

In the matter of an industrial dispute between M/s. Mediwell Laboratories(I) Pvt. Ltd. 11/20, Nagendra Nath Road, Kolkata - 700028 and their five employees (1) Pradip Das (2) AShoke Kumar Dey (3) Biman Bihari Chowdhury (4) Rabi Chakraborty and (5) Dipak Kumar Manna represented by West Bengal Medical and Sales Representatives Union, 5, Sarat Ghosh Road, Kolkata-700014 Vide G. O. No. 551-IR/IR/11L-60/12 dated 24.05.2013 and reference no. 3115-IR/IR/3A-6/59, dated 21/06/1960.

**(Case No. VIII-33/2013)**

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Before the Eighth Industrial Tribunal: West Bengal  
Present Sri Amit Chattopadhyay,  
Judge,  
Eighth Industrial Tribunal,  
West Bengal.

**A W A R D**  
**Dated 30.10.2024**

An industrial dispute between M/s. Mediwell Laboratories(I) Pvt. Ltd. 11/20, Nagendra Nath Road, Kolkata - 700028 and their five employees (1) Pradip Das (2) AShoke Kumar Dey (3) Biman Bihari Chowdhury (4) Rabi Chakraborty and (5) Dipak Kumar Manna represented by West Bengal Medical and Sales Representatives Union, 5, Sarat Ghosh Road, Kolkata-700014 Vide G. O. No. 551-IR/IR/11L-60/12 dated 24.05.2013 and reference no. 3115-IR/IR/3A-6/59, dated 21/06/1960 referred to this Tribunal for adjudication.

**I S S U E (S)**

1. Whether the termination of permanent employment of 5(five) workmen by the management of M/s. Mediwell Laboratories (I) Pvt. Ltd. W.e.f. 01.09.2009 was justified ?
2. What relief, if any, the workmen are entitled to?

In view of G.O. No. Labr./700/(LC-IR)/23099/15/2019 dated 26.07.2019 this case has been withdrawn from the file of Seventh Industrial Tribunal and has been transferred to this Tribunal i.e. Eighth Industrial Tribunal, Kolkata for disposal.

The case record is taken up for passing order.

The case of the workman is that the company illegally and unlawfully closed down the company without following the legal procedure of law which has been sanctioned in law. Thus, the workmen with the help of their union raised a dispute before the Government of West Bengal. AS the matter could not be amicable settled the matter was referred before the Learned 7<sup>th</sup> Industrial Tribunal with the issues “Whether the termination of permanent employment of 5 (five) workmen by the management of the M/s. Mediwell Laboratories (I) Pvt. Ltd. With effect from 01.09.2009 is justified? What relief, if any the workmen are entitled to?”

The union in the written statement have specifically stated that the following points:-

The company had not followed the procedure which is required for closure of the organization.

That all the workmen were permanent workmen of the company and they were appointed on different dates and their respective wages were mentioned. They were

covered with statutory schemes such as ESI and Provident which were duly paid by the management. All the workmen used to work under the instruction of the higher authorities, they had no power of giving job requisitions, sanction leave, etc. And no employee workmen under their supervision. The union states that the management had terminated their members as they used to raised their voice with regard to the unfair labour practice which was conducted by the management. The workmen were issued no show cause or charge sheet and no domestic enquiry was held against them. It is further stated that all the workmen have specifically stated that after the illegal and unlawful termination from service all of them could not secure any other employment and all of them were specifically depending upon the charity of their close relatives.

It is further stated that during the cross-examination of the workmen no contra evidence was adduced by the management which could destroy the case of the union.

On the contrary it is specifically stated that during the evidence and the cross-examination of the management the following came out.

**Examination-in-chief of O.P.W.-1 :-**

I, Nipendra Narayan Goopta S/o. – Late Hiralal Gupta, residing at 16, Kabi Nabin Sen Road, Shovena Mansi on 2<sup>nd</sup> Floor, Block – “E”, Dum Dum, Kolkata-700028. I filed chief and I tender myself. I exhibit -1- Balance-sheet as at 31.03.2007 and exhibit-A – Balance-sheet. As at 31.03.2010 and Exhibit-B printout of a cancellation of ROC detail union Advocate are strongly objection of the Exhibit NO. A and B.

**Cross-examination of O.P.W.-1:-**

I have not tender any resignation from my Director. Warning letter to be issued to the concerned workman. Para No. 6 and Para No. A as per the statement of these two paragraphs no documents have been filled. No original copy is produced of both the Exhibit A and B. No audited reports has been filed. We use to maintain sell register. NO sell register has been filed. No documents with regard to meeting along with the workmen with the management has been filed in affidavit in chief. No work specification and / or nature of duties performed by the workman and the area manager has not been filed by me. No document with regard to how many department of our company has not been filed by me. Company had preferred one writ application before the Honourable High Court being W.P. No. 253/2018 and same was of dismissed on 26.06.2011.

