

I/513784/2024

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

No. Labr/. 461 / (LC-IR)/ 22015(16)/32/2024 Date: 13/05/ 2024

**ORDER**

WHEREAS an industrial dispute existed between M/s. G.I.S. Ltd., 8, India Exchange Place, Kolkata - 700001 and Sri Jinendra Kumar Jain, 8-A, After Mosque Lane, Kolkata - 700027 regarding the issue, 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 Judge, Second Labour Court, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, Second Labour Court, Kolkata heard the parties under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS Second Labour Court, Kolkata has submitted to the State Government its Award under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute.

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 dated 29/04/2024 in Case No. 95 of 2024 under section 10(1B) (d) as shown in the Annexure hereto vide Memo No. Dte/2<sup>nd</sup> LC/021/2024 dated - 07/05/2024.

**ANNEXURE**

(Attached herewith)

By order of the Governor,

Sd/-

Deputy Secretary  
to the Government of West Bengal



1/513784/2024

:2:

No. Labr/ 46/1(5) /(LC-IR)

Date: 13/05/ 2024

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

1. M/s. G.I.S. Ltd., 8, India Exchange Place, Kolkata - 700001.
2. Sri Jinendra Kumar Jain, 8-A, After Mosque Lane, Kolkata - 700027.
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, (11<sup>th</sup> 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.

H.A.(IT)  
13/05/24  
Dibankar/Sandeep(SSP)  
13/05/2024



Deputy Secretary

No. Labr/ 46/1. 2(2)/ (LC-IR)

Date : 13/05/ 2024

Copy forwarded for information to: -

1. The Judge, Second Labour Court, West Bengal, with respect to his Memo No. Dte/2<sup>nd</sup> LC/021/2024 dated - 07/05/2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary



**THE SECOND LABOUR COURT, KOLKATA**

IN THE MATTER OF

An application No.95 of 2004 Under Section 10(1B)(d) Industrial Dispute Act,1947

SHRI JINENDRA KUMAR JAIN

VERSUS

M/S. G.I.S. LTD.

PRESENT: SREEJITA CHATTERJEE

JO CODE ; WB001252

Appearance

MR/MRS- Shaibal Mukherjee, LD Advocate for the Applicant.

MR/MRS- Satyendra Kumar Singh, LD Advocate for the Opposite Party.

DATE OF AWARD : 29.04.2024

**1)EXORDIUM**

This is an application Under Section 10(1B)(d) Industrial Dispute Act,1947 .

The present case is set to motion by an application of the workman in the above captioned industrial dispute case, seeking reinstatement on alleged illegal termination in service.

Applicant by representation dated 07.03.2002, raised an industrial dispute relating to illegal termination. In terms of Section 10(1B)(c), as amended, with respect to the State of West Bengal vide Act No.33 of 1989. The said industrial dispute was referred to the conciliation officer, who initiated conciliation proceedings. However, the said proceedings did not see any chances of settlement within sixty days from raising of the dispute. In consequence thereof, conciliation officer issued certificate about pendency of the conciliation proceedings and thus this case.

**JURISDICTION**

The matter in issue relates to *"discharge or dismissal of a workman including reinstatement of, or grant of relief to workman wrongfully dismissed"* and covered in the Second Schedule to the Act and well within the cognizance of this Court.





## **LIMITATION**

The conciliation having failed, the certificate of the conciliation officer was issued on 22.04.2004 and the present cause was initiated on 18.06.2004 and well within limitation in terms of Section 10(1B)(c).

## **2)FACTUAL MATRIX**

The present case springs from the allegation by the applicant of his illegal termination from service by the opposite party vide letter dated 18.05.1999, without any charge sheet and the enquiry.

