

I/544688/2024

LABR-22015(16)/49/2024-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./ 764/(LC-IR)/22015(16)/49/2024

Date : 07-08-2024

ORDER

WHEREAS an industrial dispute existed between M/s. Geepee Food Pvt. Ltd., Chakundi- D.C.C., P.S. – Dankuni, Dist. – Hooghly, Pin - 712310 and its workman Sri Aktar Kayal, Village – Mirpur, P.O. – Bamunari, P.S. – Dankuni, Dist. – Hooghly, Pin - 712250 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14 of 1947) to the Third Industrial Tribunal specified for this purpose under this Department Notification No. 101- IR dated 2.2.12;

AND WHEREAS the said Third Industrial Tribunal has submitted to the State Government its Award dated 30.07.2024 in Case No. 01 / 2019 on the said Dispute vide Memo No. Dte/3rd I.T./095/2024 dated 31.07.2024.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes 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/ 764 /1(5)/(LC-IR)

Date : 07-08-2024

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

1. M/s. Geepee Food Pvt. Ltd., Chakundi- D.C.C., P.S. – Dankuni, Dist. – Hooghly, Pin - 712310.
2. Sri Aktar Kayal, Village – Mirpur, P.O. – Bamunari, P.S. – Dankuni, Dist. – Hooghly, Pin - 712250.
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.

Bn

Assistant Secretary

No. Labr/ 764 /2(3)/(LC-IR)

Date : 07-08-2024

Copy forwarded for information to :-

1. The Judge, Third Industrial Tribunal, N. S. Building, 3rd Floor, 1, K. S. Roy Road, Kolkata - 700001 with reference to his Memo No. Dte/3rd I.T./095/2024 dated 31.07.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary

Sandeep Datta
07-08-2024

*In The Third Industrial Tribunal,
New Secretariat Buildings, Kolkata-700 001*

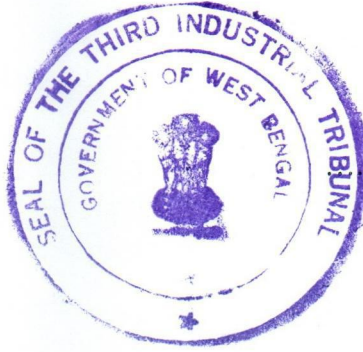
Case No. 01/2019 u/s. 2A(2)

Present: Sri Mihir Kumar Mondal
Judge, 3rd Industrial Tribunal
Kolkata

Aktar Kayal
Village-Mirpur, P.O. Bamunari,
P.S.-Dankuni, Dist. Hooghly,
PIN-712250.

-Vs.-

M/s. Geepee Food Pvt. Ltd.
Chakundi – D.C.C.
P.S.-Dankuni, Dist. Hooghly
PIN-712310.
West Bengal.



..... Applicant

OP/Company

A W A R D

DATED : 30TH DAY OF JULY, 2024

This is a case u/s 2A(2) of the Industrial Dispute Act, 1947. The instant case has been started on the basis of application u/s 2A(2) of the Industrial Dispute Act, 1947 filed by one Aktar Kayal of Village-Mirpur, P.S.-Dankuni, Dist. Hooghly against M/s. Geepee Food Pvt. Ltd., P.S.-Dankuni, Dist. Hooghly challenging the matter of his termination from the services of the Company (M/s. Geepee Food Pvt. Ltd.) by way of refusal of employment by the Management of the Company on 13.09.2018 when he went to resume his duty along with medical fit certificate after having recovered from his ailment with the prayer for granting relief of re-instatement in service with full back wages along with consequential relief in his favour.

The case of the applicant/workman is that he joined in the Company (M/s. Geepee Food Pvt. Ltd.) as a 'driver' in the year 2013 and accordingly his name was entered in the 'employment roll' of the Company and thereafter he was allotted Employees' Provident Fund Code No. WB/HLO/43345/473 and further he was brought under the coverage of ESI facilities being No.4108336738. He has mentioned that while he was working under M/s. Geepee Food Pvt. Ltd., his labour and service were utilized for the upliftment of the Company and during the period of his service under the Company, his salary was enhanced to an amount of Rs.10,000/- per month and he served under the Company for the uninterrupted period on and from the year 2013 to 13.09.2018. He has mentioned that while he was in the service of the Company, he became ill and thus remained absent from the service but after being recovered from the ailment, he went to his workplace on 13.09.2018 along with medical fit certificate and met with the Manager of the Company with the intention to resume his duty and at that time the Manager received the original medical fit certificate from him but refused to allow him to resume his duty



