JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR

tried to make contact with the management of the O.P/establishment but the same yielded no result.

Workman further averred that he was retrenched illegally as no show-cause notice, CS or termination letter was issued by his employer i.e the O.P/establishment. As his attempt to make contact with the management failed, so he raised an industrial dispute before the Asstt. Labour Commissioner (ALC), Durgapur on 16.03.2022. But, when even after elapse of the specific time for completion of conciliation proceedings no settlement could be arrived at by the concerned ALC, he obtained requisite Form-S from the office of the ALC, Durgapur and raised the impugned industrial dispute by filing an application U/S 10(1B)(d) of the Industrial Disputes Act, 1947 (in short I.D. Act, 1947) for adjudication before this Tribunal.

CR reveals that after registration of the instant case summons have been issued upon the O.P/establishment and in consequence thereof it appeared through its ld. lawyer Mr. Goutam Chatterjee on 11.04.2023.

It further reveals from the various orders passed by this Tribunal that although subsequently, O.P/employer failed to appear on the date fixed i.e on 07.08.2023 and 21.08.2023 but this Tribunal provided further opportunities to it to file its WS and list of documents on 07.09.2023, 22.09.2023, 01.11.2023 & lastly, on 10.11.2023 but as on that day O.P/employer did not take any steps, so the instant case was fixed for ex-parte hearing against it on 06.12.2023. However, the ex-parte hearing was concluded on 02.02.2024.

From the pleading of the workman, it is clear that the issues which are to be determined for adjudication of the alleged industrial dispute is whether there was any justification for alleged retrenchment of the workman and whether workman is entitled to get the relief, as prayed for under the I.D. Act, 1947, or that whether the same is barred by law of limitation.



Argument of the Workman

During the course of argument it was very candidly submitted by the ld. lawyer that although the workman did not file any separate petition for condonation of delay in preferring the instant application but considering the settled proposition of law that the strict rules of pleadings, as applicable to civil suits, are not applicable in a proceeding of industrial dispute under I.D.Act, 1947, so even in absence of any petition or prayer this tribunal has to consider such issue.

He further submitted that since the legislation of I.D.Act, 1947 is for the benefit of the workmen of the industries, so a workman should not be deprived of his valuable rights merely on technical ground, if he is otherwise found to be entitled to get the benefits under the I.D.Act, 1947.

Ld. lawyer further contended that as it is established from the unchallenged oral testimony of the workman and the EPF statements that he was a permanent employee of the O.P/establishment since 01.11.2008 and he was illegally retrenched by the O.P/employer, so he is successfully able to prove his case beyond the degree of preponderance of probabilities.

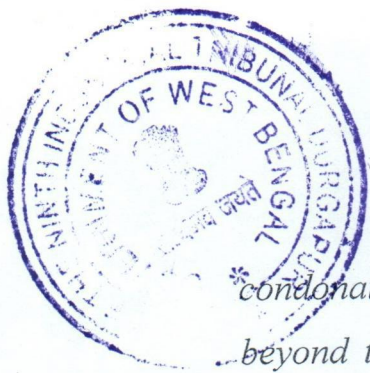
To conclude his argument ld. lawyer prayed for relief of reinstatement of the above-named workman in his service alongwith all the arrear benefits.

Decision with Reasons

To establish the petition case the workman only examined himself as P.W-1 and three EPF statements for the year 2010-2011, 2014-2015 & 2015-2016 have been produced and those have been marked as Exbt. Nos. 1, 1/1 & 1/2 respectively.

Now, let us discuss the merit of the argument of the ld. lawyer for the workman that even in absence of any pleading or petition for


JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR



condonation of delay this Tribunal has the power to consider the same beyond the stipulated period and condone such delay in preferring the impugned petition U/S 10(1B)(d) of the Act of 1947. But, before that we are to discuss the relevant provisions of law under the Act of 1947 as well as concerning Rules to see whether there is any limitation.

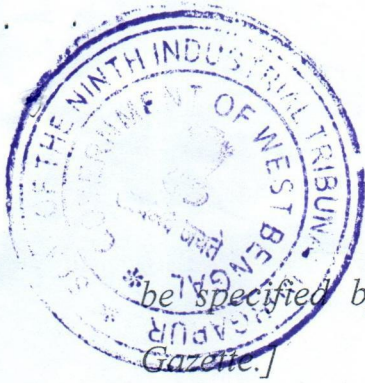
Now, let us consider the relevant provisions of the Act, 1947 and the West Bengal Rules formulated under the Act, 1947. Rule 12A speaks about settlement of dispute on representation from individual workman and it provides as follows :

[12A. Settlement of dispute on representation from individual workman. – (1) The Conciliation Officer on receipt of a representation relating to an individual workman shall investigate the matter and if he is satisfied that an industrial dispute exists, he shall take all such steps as he thinks fit and proper for the purpose of inducing the parties to come to a speedy, fair and amicable settlement of the dispute.