No document with regard to selling of asset of the company had sold off in order to square of the year 2007. No letter was served upon the Labour Department with regard to closure of our Company. No service rules of our company has been filed before this Tribunal. No document is filled in regard to complete close down of my company and the company is not operating in any part of Bengal or anywhere. I cannot say use to maintain sell register and the same has not been filled in affidavit in chief. I used to maintain of records of the product which my company used to produce and sell but no documents has been filed. No document with regard to the designation of Nilratan Biswas from the Directorship has been filed. I cannot produce any document with document in regard to

incentive and commission has been filled by me in the affidavit in chief. No document with regard to non-performance of the workman is stated as per para-7 in my affidavit has been filled. Written statement of the company has been filled by me before the Tribunal.

Not a fact that the Company is functioning. Not a fact the workman have been terminated. Not a fact that i disobeyed the Labour Law and my company use to do unfalir labour practive. Not a fact that wages of the workman have not been paid them. Not a fact that Mediwell Laboratories is functioning in the name of style of Mediwell pharma. I had offered them to work at as Commission agent instead of paying them wages which was declined by the workman. No police complain or General Diary was lodge against the union with regard to coercive measure resorted by the union. This affidavit has been signed after going through the same and understanding the same has been prepared as per my direction to Ld. Advocate. Not a fact that the statement with regard to closure of the business and the coercive steps taken by the Union are false. Not a fact that Ashok Dey and Biman Bihari Choudhury were workman. I cannot recollect where I have signed this affidavit. I signed the writ application at the High Court premises.

I have not filed nay documents with regard to my ailments.

Witness after understanding the question has given his answer without any influence from either of the party and put his signature on the same. The commission in the presence of the staff of Ajit Kumar Poyra.

The Ld. Advocate for the Union cited the following judgement reported in :-

1. 1981(3) SCC 225 p-18
2. 1984(1) SCC 509 P-2-4
3. 2013(10) SCC 324 P-38
4. 2015(4) SCC 458 P-20-22
5. 2015(8) SCC 150 P-27
6. 2019(17) SCC 184 P-13-16
7. 2022(9) SCC 586 P-16-19
8. 2022 SCC ONLINE Sc 499 P-31-33
9. 2022 SCC ONLINE SC 451 P-7

Thus, from the written statement as well as documentary evidence both oral and documentary and cross-examination of the company it can safely be stated that the company is still functioning and the 5 workmen were illegally and unlawfully terminated.

As per the written notes of argument advanced by the Ld. Advocate for the company the written statement / application so submitted by the Union on behalf of the workmen suffers in nullity as such this Ld. Tribunal may not travel beyond its maintainability and jurisdiction in accordance with the provision of law within the arena of the statute.

The dispute raised by under Section 2K of the Industrial Disputes Act, 1947 collectively represented by West Bengal Medical and Sales Representatives' Union who have no locus standi to espouse to represent an Industrial Dispute of Individual workmen as prescribed under Section 2A of the Industrial Disputes Act, 1947 and as such this order of Reference is neither fair nor proper rather violative of law as the workmen did not raise any disputes with the employer.

Any dispute on difference between that workmen and his employer connected with arising out of discharge, dismissal retrenchment or termination may be deemed to be an Industrial Dispute notwithstanding that “no other workmen nor any Union of workmen is a party to the dispute”.

the said order of reference is incompetent and non-application of mind properly by the conciliatory machinery and for which this particular order of reference is based on misrepresentation of the factum and in consequences of which the Ld. Tribunal may not entertain this order of reference for adjudication which is (sin-qua-non) violatative of settle the principle of law.

The Opposite Party Company had no knowledge and / or information from the concerned workmen, were the members of any such Union or the union was ever informed to the opposite party company about the registration of the workmen to the Union and no such credible documents are material on record. Hence, the representation of the Union is violatative misnomer under the Trade Union act, 1926.

The representative character of the Union is strongly inter alia challenged in accordance with the Trade Union Act, 1926 and the Rules so made there-under.

The recognition of the aforesaid Union, is never acknowledged by the opposite party company and it hints the relevant provisions of Section 28A Sub-Section (1) in Chapter – 111A of the Trade Union Act, 1926.

That the Opposite Party Company submits that as per provisions of Section 28D, the aforesaid Union has not been recognized as such no application or prayer placed before the opposite party company for its recognition on any point of time from the end of the aforesaid Union or the workmen at all are the members of any such union.

The character and representation of this Union relating to an individual dispute of a workman contaminated the settled principle of law as enunciated in the statute.

That apart from the aforesaid preliminary points so ventilated herein above, it is inter alia challenged that there was no such existing relationship of employee and employer and for which this order of reference exposing non-application of mind as well as not at all sustainability in law.