without assigning satisfactory reason. He has claimed that the Management never gave any opportunity to him to explain the reason behind his 'absence from duty' or to make self defence in the matter of his conduct. He has claimed that such refusal of employment was tantamount to the 'termination' from his service/job under the guise of 'refusal of employment' and such act of the Management was violative of all the settled principles of law. It is mentioned that after he was refused to join his duty under M/s. Geepee Food Pvt. Ltd. on 13.09.2018, he attended the office of the Company almost usually and requested the management of the Company to allow him to join his duty but the management did not allow him to join duty without assigning any satisfactory reason and also he was not given any opportunity for making his defence against any allegation leveled upon him. It is mentioned that prior to the termination of his service from the Company by way of refusal of employment, the management did not start any disciplinary proceeding against him as well as no charge sheet was served upon him or no show cause notice was issued against him or no domestic enquiry was conducted against him. It is mentioned that on 14.09.2018 he placed a 'demand of justice' before the management of the Company with the help of his legal agent along with a prayer for reinstatement with full back wages and other consequential benefits but the management of the Company kept itself mum without giving any effect to his such prayer submitted through his legal agent. It is mentioned by the workman that he challenged the matter of termination of his service under the Company under the veil of refusal of employment by way of filing representation before the Labour Commissioner, Government of West Bengal on 24.09.2018. The workman has mentioned that finally he filed this case before this Tribunal u/s. 2A(2) of the Industrial Disputes Act, 1947. In the application he has claimed that the so called termination of his service under the Company falls under the mischief of Section 2(oo) of the Industrial Disputes Act, 1947 i.e. in the category of 'retrenchment' and accordingly the Section 25F of the Industrial Disputes Act, 1947 comes into play and thus a workman cannot be retrenched without payment of retrenchment compensation but no such 'compensation' was paid to him. The workman has claimed that the termination of his service under the Company is void ab initio, irregular, illegal and inoperative and for that reason he is entitled to reinstatement in his service with full back wages and also entitled for other consequential benefits for the period in which he was forced to seat idle.

The Company i.e. M/s. Geepee Food's Pvt. Ltd. has contested the 'Application' u/s 2A(2) of the Industrial Dispute Act, 1947 by filing Written Statement. The OP/Company by its W.S. has denied all the statements of the applicant/workman containing various allegations leveled against the OP/Company and its Management. The OP/Company by its W.S. has claimed that on number of occasions the applicant/workman was appointed casually in the event when requirement of driver had arisen and thus the applicant/workman was never appointed as 'permanent employee' of the OP/Company and for that reason refusal of employment to the applicant/workman by the OP/Company does not arise. It has been reiterated that in the matter of a casual employment, guarantee of continuance of employment does not arise. It is mentioned in

the W.S. that the applicant/workman was never in continuous service under the OP/Company for a period of one year as defined u/s. 25B of the Industrial Disputes Act, 1947 and thus there is no ground to attribute the instant dispute as an industrial dispute. Moreover, it is mentioned that the applicant does not come within the purview of the definition of workman as provided in Section 2(s) of the Industrial Disputes Act, 1947 and thus this Industrial Tribunal has no jurisdiction to adjudicate the instant matter. In the W.S. the OP/Company has reiterated that the applicant was appointed as a casual driver in the factory and the said applicant had been working intermittently whenever vacancy had arisen, although his service was never satisfactory as he was involved in fatal accidents over multiple times. It is specifically mentioned that the applicant being the driver of the vehicle of the OP/Company met with an accident on 18.12.2017 and thereafter he did not turn up to perform duty and the management of the OP/Company got information that the applicant/workman was under treatment at ESI Hospital but he did not send any intimation to the OP/Company about such treatment.

The OP/Company has prayed for dismissal of the 'Application' u/s 2A(2) of the Industrial Disputes Act, 1947.

On the basis of pleadings of the parties the then Ld. Presiding Officer of this Tribunal on 11.09.2019 framed the following issues in this case :



ISSUES

1. *Whether the termination of service of Aktar Kayal, dated 13.09.2018 is justified?*
2. *Is the workman entitled to relief as prayed for there?*
3. *To what other relief/reliefs is the workman entitled?*

After framing of the issues, the evidence of this case was started. On scrutiny of the record, it is found that the applicant/workman examined himself as PW-1 in support of his case. It is seen that after conclusion of examination in chief of PW-1 AKTAR KOYAL in continuation of his examination in chief on affidavit, his cross-examination by the OP/Company was started and he was cross-examined in part on 21.10.2019 but his cross-examination was deferred on the prayer of the Ld. Advocate for the OP/Company. Next date for cross-examination of PW 1 was fixed. It is seen that after going through several developments ultimately this Tribunal failed to secure the presence of the OP/Company in the proceeding of this case and thereafter on 08.07.2022, the then Learned Presiding Officer of this Tribunal passed order for proceeding of this case ex-parte in absence of the OP/Company and accordingly, next date (19.07.2022) for ex-parte hearing. During ex-parte hearing, the Ld. Advocate for the workman did not adduce any further witness and thus, date for hearing of ex parte argument was fixed. The Ld. Advocate for the Applicant/Workman has filed written notes of argument.