(2) If no settlement of the industrial dispute mentioned in sub-rule (1) is arrived at within a period of 60 days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer personally or by registered post with acknowledgement due in Form P-4 for a certificate about the pendency of the conciliation proceedings before such Conciliation Officer.

(3) The Conciliation Officer on receipt of the application referred to in sub-section(1B) of section 10 shall within 7 days from the date of receipt of such application, issue a certificate about the pendency of conciliation proceedings to the applicant in Form S.

(4) The party may, within a period of 80 days from the date of receipt of such certificate or when such certificate has not been issued within 7 days under sub-rule (3) , within a period of 60 days commencing from the day immediately after expiry of 7 days as aforesaid, file an application in Form T to such Labour Court or Industrial Tribunal as may



be specified by the State Government by notification in the Official Gazette.]

On plain reading of the sub-rule 2 it is evident that if no settlement of industrial dispute is arrived at, initiated on the representation of an individual workman, within the period of 60 days from the date of the raising disputes, the workman is entitled to knock door of Labour Court or Industrial Tribunal constitute under the Act of 1947 within a period of 60 days from the date of raising of pendency certificate in Form-S.

Thus, apparently the workman has to file the case within 60 days from the date of receipt of such certificate as per Rule 12A of 1948.

Reverting back to the fact of the instant case it is pertinent to mention herein that the workman in para 8 of his WS although stated that he raised the industrial dispute before the Asstt. Labour Commissioner, Durgapur on 16.03.2022 and in para 9 stated that as no settlement arrived at within specific time/days he obtained Form-S from the ALC, Durgapur but curiously enough, he did not mention the date when he obtained Form-S. His such non-mentioning of date of obtaining Form-S certainly raises doubt in my mind about his approaching this tribunal with clean hands.

However, it is evident from From-S, as filed in this case, that the same was issued on 29.09.2022. Order No.1 dated 29.03.2023 reveals that the workman filed his petition U/S 10(1B)(d) of the Act of 1947 praying for adjudication of the alleged industrial dispute on 29.03.2023. Thus, it is clear that the said petition has been filed after more than 180 days from the stipulated period of 60 days, as mentioned herein above, without assigning any reason for such delay as well as without making any prayer of condonation of such delay.

In other words, admittedly the workman approached this tribunal much after expiry of the stipulated period and also has not made any prayer for condonation of such delay.


JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR



So far as the merit of argument of the ld. lawyer for the workman regarding tribunal's power to suo moto condone delay in preferring the industrial dispute is concerned, I find no merit in such argument especially in absence of any prayer from the side of the workman.

Although I do concur with the submission of the ld. lawyer for the workman that as the object of the Act of 1947 is beneficial in nature, so while doing justice the tribunal should take lenient view in favour of the workman. But, it does not mean the tribunal should throw away all the basic rules of pleading of a suit/case.

It is the settled proposition of law that a court or tribunal cannot travel beyond the pleadings of a suit or case as the same is the foundation of deciding disputed issues between the parties.

Another striking feature of this case, as emerged from the conduct of the workman during the course of ex-parte hearing of this case as well as argument, is that even after raising question about issue of limitation by this tribunal the workman neither in his unchallenged oral evidence nor by making any petition prayed for condonation of delay in preferring the impugned case before this tribunal.

In my considered view, had he made such prayer in any form, then there would have been any scope for tribunal to consider the same, even though there is no specific provision either under the Act of 1947 or under the Rules made thereunder conferring such power to the tribunal. Absence of such prayer in any form from the side of the workman debars tribunal from considering the same.

However, so far as the question whether the provisions of the limitation Act or any other limitation period applied in a case U/S 10(1B)(d) of the Act, 1947, our Hon'ble High Court in the case of Biswanath, 2003 (1) L.L.N 121 made elaborate discussion in para 8.

The Hon'ble Court in para 8 of its judgement observed that "There can be no doubt with regard to the matter being within the



jurisdiction of the Labour Court. The jurisdiction is not ousted merely because the time frame prescribed under S.10 (1B) of the Act were not adhered to by the petitioner –workman. The provisions of S 10(1B) of the Act are beneficial provisions and thereby the procedure for adjudication of an industrial disputes relating to an individual has been simplified. The benefit of provisions is for an individual in his private capacity and does not serve any to public purpose, interest or policy. Non-compliance with the periods prescribed in the provisions would only make it an irregularity and not an illegality”.

