

I/549678/2024

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata – 70000

No. Labr/817/(LC-IR)/22015(16)/7/2022

Date: 22/8/2024

ORDER

WHEREAS an industrial dispute existed between M/s. Gloster Limited, P.O. – Fort Gloster, Dist. Howrah, Pin - 711310 and Sri Golak Chandra Patra, Vill. – Bauria Gowala Para, P.O. – Bauria, Dist. – Howrah, Pin - 711305 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) (d) of the Industrial Dispute Act, 1947 (14 of 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 (14 of 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 14.08.2024 in Case No. 44/2022 under section 10(1b) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide Memo No. Dte/2nd I.T./084/2024 dated 14.08.2024.

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/817/1/(5)/(LC-IR)

Date: 22/8/2024

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

1. M/s. Gloster Limited, P.O. – Fort Gloster, Dist. Howrah, Pin - 711310.
2. Sri Golak Chandra Patra, Vill. – Bauria Gowala Para, P.O. – Bauria, Dist. – Howrah, Pin - 711305.
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.

Bm

Assistant Secretary

No. Labr/817/2/(2)/(LC-IR)

Date: 22/8/2024

Copy forwarded for information to:-

1. The Judge, Second Industrial Tribunal West Bengal, with respect to his Memo No. Dte/2nd I.T./084/2024 dated 14.08.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Assistant Secretary

Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

2nd Industrial Tribunal, Kolkata

Case No.44/2022

**Under Section 10(1)(b)(d) of The Industrial Disputes Act,
1947**

Sri Golak Chandra Patra

Petitioner

Vs.

M/s. Gloster Limited

Opposite Party

Date: 14.08.2024

J U D G E M E N T

The petitioner has filed one written statement under Section 10(1)(b)(d) of The Industrial Disputes Act, 1947 in this case and submitted that he was a permanent employee under the OP company and he was on medical leave from 12.02.2022 and on 10.05.2022 he was declared fit and then on 10.05.2022 he went to the OP company to join his duty and the OP company directed him to join his duty on 11.05.2022 and then he went

to the OP company on 12.05.2022 to join his duty but he was not allowed to join his duty and he raised one dispute before the Labour Department and attended the Conciliation Officer but the matter was not solved and then he filed this case before this Tribunal praying for his reinstatement and payment of full back wages alongwith consequential benefits.

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

In the written statement the OP company has submitted that the petitioner was under treatment under the ESI, since 11.05.2022 and on 06.05.2022 he was declared fit and the petitioner sent one letter dated 06.05.2022 to the OP company for providing him light job but the OP company is not legally entitled to provide any light job to the petitioner in absence of any contract and on 10.05.2022 he was advised to resume his duty in his usual place of work but the petitioner refused to work there and then the petitioner sent some letters containing some false and baseless allegations to the OP company and he did not join in his usual place of work and in para no. 28 of the written statement the OP company has submitted that the company has no objection to employ the petitioner if he is interested to work in his usual place of posting and he can join his duty on any day and hence, the OP company has prayed for dismissal of this case.

In this the petitioner has also filed one petition under Section 15(2)(b) of The Industrial Disputes Act, 1947 praying for interim relief against the OP company and the OP company has contested the said interim relief petition by filing one written objection and then 04 issues were framed and then the case was taken up for evidence of the petitioner on interim relief and the petitioner as the PW1 was examined in chief in full and he proved some documents and he was cross-examined in part and during his further cross-examination on 24.01.2024, the petitioner stated that if the OP company permits him to join as Hessain Weaver in the Weaving department, he will join on the next date in the OP company and as per permission of the OP company, cross-examination of the petitioner on the interim relief was deferred on that date as he agreed to join his duty as per permission of the OP company.

Record shows that 31.01.2024 was fixed for filing the joining report and on 31.01.2024 the OP company filed a petition stating that the petitioner did not join his service and the petitioner filed a petition praying for time as the petitioner did not join his duty and on the next date also the petitioner prayed for time and then on 02.05.2024 the petitioner filed a petition with some medical documents and submitted that at present the petitioner has been suffering from different diseases including the nerve system and the doctor has advised for a light job for him and accordingly he has prayed for joining in the light duty.