Thus, the case has become ready for passing award.

It is seen that the erstwhile Presiding Officer of this Tribunal by order dated 11.09.2019 framed issues on the pleadings of the parties. It is seen that all total three numbers of issues were framed in this case u/s. 2A(2) of the Industrial Disputes Act, 1947. It is found that no issue on the point of maintainability of this case was framed, whereas framing of issue on the point of maintainability of the case is required for proper adjudication of the industrial dispute but such issue was omitted to frame.

In view of the above observation, the issues are recasted as follows :-

Recast Issues

1. *Whether the case is maintainable in its present form and in law.*
2. *Whether the termination of service of Aktar Kayal, dated 13.09.2018 is justified.*
3. *Is the workman entitled to relief as prayed for there?*
4. *To what other relief/reliefs is the workman entitled?*

During evidence of PW-1, following documents were proved and admitted in evidence and accordingly those were marked as exhibited documents. The documents are as follows:-

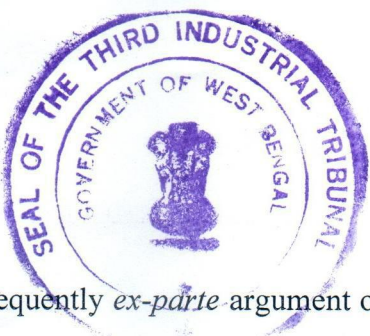
1. Exbt.-1 : Copy of ESI Card – IP No. 4108336738;
2. Exbt.-2 : Copy of Identity Certificate;
3. Exbt.-3 : Copy of Form-B.1.1, Injury Report;
4. Exbt.-4 : Copy of Form-10 for accidental benefit;
5. Exbt.-5 : Copy of Hazira Khata (two sheets)
6. Exbt.-6 : Copy of accidental benefit (two sheets)
7. Exbt.-7 : Copy of Demand Justice
8. Exbt.-8 : Copy of Postal Receipt-EW788719969IN
9. Exbt.-9 : Copy of receipt of the letter addressed to the LC.
10. Exbt.-10 : Copy of certificate issued by the Company.



Decisions with reasons

Issue Number - 1

In this case, the applicant/workman examined himself as PW-1. The OP/Company started cross-examination of PW-1 and such cross-examination was deferred but subsequently, the OP/Company did not avail the opportunity to complete the cross-examination of PW-1, the reason was best known to them. The erstwhile Learned Presiding Officer of this Tribunal vide order dated 08.07.2022 had taken view to consider the proceeding of this case as *ex-parte* and



subsequently *ex-parte* argument of this case has been heard in absence of the OP/Company. The applicant/workman in his Application under Section 2A(2) of the Industrial Disputes Act i.e. in his W.S. has mentioned that he submitted application before the Labour Commissioner on 24.09.2018 but such application yielded no result and thus he filed the instant Application before this Tribunal. The fact remains that the OP/Company submitted written statement in this case and in the written statement the OP/Company denied all the material allegations leveled against it by the applicant/workman. In the W.S. the workman has averred that the matter of refusal of employment by the Company to the workman “*was protested vide his letter dated 24.09.2018 to the Labour Commissioner, Government of West Bengal, but yielded no effect.*” The workman examined himself as PW-1 and some photocopies of documents were produced and proved by the workman and those were marked as exhibited documents. All total ten documents in photocopies were exhibited being identified and proved by PW-1. On perusal of exhibited documents, this Tribunal did not find any ‘protest letter dated 24.09.2018’ issued by the workman Aktar Kayal addressed to the Labour Commissioner, Government of West Bengal. There should not be any hesitation to mention here that the workman did not produce and prove any such ‘protest letter dated 24.09.2018’ addressed to the Labour Commissioner, Government of West Bengal in course of his evidence and even prior to passing this Award. It is to mention here that Ld. Advocate for the workman submitted written notes of argument on 20.06.2024. In the written notes of argument he has mentioned that *Exhibit-9* is the ‘Letter to the Commissioner receipt on 24.09.2018’. During oral argument, this Tribunal asked the Ld. Advocate for the workman to show that the Exhibit-9 is actually a letter addressed to the Labour Commissioner raising industrial dispute which was received by the office of the Labour Commissioner on 24.09.2018, which he meant to say. Ld. Advocate for the workman in reply stated that actually Exhibit-9 is a photocopy of a letter dated 14.09.2018 written by the workman Aktar Kayal to M/s. Gee Pee Food Pvt. Ltd., Chakundi Limited, Chakundi D.C.C., P.S.-Dankuni, Dist.-Hooghly and such copy of letter bears a ‘received’ seal of Labour Commissioner, West Bengal with the date 24 Sep 2018. Ld. Advocate for the workman candidly submitted that actually **no** document was produced and filed by the workman to show that actually he raised industrial dispute to the Labour Commissioner, Government of West Bengal after his service was terminated by the Management of the Company. He has candidly submitted that he has no answer supported by exhibited document on the point raised by this Tribunal i.e. the workman is required to establish that he raised industrial dispute to the *Conciliation Officer of the Appropriate Government* for the conciliation of the dispute and after expiry of 45 days from the days of such ‘application’ raising industrial dispute, he directly made an application to this Tribunal for adjudication of the dispute. Ld. Advocate Uddipan Banerjee also mentioned that he was not the Advocate on Record of the workman while the application u/s. 2A(2) of the Industrial Disputes Act, 1947 was filed before this Tribunal and he was engaged by the workman as his Advocate at the later stage of