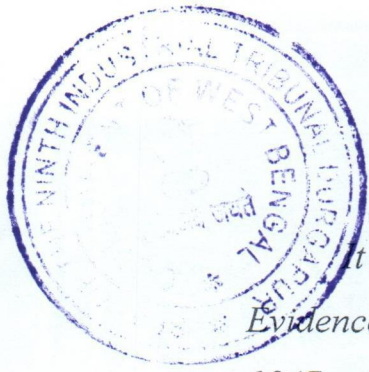
From the above discussed facts and provisions of law it is crystal clear that the tribunal although has the power to consider the prayer of condonation of delay in preferring an application U/S 10(1B)(d) of the Act of 1947 but there must be some pleading on that issue from the side of the workman. Consequently, I find no merit in argument of the ld.lawyer for the workman. Accordingly, the instant case is barred by limitation under the Act of 1947.

Now, let us discuss the workman's pleading case regarding his alleged illegal retrenchment from the service by his employer.

Workman in his WS stated that he was employed as driver by the O.P/establishment on 01.11.2008 and since then he discharged his duty in unblemished manner till the date of his illegal retrenchment i.e. on 30.09.2019. He further averred that his monthly salary was Rs.9,000/- and he used to get other benefits i.e. ESI, PF, etc. during his service tenure.

He in his evidence-in-chief on oath also stated in the line of his such pleading case. To corroborate his such uncontroverted oral evidence he relied upon his EPF statements i.e Exbt.1 (series). It is evident from Exbt.1(series) that the workman was an employee of the O.P/establishment and he was also getting the benefit of EPF scheme. In absence of any contrary nature of evidence, which the employer had the opportunity to adduce, I find no reason not to rely upon such documentary evidence.

[Signature]
JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR



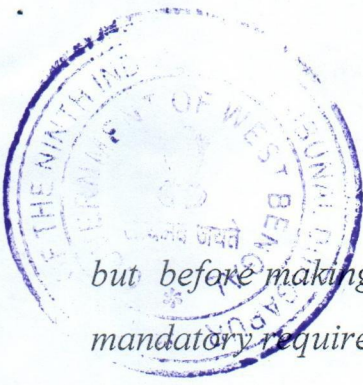
It is the settled proposition of law that the provisions of Indian Evidence Act, 1872 are not strictly applicable in a case under the Act of 1947 and the tribunal has to adjudicate the industrial disputes by taking lenient view for the benefit of the workmen. A case of a workman under the Act of 1947 succeeds if he is able to prove the same only upto the degree of preponderance of probabilities.

Keeping in mind the settled proposition of law as well as the above discussed unchallenged oral and documentary evidence, I am of the view that the workman has been able to establish that he was employed as driver on 01.11.2008 by the O.P/establishment and he was not allowed to join his duty on and from 30.09.2019.

Workman's further pleading case is that he was illegally retrenched as no show-cause notice was ever issued and his employer did not follow the principles of natural justice while illegally terminating his service. He in his uncontroverted oral evidence categorically stated that when on 30.09.2019 he went to join his duty but he was not allowed by the management to join his duty and thereby he was illegally retrenched. He further stated that no show-cause notice, Charge Sheet or Termination letter was ever issued to him by the employer.

As the O.P/employer chooses not to challenge the pleading case of its workman, so there remains no cogent ground for me to disbelieve such uncontroverted oral evidence of the workman, which reveals about his continuous service of more than 10 years and retrenchment without following the mandatory provisions of principles of natural justice by the employer before terminating his service. The same also proves that the employer illegally made retrenchment of the petitioner / workman from his service which tantamounts to termination in terms of Sec.2 (oo) of the Act of 1947.

Workman's evidence also proves that although he completed more than the required continuous period of service, as provided in Sec.25B,



but before making retrenchment the management did not comply with the mandatory requirement of the provisions of Sec.25F of the Act of 1947.

Taking into account of all the materials, as discussed herein above, I am of the view that although the workman has been able to prove that he has been illegally retrenched from his service by his employer i.e the O.P/establishment of this case, but he is not entitled to get any relief as the same is barred by limitation.

To conclude my discussion I am of the view that the applicant / workman miserably failed to prove that his case.

In the result, I find no merit in the workman's impugned petition U/S 10(1B)(d) of the Act of 1947. Thus, the instant case fails on merit.

Hence, it is

ORDERED

that the instant case U/S 10(1B)(d) of the Act of 1947 be and the is dismissed against the O.P/M/S Shibam Meltech Pvt.Ltd. in ex-parte but without cost.

Sent a copy of this award to the Addl. Chief Secretary, Labour Department, Government of West Bengal for his doing the needful.

D/C by me

Sd/- Sri Sujit Kumar Melnaker
Judge. 20-3-27

JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR

Sd/- Sri Sujit Kumar Melnaker
Judge 20-3-27,

9th Industrial Tribunal

Durgapur.
JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR