

I/542984/2024

LABR-22015(16)/550/2019-IR SEC-Dept. Of LABOUR

Government of West Bengal

Labour Department, I. R. Branch

N. S. Building, 12th Floor, 1, K. S. Roy Road, Kolkata – 700001

No. Labr/ 750 /(LC-IR)/22015(16)/550/2019

Date : 05-08-2024

ORDER

WHEREAS an industrial dispute existed between M/s. Davidian Girls' School, 15, Royd Street, Kolkata – 700016 and their workman represented by Armenian College & Philanthropic Academy and Davidian Girls' School Non-Teaching Staff Union, 50/1, Nirmal Chandra Street, Kolkata - 700012 regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947) ;

AND WHEREAS the parties have filed an application under section 10(2A) of the Industrial Dispute Act, 1947 (14 of 1947) to the Second 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 Second Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 29.07.2024 in case No. VIII-35/2009 under section 10(2A) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide Memo No. Dte/2nd I.T./074/2024 dated 23.07.2024 ;

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,

Sdt.

Assistant Secretary

to the Government of West Bengal

No. Labr/ 750 /1(5)/(LC-IR)

Date : 05-08-2024

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

1. M/s Davidian Girls' School, 15, Royd Street, Kolkata – 700016.
2. Armenian College & Philanthropic Academy and Davidian Girls' School Non-Teaching Staff Union, 50/1, Nirmal Chandra Street, Kolkata - 700012.
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.

Sdt.

Assistant Secretary

No. Labr/ 750 /2(3)/(LC-IR)

Date : 05-08-2024

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his Memo No. Dte/2nd I.T./074/2024 dated 23.07.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary

Sandeep Datta
05/08/24

Case No. VIII-35/2009

M/s. Davidian Girls' School

Vs.

Workman Represented by Armenian College and
Philanthropic Academy and Davidian Girls' School Non-
Teaching Staff Union

Order No. 190

Date: 19.07.2024

Both parties are present.

The petitioner filed this case against the Opposite Party praying for a declaration that the order of dismissal dated 01.09.2008 issued by the Opposite Party is arbitrary and illegal and prayed for reinstatement alongwith full back wages and consequential relief and the Opposite Party contested this case and the case is pending for hearing argument.

In its Written Statement the Opposite Party has taken a plea that the Opposite party is not an industry according to The Industrial Disputes, Act 1947 and accordingly the case is not maintainable in law.

It is true that the case is pending for argument but according to Order 14 Rule 2(2) of the CPC, before discussing all other issues the Court has power to

dispose of any issue as preliminary issue if the allegation is related to the jurisdiction of the Court and any matter barred by law.

It is not legally necessary that the Opposite Party has to take any plea regarding non-maintainability of the case on the point of law or jurisdiction of the Court.

The Court suo motto can decide at any stage of the case or even at the time of filing of the case, as to whether the case is barred by law or by jurisdiction of the Court.

Accordingly one issue as preliminary issue was framed on 02.07.2024 to the point "Is the Davidian Girls' School an industry according to The Industrial Disputes Act, 1947?"

Heard both sides. The Ld. Advocate for the Opposite Party raised strong objection because the case is not maintainable in law and the Opposite Party is not an industry under The Industrial Disputes Act, 1947.

According to the substituted definition of Industry w.e.f. **21.08.1984** inserted by Act 46 of 1982, Section 2, hospitals and institutions owned or managed by organisation wholly or substantially engaged in any charitable, social, or philanthropic service or educational, scientific, research or training institutions

are not industries according to The Industrial Disputes Act, 1947.

Accordingly the decisions of the Hon'ble Supreme Court Reported in 1995, M.P.L.J. page 53 and 1999 SCC OnLine All 1308 cited by the Ld. Lawyer for the petitioner are not applicable in this case in view of Section 2 of Act 46 of 1982 effective from 21.08.1984.

In this case the petitioner has mentioned the Davidian Girls' School as the Opposite Party in this case and accordingly there is no need to prove that the Opposite Party is not a school.

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.

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 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. VIII -35/2009 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