It is not necessary to delve into the detailed facts leading up to the institution of the proceedings before this court since the Applicant and OP have arrived at settlement and prayed for according a sanction to their settlement. The abridged facts however are enshrined hereunder :-

It is the plea of the workman/applicant that he was illegally terminated from service by the employer without any valid enquiry against him. On his ignorance, a petition for recovery of wages along with reinstatement was filed and he wrote to the Labour Commissioner, Government of West Bengal. Assistant Labour Commissioner took up the matter for conciliation against which company raised a preliminary objection inter alia that the applicant is not a workman. To this, it was replied that he never held any managerial or supervisory post and the post was ornamental and in essence he is a workman.

The OP deprecates all the above. It is their specific contention that application is barred as it was filed beyond time. It is further averred that the applicant is not a workman. The management inducted him on probationary basis on 12<sup>th</sup> June, 1997 which was confirmed in 1998. However, he was terminated on 18<sup>th</sup> May, 1999 and the company sent a letter along with a cheque of Rs.24,442.98 paise. The management never delayed conciliation and the termination is legal.

## **3)LEGAL PERSPECTIVES**

The memorandum of settlement arrived at in the course of proceedings before this court, in essence invites this court to dispose off the application and the present case in terms of the said memorandum. Therefore, it is necessary to deal with the provisions empowering this court to deal with such settlement arrived at between the parties in the course of pendency of proceedings before labour court coupled with its implications and ramifications.

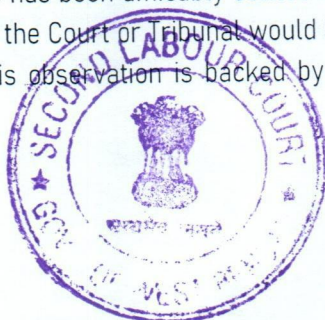
## **SETTLEMENT INCOURSE OF PROCEEDINGS BEFORE COURT**

Amicable settlement of industrial dispute leads to industrial peace and harmony which is the primary object of this Act.

The Act does not contain any provision corresponding to the provision of Order XXIII Rule 3 CPC.

Conversely, there is nothing in the Act which prohibits the employee and the workman from entering into a settlement during the pendency of proceedings.

It would be unreasonable to assume that the Court would insist upon dealing with the dispute on merits even after it is informed that the dispute has been amicably settled. There can be therefore no doubt that if an industrial dispute is amicably settled, the Court or Tribunal would immediately make an Award in terms of the settlement between the parties. This observation is backed by judicial pronouncement titled *State of Bihar vs. D.N. Ganguly & Ors.* 1958.





This court hastens to add here that this procedure was even followed in the Industrial Dispute Appellate Tribunal Act of 1950, which though not in force, the legislators had once recognized making of Awards with the consent of the parties.

Further Section 2(P) of the Industrial Dispute Act, 1947, defines Settlement as follows:-

*"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to [an officer authorized in this behalf by] the appropriate Government and the conciliation officer.*

The above definition would show that it contemplates two kinds of settlement;-

- i) A settlement arrived in the course of the conciliation proceedings under the Act and
- ii) A written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding.

A written agreement of the later kind, in order to fall within the definition, must satisfy two more conditions;-

- a) It must be signed by the parties thereto in such manner as may be prescribed and
- b) A copy thereof has been sent to an officer authorized in this behalf by the appropriate Government and the conciliation officer.

It means a settlement arrived at in the course of the conciliation proceedings and includes a written agreement between the employer and the workman arrived at otherwise than in the course of conciliation proceedings where such agreement has been signed by the parties in such manner as is prescribed and a copy thereof is sent to the appropriate Government and conciliation officer. The reference to settlement in the later part of the statement is assumed to mean such settlements as is the subject of this present case and is arrived at during the course of pendency of proceedings before court or Tribunal.

### **EFFECT OF SUCH SETTLEMENT IN THE COURSE OF PROCEEDINGS**

Section 18(3) expiates that a settlement arrived at in the course of conciliation proceedings and award of the court is binding not only on the parties thereto but also their heirs, successors or assigns of the employer on one hand and all the workman of the establishment, present or future, on the other. This gives effect to the principle of collective bargaining recognized in the Section.