The written statement so filed by the applicants is unmistakably proved based on suppression and / or distortion of material fact for which this opposite party company submits that the claim application is not at all sustainability on the point of maintainability by any way or by any manner.

This Opposite Party Company submits that there is no unimpeachable proof regarding the locus standi of Union aforesaid and its members of the workmen in absence whereof this claim written statement / application suffers in nullity as well as it travels beyond the respective question of law and it should be decided at first, prior to arrive on the merits of this case.

The above mentioned maintainability points are purely based on both of question of law and facts. Hence, these are not sustainable in law before this Learned Tribunal.

It is very significant to note that the aforesaid erstwhile company was not a manufacturing unit but to obtain products to some other company and continue to its sales promotion as an agent of some other units.

The aforesaid employees, who worked as Medical representatives were not discharging their allotted duties for which the targets could not be achieved. At the same time, payment was not getting from the stockists causing hardship to the opposite party Company.

It is very surprised to note that Shri Biman Behari Chowdhury and Shri Ashoke Kumar Dey were the Area Manager, But all on a sudden, they refused to work as Area Manager and accordingly started work under their own choice and whims and conveyed to the Management that they are working under the instruction of the Union and their unwillingness to work in proper position causing detriment to the Opposite Party Company's business.

It is very strange to note that the Union, namely, West Bengal Medical and Sales Representatives Union, sent a notice by hand on 25.11.2009 addressing to the employer admitting the bona fide of the closer at Kolkata District as well as requested to withdrawn the said closer but this letter of the Union has no noxious with this present order of Reference when an Industrial Dispute is ceased to exist with effect from 01.09.2009 and requested to re-continuation of the business which is apparently not at all practicable for continuous losses of the Industrial Dispute duly intimated to the concerned workmen.

Apart from the aforesaid closer which was out and out justified and legal on which the Opposite Party Company also intends to pay all the employees of their legal dues within the arena of Section 25F of the Industrial Disputes Act, 1947 and in such circumstances here is no avenue left open which can be challengeable the factum of closer as it is prerogatives of the employer if they fail or unable to run its business by any way or by any manner so prescribed in the statute can shut down its working process / business.

Thereafter number of Joint Conference were held before the conciliatory machinery by series of issuance of notices over the caption issues : "unlawful and illegal closer", but the said issues ceased to exist when the employee and employer relationship are existed.

In accordance with the discussions so held before the Office of the Labour Commissioner, where a detailed chart of compensation was given to the employee-wise vide its letter dated 10.06.2010 duly acknowledged by the authority concerned.

The conciliation officer sent his failure report without proper enquiry and investigation simply non-application mind and accordingly the proposition of the law of closer under Section 25FFA of the I.D. Act, 1947 penetrated into Section 10 read with 2A of the Industrial Disputes Act, 1947 and for which the reference is bad in law ab-initio as well as not at all sustainable as such there is no existence of industry is found and / or operative in position.

In cross-examination of P.W.-1 i.e. Sri Pradip Das, one of the alleged members of Union but when respondent company had put forward categorical question to PW-1 that whether he will be produced and / or to show any documents which shows and / or

demonstrate the subscription paid to union as it has been allegedly stated that he was member of union since 1992, but, he has failed and / or to produce any such documents in this regard. PW-1 in cross-examination by the respondent company has stated that he does not know whether other employee i.e. Pradip Das, Ashoke Kumar Dey, Bimal Bharati Chowdhury, Rabi Chakraborty, Dipak Kumar Manna became members after the closure on 31.08.2009. Relevant questions put forwarded to the PW-1 for explaining any previous grievances and dispute with company prior to termination, where in the PW-1 has categorically stated that he has received increment every year, he was also enrolled as a member of ESI Corporation, used to subscribe to the EPFO Fund through company and prior to termination, there was no industrial dispute in any manner has been raised. PW-1 has also accepted the fact in his cross-examination that Union has not submitted any subscription receipt or registrar before Tribunal demonstrating membership of terminated employees.

PW-1 in his cross-examination on 03.09.2019 has also accepted the facts that they have never written and / or ventilated their grievances before Union in writing. It has been also accepted in his cross-examination that there was down fall in their sales product.

Under the above circumstances it is humbly submitted and prayed before this Learned Tribunal that the closure of the erstwhile company is lawful and that such closure be treated as closure from 01.09.2009 and not be turned as unlawful and illegal termination as unlawfully claimed by the employees through representatives' union. The claim is also barred by limitation and not maintainable before this Learned Tribunal. Furthermore, the erstwhile company has been able to show the all documents to establish that the union had made fraudulent and frivolous claim and applicant is not entitled to any relief from this Learned Tribunal.