this case. He has urged to mention in the record that when the evidence of PW-1 was recorded in this case, he had no existence in this case as the Advocate on Record on behalf of the workman.

The relevant portion of the provision of Section 2A(2) of the Industrial Disputes Act, 1947 reads as follows – “*Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after expiry of forty-five days from the date he has made the application to the Conciliation Officer of the Appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute,*”

Thus, it is well transpired that the workman failed to comply the mandatory provision of sub-Section 2 of Section 2A of the Industrial Disputes Act, 1947 prior to filing application for adjudication of industrial dispute before this Tribunal under the provision of Section 2A(2) of the Industrial Disputes Act, 1947. According to the sub-section 2 of Section 2A of the Industrial Disputes Act, 1947 a workman who has been dismissed/terminated from his service of the employer, is required to make an application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and after expiry of 45 days from the date of such application to the ‘appropriate Government’ for conciliation of the industrial dispute, his right to file application direct to the Labour Court or Tribunal for adjudication of the industrial dispute accrues.

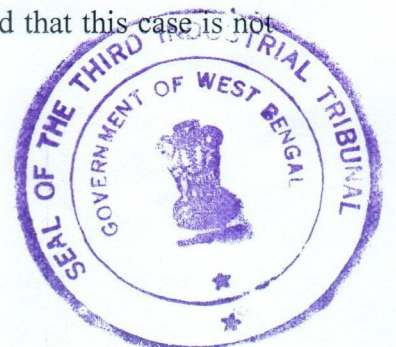
But, in this instant case, unfortunately the workman has failed to produce and prove either the original or photocopy of his such application, if any, supposedly submitted to the appropriate Government for conciliation of the industrial dispute after his service was terminated by his employer. Thus, he has failed to establish that he has complied the provision of ‘pre-condition’ to file an application directly to the Labour Court or Tribunal for adjudication of the industrial dispute arose as a consequence of termination from his service.

In view of the practical situation and discussion made in the above, it is no more obscure that this case was filed ignoring the provision of sub-section 2 of Section 2A of the Industrial Disputes Act, 1947. So, without hesitation it can be mentioned that the foundation of this case was defective. Accordingly, there is nothing to prevent this Tribunal to hold that this case is not maintainable in its present form and in the law.

Thus, the issue No. 1 is decided in negative against the petitioner.

Issue Nos. 2, 3 & 4

For the sake of convenience and brevity all those issues are taken together for discussion.



[Case No.01/2019; u/s. 2A(2)]

From the above it is found that Issue No.1 has been decided in negative. So, in view of such decision it is clear that this instant case is not maintainable in its present form and in law. Since it has been decided that this case is not at all maintainable in its present form and in the law, there is no scope and necessity to decide whether the termination of the service of the workman Aktar Kayal with effect from 13.09.2018 is justified or not. Moreover, in view of the decision over the issue No.1 no scope remains for making decision whether the workman is entitled to get any relief as prayed for or whether the workman is entitled to any other relief or reliefs.

Thus, issue Nos. 2, 3 & 4 are disposed of accordingly.

Hence,

it is

ORDERED

that the instant case arising out of an application u/s. 2A(2) of the Industrial Disputes Act, 1947 by the applicant/workman is not maintainable.

This is the award of this Industrial Tribunal in this case.

Copies of this Award be sent to the Labour Department, Government of West Bengal in accordance with usual norms and rules.

Dictated and corrected

Judge



sd/-
(Mihir Kumar Mondal)
Judge
Third Industrial Tribunal
Kolkata
30.07.2024