

1/526616/2024

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

No. Labr/597/(LC-IR)/22015(16)/46/2022 Date: 24/06 /2024

ORDER

WHEREAS an industrial dispute existed between Shree Jain Hospital and Research Centre, 493B/12, G.T. Road (S), Distt. – Howrah, Pin - 711102 and Sri Nand Kishore Roy, 8, B.B.D. Bag, Kolkata - 700001 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) of the Industrial Dispute Act, 1947 (14of 1947) to the Second Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Second Industrial Tribunal heard the parties under section 10(1B) of the I.D. Act, 1947 (14of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

AND WHEREAS the Second Industrial Tribunal has submitted to the State Government its Award dated 13.06.2024 in Case No. 21/2022 under section 10(1B) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute vide Memo No. Dte/2nd I.T./058/2024 dated 13.06.2024.

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 as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

Sdt

Assistant Secretary
to the Government of West Bengal

I/526616/2024

:2:

No. Labr/ 597/ 1/(5)/(LC-IR)

Date: 24/06/2024

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

1. Shree Jain Hospital and Research Centre, 493B/12, G.T. Road (S), Distt. - Howrah, Pin - 711102.
2. Sri Nand Kishore Roy, 8, B.B.D. Bag, Kolkata - 700001.
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/ 597/ 2/(2)/(LC-IR)

Date . 24/06/2024

Copy forwarded for information to:-

1. The Judge, Second Industrial Tribunal West Bengal, with respect to his Memo No. Dte/2nd I.T./058/2024 dated 13.06.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Assistant Secretary

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As
24/06/2024

Case No. 21/2022

Order No. 27

Date: 13.06.2024

Both parties are present.

The case is taken up for passing order on the point of maintainability of this case regarding status of the Opposite Party of this case as the **Industry** according to the definition of The Industrial Disputes Act, 1947 **raised by the Tribunal itself.**

The petitioner has filed this case against the Opposite Party praying for reinstatement of his service alongwith full back wages and other consequential benefits.

The Opposite Party has contested this case by filing one written statement denying therein all the material allegations of the case of the petitioner.

Record shows that on the basis of the materials on record, issues were framed and the petitioner as the PW1 deposed in this case and after closure of his evidence the OP company has examined the OPW1 and her cross-examination was deferred.

Then the Tribunal suo motto decided to hear this case on the point of maintainability of this case considering the definition of Industry according to the definition of

The Industrial Disputes Act, 1947 and then both sides were heard in full and today is fixed for passing order.

The Ld. Lawyer for the petitioner has cited the following decisions:-

1. One decision of the Hon'ble High Court, MH passed in N.M.W.C TRUST HOSPITAL VS. ASHOK VYANKATESH APTE (DR) as reported in 2011 (5) MH page 444.
2. One decision of the Hon'ble Supreme Court passed in BACHHAJ NAHAR Vs. NILIMA MONDAL AND ANOTHER as reported in (2008) 17 Supreme Court cases page 491.

Perused the abovementioned decisions passed by the Hon'ble Supreme Court and High Court .

On perusing the written statement filed by the Opposite Party, I find that the Opposite Party has taken a plea that **this case is not maintainable either in law or facts** and considering the cases of both sides, four issues have already been framed and **out of the said four issues, one issue to the point that "Is the case maintainable in its present form and law?" has been framed as the Issue No. 01.**

During trial of this case, the Tribunal itself fixed date for hearing on the point of maintainability of this case regarding the definition of Industry according to The Industrial Disputes Act, 1947 and both sides were heard.

Admittedly the Opposite Party of this case namely Shree Jain Hospital and Research Centre is a hospital run by a charitable trust.

According to the substituted definition of Industry w.e.f. **21.08.1984**, hospitals and institutions owned or managed by organisation wholly or substantially engaged in any charitable, social or philanthropic service are not industries according to The Industrial Disputes Act, 1947.

Accordingly, I hold that the Opposite Party of this case is not an industry and there cannot be any relationship of employer and employee between the petitioner and the Opposite Party of this case and as the Opposite Party is not an industry, the case is not maintainable **legally** against the Opposite Party.

The Hon'ble Supreme Court has held in a case namely Commissioner of Central Excise, Bangalore-Vs-Srikumar Agencies Etc. as reported in LAWS(SC) 2008 11 200 that Courts should not place reliance on decisions without discussing as to how the factual situation fits in, with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgements of Courts are not to be construed as

statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgements. They interpret words of statutes, their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

So in view of the abovementioned decision of the Hon'ble Supreme Court passed in a case namely Commissioner of Central Excise, Bangalore-Vs-Srikumar Agencies Etc. as reported in LAWS(SC) 2008 11 200, I hold that the facts and circumstances of those cases mentioned in the said decisions cited by the petitioner are different from the facts and circumstances of this case because in its written statement the Opposite Party has already taken a plea that the case is not maintainable in law and one issue to that point has already been framed by this Tribunal and I also hold that the decisions cited by the petitioner are not applicable in this case.

The Court or Tribunal has enough power to consider at any stage before passing Judgement or Award in a case as to whether the case is maintainable in law

before proceeding further and accordingly the maintainability of this case as per the law was taken up by this Tribunal during the stages of trial for consideration and both sides were heard.

Even the Court or Tribunal has power to consider on the first date of filing of a case as to whether the case is maintainable in law and pass necessary order to that effect.

So in view of the above position of the record, definition of the term 'industry' as per The Industrial Disputes Act, 1947 and the above decision passed by the Hon'ble Supreme Court, I hold that this case is not maintainable in law as the Opposite Party is not an industry and I also hold that the petitioner is not entitled to get any relief in this case as the Opposite party is not an industry.

Hence it is

ORDERED

THAT the Case No. 21/2022 under Section 10(1B) of The Industrial Disputes Act, 1947 is dismissed on contest against the Opposite Party as the case is not legally maintainable according to The Industrial Disputes Act, 1947.

Let this 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