On scrutiny the evidence and documents as well as hearing the submission of both the Ld. Advocates on behalf of the parties it is not established by the Company M/s. Mediwell Laboratories Pvt. Ltd. the cause of closure of Company and no document has been filed with regard to the selling of assets of the Company had sold upon in order to square off the year 2007. No letter was served upon the Labour Department with regard to closure of the Company. The company failed to produce the rules of the Company before this Tribunal. No document with regard to complete closed down of Company and the Company is not operating in any part of the Bengal or in any where has been filed. O.P.W.-1 Nripendra Narayan Gupta in his evidence stated that he did not tender his resignation from the director. No document with regard to non-performance of the workman in affidavit-in-chief has been filed. Therefore, considering all these Tribunal has got no hesitation to hold that the termination of service of the above Five permanent

employees is totally illegal and the above Five employees are entitled to reinstate with full back wages.

Accordingly, this case is disposed off on contest and this order is to be treated as an Award of this Tribunal.

Let the necessary number of copies of this judgment and award be sent to the Secretary, to the Government of West Bengal, Labour Department, New Secretariat Buildings, 12<sup>th</sup> Floor, 1 No. Kiran Shankar Roy Road, Kolkata – 700 001.

Dictated & Corrected by me

-Sd-  
Judge

-Sd-  
( Amit Chattopadhyay )  
Judge  
Eighth Industrial Tribunal,  
Kolkata  
30.10-2024

NEW SECRETARIAT BUILDINGS  
BLOCK – 'A', 2<sup>ND</sup> FLOOR  
1, KIRAN SANKAR ROY ROAD  
KOLKATA – 700001

Memo No. Dte./8<sup>th</sup> I.T./105/2024

Dated Kolkata, the 12-11- 2024

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From: Shri Amit Chattopadhyay,  
Judge,  
8<sup>th</sup> Industrial Tribunal,  
Kolkata – 1.

To : The Secretary to the  
Govt. of West Bengal,  
Labour Department,  
New Secretariat Buildings, 12<sup>th</sup> Floor,  
1, Kiran Sankar Roy Road,  
Kolkata – 700 001.

Sir,

I am sending herewith the Award passed in the matter of an industrial dispute between M/s. Mediwell Laboratories(I) Pvt. Ltd. 11/20, Nagendra Nath Road, Kolkata - 700028 and their five employees (1) Pradip Das (2) AShoke Kumar Dey (3) Biman Bihari Chowdhury (4) Rabi Chakraborty and (5) Dipak Kumar Manna represented by West Bengal Medical and Sales Representatives Union, 5, Sarat Ghosh Road, Kolkata-700014 Vide G. O. No. 551-IR/IR/11L-60/12 dated 24.05.2013 and reference no. 3115-IR/IR/3A-6/59, dated 21/06/1960 being **Case No.VIII-33/2013 U/s. 10 of the I.D. Act, 1947** for information and necessary action.

Encl: As stated above.

Yours faithfully,

Judge,  
Eighth Industrial Tribunal,  
Kolkata  
12.11-2024



I/595800/2025

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/ 67 /LC-IR)/22015(16)/12/2025

Date : 15/01/2025

ORDER

WHEREAS under reference of Labour Department's Order No. 551-IR/IR/11L-60/12 dated 24.05.2013 reference of the Industrial Dispute between M/s Mediwell Laboratories(I) Pvt. Ltd., 11/20, Nagendra Nath Road, Kolkata - 700028 and their five workmen (1) Pradip Das, (2) AShoke Kumar Dey, (3) Biman Bihari Chowdhury, (4) Rabi Chakraborty and (5) Dipak Kumar Manna represented by West Bengal Medical and Sales Representatives Union, 5, Sarat Ghosh Road, Kolkata-700014, regarding the issues mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Eighth Industrial Tribunal, Kolkata.


AND WHEREAS the said Eighth Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 30.10.2024 in case No. VIII-33/2013 on the said Industrial Dispute vide E-mail dated 09.01.2025 in compliance of u/s 10(2A) of the I. D. Act, 1947.

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,


  
Assistant Secretary  
to the Government of West Bengal

No. Labr/ 67 /1(5)/(LC-IR)/ 22015(16)/12/2025

Date : 15/01/2025

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

1. M/s Mediwell Laboratories(I) Pvt. Ltd., 11/20, Nagendra Nath Road, Kolkata - 700028.
2. West Bengal Medical and Sales Representatives Union, 5, Sarat Ghosh Road, Kolkata-700014.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11<sup>th</sup> Floor, 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/ 67 /2(3)/(LC-IR)/ 22015(16)/12/2025

Date : 15/01/2025

Copy forwarded for information to :

1. The Judge, Eighth Industrial Tribunal, Kolkata, N.S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata-700001 with reference to his E-mail dated 09.01.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

  
Assistant Secretary