However, any settlement in the course of the proceedings before the court, though it would be recorded as an award of the court, wouldn't follow the lines of Subsection (3), with respect to operation of awards upon their heirs, successors or assigns of the employer on one hand and all the workman of the establishment, present or future. It is because, the legislature, in its wisdom, has created a separate provision under subsection (1), to cater such situation. When such an agreement has been arrived at, not in the conciliation proceedings, it becomes a settlement and in terms of Section 18(1) and such settlement shall be binding only on the parties thereto.

Section 19(1) provides that a settlement comes into operation on such a date as is agreed upon by the parties to the dispute and if no such date is agreed upon, on the date on which memorandum of settlement is signed between the parties. This is to be deciphered from the memorandum of settlement of a given case.





Caviling relate to the fact that if a dispute referred to the Labour Court under Section 10(1) is settled between the parties, the only remedy for giving effect to a compromise would be to cancel the reference and to take the proceedings out of the jurisdiction of the Court. This was based upon the assumption that the Court would have to ignore the settlement by the parties of their dispute pending before it and would have to make an Award on merits. However such difference was set by the Hon'ble Apex Court in Sarlik Ltd and other vs Govt of AP, 1963. Even then, this court further adds here this case is distinguished as the present case was instituted by the applicant, upon the report of conciliation officer and not on a reference.

#### **4) TERMS OF SETTLEMENT AND AWARD IN LIGHT OF THE ABOVE LEGAL DISPOSITIONS.**

The terms of settlement is incorporated herein :-

- (a) That the concerned employee Shri Jitendra Kumar Jain will accept his termination.
- (b) That the concerned employee Shri Jitendra Kumar Jain will be paid a lump sum amount of Rs. 3,00,000/- (Rupees Three Lakhs) in full and final settlement of all his claims and dues.
- (c) That the concerned employee Shri Jitendra Kumar Jain has not received his Provident Fund and Pension. The above sum (Rs. 300,000) for settlement does not include the Provident Fund and Pension. The employee should receive the Provident Fund and Pension and the employer will provide all necessary documents and assistance to him for obtaining the same.
- (d) That the concerned employee Shri Jitendra Kumar Jain will have no other claim over the employer Opposite Party of whatsoever nature, monetary and/or for reinstatement/reemployment.
- (e) That on payment of the aforesaid sum the concerned employee Shri Jitendra Kumar Jain will not press his case being numbered as 95/04 u/s. 10(1B)(d), pending before Ld. Second Labour Court and a joint petition will be filed before the said Ld. Court for passing of an Award in terms of this Settlement.
- (f) This settles all the disputes related with the termination of Shri Jitendra Kumar Jain w.e. from 18/05/1999.

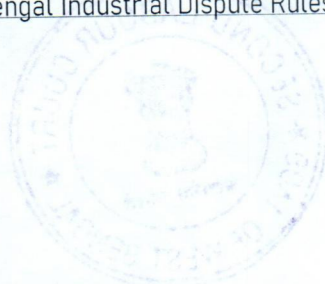
The PW1 that is the applicant and OPW1 that is the company are examined and they confirm to be parties to the agreement and have signed it out of their own accord and free will. The said agreement is marked as EXHIBIT 1, along with the cheque which has been handed over to the applicant herein and marked as Exhibit A.

Gauged in the above factual and legal matrix, it occurs to this court that the terms of the agreement are ex facie valid in the eyes of law, which in essence incorporates the relative bargain of the parties, in a bid to dissolve the differences herein. Hence there is nothing which prevents this court from accepting such agreement. This court is inclined to uphold the settlement arrived at between the parties, in terms of the memorandum of settlement. The application stands disposed off in terms of the settlement between the parties.

Further, in light of the above legal discussions, the said agreement shall be binding upon the parties to such agreement in terms of Section 18(1) of the Act.

In terms of Section 19(1) of the said Act, the agreement shall take effect from the date on which it was signed, as no date was otherwise agreed upon.