The OP company filed one written objection on 27.06.2024 against the petition dated 02.05.2024 filed by the petitioner and then on 15.07.2024 the petitioner filed one petition alongwith two letters dated 11.07.2024 and 12.07.2024 and submitted that on 11.07.2024 he went to join his duty but he was not allowed to join his duty and he showed his resignation letter dated 12.07.2024 on that date to the OP company in good faith and without allowing the petitioner to join his duty on 11.07.2024, the OP company accepted his resignation letter dated 12.07.2024 and then on 06.08.2024 the OP company filed one objection against the petition dated 15.07.2024 filed by the petitioner and submitted that on 11.07.2024 the petitioner went to the OP company and he did not join his service but he submitted his resignation letter dated 12.07.2024 on 11.07.2024 and the OP company accepted his resignation letter dated 12.07.2024 on 11.07.2024.

After hearing both sides it is clear that the petitioner has not produced any letter dated 11.07.2024 to show that he went to join his duty on 11.07.2024. On the contrary, he has produced one letter dated 12.07.2024 signed by him, which was produced by him before the OP company and the letter dated 11.07.2024 issued by the OP company mentions that the OP company has accepted his resignation letter dated 12.07.2024 with immediate effect.

The letter dated 12.07.2024 issued by the petitioner to the OP company mentions that due to his illness he has submitted

resignation from his service and requested the OP company to accept the said resignation letter.

So at present the circumstance is that the petitioner filed this case praying for reinstatement of his service with full back wages and consequential benefits as he was not allowed to join his service with effect from 10.05.2022 and during hearing of the interim relief petition of the petitioner, the petitioner was allowed by the OP company to join his service in his usual place of posting but there is nothing on record to show that on 11.07.2024 he went to join his duty. On the contrary, on 11.07.2024 he went to the OP company to submit his resignation letter dated 12.07.2024 which was accepted by the OP company on 11.07.2024.

So at present he has resigned from his service and he did not proceed with his prayer for reinstatement of his service alongwith full back wages with consequential benefits as mentioned by him in his written statement in this case and accordingly I hold that as he has resigned from his service, he has waived his claim for reinstatement of his service alongwith full back wages with consequential benefits and there is no legal need to proceed further with this case and the interim relief petition and though the matter of resignation took place during hearing of the interim relief petition, the said matter of resignation has legal effect on the main case because the interim relief petition is a part of the main case of the petitioner and there is no legal necessity to discuss whether the allegations of the petitioner and the OP company in the main,

case are false or true as the petitioner has resigned from his service.

According to the case of the petitioner, since 10.05.2022 the petitioner was not allowed to join his service and according to the written statement of the OP company, the doctors of ESI declared the petitioner fit on 06.05.2022 by a certificated and recommended for joining his service w.e.f. 09.05.2022.

So from the cases of both sides, it is clear that since 10.05.2022 the petitioner did not work or was not allowed to work in the OP company though it is admitted by the OP company in its written statement that since 11.02.2022 the petitioner was under the treatment of ESI and on 06.05.2022 he was declared fit by the said ESI by a certificate and the said ESI recommended for joining from 09.05.2022.

As the petitioner has resigned from his service during pendency of this case and as there is no question of reinstatement of his service in the OP company as per **voluntary** resignation by the petitioner, he is not entitled to get any full back wages from 10.05.2022.

As the petitioner has voluntarily resigned from his service during pendency of this case due to his illness and as the case of the petitioner cannot be **legally** proceeded at present, the main dispute of both the parties of this case as to whether on 10.05.2022, being medically fit, the petitioner **was not allowed**

to work in the OP company or he himself **did not join to work**, cannot be and could not be legally decided.

Admittedly from 11.02.2022 to 06.05.2022 the petitioner was under treatment under the ESI and it was recommended by the ESI that the petitioner may join his service on 09.05.2022.

From the record it is not clear as to whether from 11.02.2022 to 09.05.2022, the OP company paid salary of the petitioner and accordingly I hold that if full back wages along with other consequential benefits from 11.02.2022 to 09.05.2022 have not been paid by the OP company to the petitioner earlier, the OP company is bound to pay the same to the petitioner immediately.

So considering the entire materials on record, I hold that the petitioner is not entitled to get any relief for reinstatement of his service as he has voluntarily resigned from his service during pendency of this case.

Hence it is,

ORDERED

that the case no. 44/2022 under Section 10 (1)(b)(d) of The Industrial Disputes Act, 1947 is dismissed against the OP company.

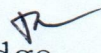
If the full back wages along with other consequential benefits from 11.02.2022 to 09.05.2022 have not been paid by the OP company to the petitioner earlier, the OP company is directed to pay the same to the petitioner with interest of 10% per annum for the said period within 30 days from this date of Order.

Let this judgement and 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**