

I/527897/2024

(2)

No. Labr/ 607 /1(2) - IR

Dated: 25.06.2024

Copy forwarded for information to:

1. The Judge, Second Industrial Tribunal with reference to his Memo No. Dte/2ndIT/063/2024 dated 19/06/2024.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Sdt

Assistant Secretary

No. Labr/ 607 /2(5) - IR

Dated: 25.06.2024

Copy with a copy of the Award is forwarded for information & necessary action to:

1. M/s. South End Centre School, 181 Andul Road, Howrah - 711103.
2. M/s. South End Centre School, 34/26/1, Andul Road, 1st By Lane Howrah - 711109
3. Smt. Uma Chakrabarty, Wife of Sri Anindya Chakrabarty, 12/2A, Aswini Dutta Road, Kolkata - 700029.
4. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
5. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
6. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Sdt

Assistant Secretary

O.S.D. (S.S.)

Sandeep Saha (S.S.)

25/06/24

Case No.VIII-34/16

Order No. 100

Date: 19.06.2024

Both parties are present.

The case is taken up for passing order on the point of maintainability of this case regarding the status of the petitioner as the workman under Section 2(s) of The Industrial Disputes Act 1947.

The petitioner has filed this case against the Opposite Party praying for reinstatement of her 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.

The Opposite Party is a school namely South End Centre School.

The Opposite Party has mentioned in its written statement that the case is not maintainable in law as the petitioner was appointed as the Assistant Teacher in the School of the Opposite Party and the petitioner did not implead the Secretary of the said school as a party to this case and the petitioner is not a workman according to Section 2(s) of The Industrial Disputes Act 1947.

By filing a petition dated 05.09.2022, the Opposite Party has prayed for hearing of the preliminary issue regarding paragraph nos. 03 to 13 of the written statement of the Opposite Party and

the petitioner has filed written objection against this petition dated 05.09.2022.

Then one preliminary issue to the point "Is the case maintainable under Section 2(s) of The Industrial Disputes Act 1947 as the petitioner is not a workman?" has been framed and then both sides made their submissions regarding the said petition and objection of the petitioner.

During hearing of the said petition dated 05.09.2022 filed by the Opposite Party and the objection against this petition filed by the petitioner, this Tribunal suo motto after considering the entire materials on record, decided to consider as to whether the Opposite Party namely South End Centre School is an industry according to the definition of the industry as mentioned in The Industrial Disputes Act, 1947.

As the petitioner has filed this case against the Opposite Party under The Industrial Disputes Act 1947, **at first** it has to be considered as to whether the Opposite party school is an industry according to The Industrial Disputes Act, 1947, and if it is seen that the Opposite Party school is an industry, then it has to be considered as to whether the petitioner is a workman under Section 2(s) of The Industrial Disputes Act, 1947 and other preliminary points raised by the Opposite Party.

If the Opposite Party school is not an industry, then there is no relationship of employer and employee between the petitioner and the Opposite Party in this case according to The Industrial Disputes Act, 1947 and in that event the case will not be maintainable in law according to The Industrial Disputes Act, 1947.

Admittedly the Opposite Party of this case namely South End Centre School is an educational institution.

According to the substituted definition of Industry w.e.f. **21.08.1984, the educational institutions 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 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 proceeding of this case 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.

As this case is not maintainable in law as per The Industrial Disputes Act, 1947, because the Opposite Party is not an industry, the petitioner is not a workman under Section 2(s) of The Industrial Disputes Act, 1947, because the petitioner was not a workman under the Opposite Party, which is not an industry as per The Industrial Disputes Act, 1947.

So in view of the above position of the record and definition of the term 'industry' as per The Industrial Disputes Act, 1947, I

hold that this case is not maintainable in law as the Opposite Party is not an industry under The Industrial Disputes Act, 1947, and 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. VIII-34/2016 under Section 10(2A) 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

Judge
2nd Industrial Tribunal
West Bengal