Necessary compliances in the form of service of copies of the award are required to be made in terms of service of the copies to concerned Government authorities, in terms of Section 2(p) of the Industrial Dispute Act and rule 68 of West Bengal Industrial Dispute Rules and other provisions and rules made thereunder.





**IT IS ORDERED**

The application stands disposed off in terms of the settlement between the parties.

Let the Memorandum of settlement form a part of the award, to be binding upon the parties herein.

Let necessary compliances be made in terms of service of the copies to concerned Government authorities.

The case is hereby disposed off.

Note in the relevant register.

Dictated & corrected by me

Sd/-

(SREEJITA CHATTERJEE)  
JUDGE

*Judge*  
**Second Labour Court W.B.**

Sd/-

(SREEJITA CHATTERJEE)  
JUDGE  
SECOND LABOUR COURT,  
KOLKATA

*Judge*  
**Second Labour Court W.B.**





MEMORANDUM OF SETTLEMENT

1. Name of the Parties:- Gillanders Arbuthnot & Co. Limited  
C-4 Gillander House Netaji Subhas  
Road, Kolkata 700001

AND

Shri Jinendra Kumar Jain,  
146E Kailash Pandit Lane,  
Kailash Gardens  
Kolkata- 700 053

2. Representing Employer:- Mr. Gautam Samanta  
Asst. Vice President  
Gillander Arbuthnot and Company  
Limited

3. Representing Employee:- Shri Jinendra Kumar Jain Concerned  
Employee

4. Short Recital of the Case:- The concerned employee,  
Shri Jinendra Kumar Jain was appointed as Export Executive  
by the Company, Gillanders Arbuthnot & Co. Limited.  
Further the service of the concerned employee was terminated  
by the Company w.e. from 18<sup>th</sup> May 1999. Thereafter the

*Gautam Samanta*

*Jinendra Kumar Jain*



concerned employee raised an Industrial Dispute with the Conciliation Officer, Govt. of W.B. at Kolkata where the dispute <sup>could not</sup> ~~cannot~~ be settled. Thereafter the Concerned employee obtained a certificate of pendency of conciliation and filed a case U/s 10(1B) of the Industrial Disputes Act 1947 (as applicable in W.B.). The said case was registered before Ld. Second Labour Court as caseNo.95/04U/s 10(1B) (d). During pendency of the aforesaid case the parties negotiated for out of Court Settlement and after protracted negotiations arrived at the following mutual settlement.

5. Terms of Settlement:- It is agreed by and between the parties;

- (a) That the concerned employee Shri Jinendra Kumar Jain will accept his termination.
- (b) That the concerned employee Shri Jinendra Kumar Jain will be paid a lump sum amount of Rs.3,00,000/= (Rupees Three Lakhs) in full and final settlement of all his claims and dues.
- (c) That the concerned employee Shri Jinendra Kumar Jain has not received his Provident Fund and Pension. The above sum (Rs 300,000) for settlement does not include the Provident Fund and Pension. The employee should receive The Provident Fund and Pension and the employer will provide all necessary documents and assistance to him for obtaining the same.
- (d) That the concerned employee Shri Jinendra Kumar Jain will have no other claim over the employer Opposite Party of whatsoever nature, monetary and/or for reinstatement/ re employment.
- (e) That on payment of the aforesaid sum the concerned employee Shri Jiendra Kumar Jain will not press his

Gautam Kumar

Jinendra Kumar Jain



case being numbered as 95/04 U/s10(1B)(d), pending before Ld. Second Labour Court and a joint petition will be filed before the said Ld. Court for passing of an Award in terms of this Settlement.

- (f) This settles all the disputes related with the termination of Shri Jinendra Kumar Jain w.e. from 18/05/1999

For the Company

For Gillanders Arbuthnot & Co. Ltd.

*Gauram Samanta*  
Asst. Vice President-H.R.

For the Employee

*Jinendra Kumar Jain*

Witness:-

1. *Somnath Mubheige*  
C-4, Gillander House  
N.S. Road Kol-1
2. *Jitendra Jain*  
1462, Kailash Pandit lane  
Kol-53