

I/439387/2023

Government of West Bengal
Labour Department
I.R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/. 865 / (LC-IR)/11L-39/2015 Date: 20/09/2023

ORDER

WHEREAS an industrial dispute existed between M/s. Kansabati Spinning Mills Ltd., Barjora (Bankura Unit), Dist.- Bankura, Pin - 722202 and workman Mr. Ranjit Kumar Ghosh, S/o Lt. Amulya Charan Ghosh, Vill. & P.O. - Khirpai, Ward No. - 10, Dist. - Paschim Medinipur, Pin - 721232 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 Judge, Ninth Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the Ninth Industrial Tribunal has submitted to the State Government its Award dated 31/08/2023 in case No. 01/2017 U/s 2A (2) on the said Dispute vide memo no. 154 -I.T. dated 05/09/2023.

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,

Sd/-
Assistant Secretary
to the Government of West Bengal

439387/2023

(2)

No Labr/⁸⁶⁵...../1(2) – IR Dated ^{28/09/}.....2023

Copy forwarded for information to:

1. The Judge, Ninth Industrial Tribunal, West Bengal, Durgapur, Administrative Building, City Centre, Pin - 713216 with reference to his Memo No. 154 -I.T. dated 05/09/2023.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

^{Solt}
Assistant Secretary

No. Labr/⁸⁶⁵...../2(5) – IR Dated ^{28/09/}.....2023

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

1. M/s. Kansabati Spinning Mills Ltd., Barjora (Bankura Unit), Dist.- Bankura, Pin - 722202.
2. Mr. Ranjit Kumar Ghosh, S/o Lt. Amulya Charan Ghosh, Vill. & P.O. – Khirpai, Ward No. – 10, Dist. – Paschim Medinipur, Pin - 721232.
3. The Assistant Labour Commissioner, W.B., In-Charge of 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.


Assistant Secretary

H.A.(IT)
21/09/2023
Dipankar
21/09/2023



IN THE MATTER OF INDUSTRIAL DISPUTES BETWEEN
 RAJIT KUMAR GHOSH, S/O -LT.AMULYA CHARAN GHOSH,
 RESIDING AT VILL. & P.O KHIRPAI, WARD NO.10,
 DIST.-PASCHIM MEDINIPUR, PIN-721232.

VS.

M/S. KANGSABATI SPINNING MILLS LTD., BARJORA (BANKURA
 UNIT), DIST.-BANKURA, PIN- 722202.

BEFORE THE 9TH INDUSTRIAL TRIBUNAL, DURGAPUR,

PRESENT :- SHRI SUJIT KUMAR MEHROTRA,

JUDGE, 9th INDUSTRIAL TRIBUNAL,

DURGAPUR.

Case No.01/2017, U/S 2A(2) of the Industrial Disputes Act,1947.

Ld. Advocate for the Workmen: - Mr.S.K.Panda & Mr. Jayanta
 Kr. Chakrabarty..

Ld. Advocate for the O.P./Employer :- Mr. Debasis Mondal..

The Award dated:-31st day of August, 2023.

The above-named petitioner/workman by presenting an application U/S 2A(2) of the Industrial Disputes Act,1947 ((herein after referred to as the Act,1947) before this tribunal prays for adjudication of the industrial disputes between him and his employer i.e O.P/Mill. He by invoking jurisdiction of this court under the amended provision of Sec.2A(2) of the Industrial Disputes Act, 1947 prays for an award for his reinstatement in the service of the O.P/employer with full back wages on the ground of his illegal retrenchment from the service by the O.P/employer.

Petitioner/workman's pleading case in a nut-shell is that he was appointed as Deputy Spinning Master on 21.10.2013 by the O.P/employer for a period of one year under Mill Manager and that subsequently, he was transferred from Barjora to Birbhum Unit.

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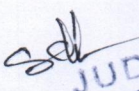
His further pleading case is that being satisfied with his performance the management of the O.P/employer confirmed his service after one year from the date of his appointment.

Petitioner/workman in his application further averred that due to his illness he was compelled to remain absent from his duty on and from 30.03.2015 and he duly informed the management of the O.P/employer about his such ailment and that when after recovery from his ailment he went to join his duty he was not allowed to resume his duty. He by sending a letter dated 27.03.2017 requested the management to allow him to join his duty but as no reply was received by him, so he personally appeared before the management of the O.P/employer on 03.05.2017 and the management of the O.P/employer refused to allow him to resume his duty.

Petitioner/workman's further pleading case is that such refusal of employment by the management of O.P/employer amounts to illegal termination of his service and against such illegal termination he made a representation in writing on 12.05.2017 but the management refused to accept his said letter.

Finding no other alternative he raised an industrial dispute with the Asstt. Labour Commissioner, Bankura by sending a letter dated 16.06.2017 and as even has elapsed of 45(forty-five) days no information is received by him, so he filed the instant application U/S 2A(2) of the Act, 1947.

CR reveals that after registration of the impugned application of the petitioner/workman on 06.11.2017 this tribunal issued notice upon the O.P/employer and in consequence thereof the management of the O.P/employer appeared on 11.10.2022 and also filed its written objection wherein it challenges the maintainability of the petitioner/workman's impugned petition by stating that the applicant does not come within the definition of "workman" under the Act, 1947 as he was employed in a managerial / supervisory post and drew monthly wages exceeding Rs.16,000/-.


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It also denies all other averments of the petitioner/workman's pleading case and also stated that the petitioner/workman should have joined his duty immediately after getting a fit certificate of the Doctor but he did not join the same. O.P/employer also stated in its WS that the petitioner/workman has not been terminated but he himself remained absent from his duty, so the question of his getting retrenchment compensation, notice pay, etc. does not arise and ultimately prays for dismissal of the instant case against it.

Before making further discussion it would be pertinent to specify the reason of delay for hearing of the instant case, as revealed from the CR. After registration of the impugned application of the petitioner/workman on 06.11.2017 the then Id. Judge of this tribunal fixed the matter for hearing on the point of admission and the same continued till 01.08.2022 and thereafter the notice upon the O.P/employer was issue by this tribunal. That apart, due to long pandemic situation the instant case could not proceed in the pace in which it was supposed to proceed.

CR further reveals that after completion of the pleading of the parties this tribunal vide order no.62 dated 09.12.2022 framed the following issues for adjudication of the industrial disputes between the parties :-

- 1) Is the petitioner a workman?
- 2) Is the instant case maintainable under the Industrial Disputes Act, 1947?
- 3) Whether service of the petitioner/workman was terminated on 03.05.2017 by way of retrenchment of the O.P/employer? If so, whether the same is justified?
- 4) To what other relief petitioner/workman is entitled to get?

At this juncture, it is pertinent to mention herein that after framing of the above issues this tribunal fixed the instant case for evidence of the petitioner/workman in presence of the Id. Lawyer of the O.P.?employer but as subsequently, the O.P/employer stopped to appear in the instant case, so



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this tribunal was left with no other option but to fix the instant case for hearing in ex-parte against the O.P/employer vide order no.69 dated 11.05.2023. In terms of the said order the instant case is heard in ex-parte against the O.P/employer.

Evidence from the side of the petitioner/workman

In order to prove his pleading case the petitioner/workman adduced evidence by filing his affidavit-in-chief as well as by adducing further evidence on oath as P.W-1 and he also produced the following documentary evidence from his side:

- 1) Appointment letter dated 21.10.2013 ---Exbt.1,
- 2) Letter addressed to A.L.C, Bankura by Ranjit Kumar Ghosh dated 16.06.2017--- Exbt.2,
- 3) Letter addressed to M.D of company by Ranjit Kumar Ghosh dated 03.05.2017--- Exbt.3,
- 4) Letter addressed to M.D of company by Ranjit Kumar Ghosh dated 27.03.2017--- Exbt.4,
- 5) Order of Increment of Ranjit Kumar Ghosh dated 13.10.2014-- Exbt.5,
- 6) Letter addressed to Ranjit Kumar Ghosh by M.D, Company dated 21.10.2013---Exbt..6,
- 7) Note sheet of the Mill Manager dated 05.08.2014--- Exbt.7,
- 8) Letter addressed to Ranjit Kumar Ghosh by Mill Manger dated 25.05.2015--- Exbt.8,
- 9) Letter addressed to Ranjit Kumar Ghosh by M.D, Company dated 21.10.2013--- Exbt.--9,
- 10) Pay Slip on August, 2014 --Exbt.--.10.

Argument from the side of the petitioner / workman

During the course of argument it was argued by the ld. Sr. lawyer that the petitioner workman was although appointed as Deputy Spinning Master



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and his salary was Rs.10,000/- p.m. but his nature of work was as that of ordinary workman and not that of managerial / supervisory nature. He further contended that to decide the issue whether the petitioner is a 'workman' within the ambit of Act, 1947, it is not the nomenclature of the post in which petitioner was appointed and working but it is the nature of the duty performed by him which should be the determining factor.

By taking recourse to the definition of 'workman' as provided in Sec.2(s)(iv) of the Act, 1947 it was also contended by the ld. lawyer that mere drawing monthly wages exceeding Rs.10,000/- p.m. does not debar a workman from invoking the jurisdiction of this tribunal for adjudication of industrial disputes.

It is pertinent to mention herein that that ld. lawyer also submitted his written argument wherein he referred number of case laws but he did not submit either the journals or the copies of those case laws in support of his such arguments. However, be that as it may for the time being as if required I would discuss about implication of the same in the latter part of this award.

Issue Nos. 1 & 2 :

Both these issues are taken up together for the sake of brevity and convenience for discussion.

These issues speak about mixed question of law and facts as because whether the petitioner is a 'workman' under the Act, 1947 is or not is to be considered in the light of facts and other materials of the instant case. To determine the same we are to first consider the relevant provision of law.

Sec.2(s) of the I.D. Act, 1947 provides as under :-

"workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment by express or implied, and for the purposes of any proceeding under this

this

Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

- (i) who is subject to the Air Force-Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]



On plain reading of the above provisions it is crystal clear that a person is not included in the definition of workman if he comes under any of the categories as mentioned in clause (i) to clause (iv).

From clause (iv) if sec.2(s) of the I.D Act it is apparent that the legislature have put a ,(comma) in between the word 'supervisory capacity and draws wages exceeding ten thousand rupees'.

To consider the merit of the argument of the ld. Sr. lawyer we are to read the entire clause as a whole to give effective meaning of the same with the object of the Act.

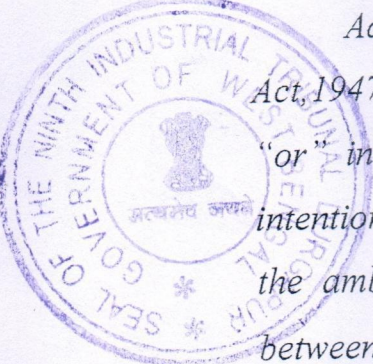
It is the golden rule of interpretation of a statute that words of statute must prime facie is given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, the courts/tribunals are bound to give effect to that meaning irrespective of the consequences.

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The conventional way of interpreting a statute is to seek the intention of its maker and apply that to the facts of the case at hand. An interpretation of the statutory provision which defeats the intent and purpose for which the statute was enacted should be avoided. The Hon'ble Calcutta High Court in the case of **Badsha Mia Vs. Rajjab Ali**, AIR 1946 Cal 348 observe that the primary object in interpreting a statute is always to discover intention of the legislatures.

This apart, the Hon'ble Supreme Court in catena of decisions observed that it is the settled proposition progressive and beneficial legislation must be interpreted in favour of the beneficiaries when it is possible to take two views of a local provision. In this regard, we may refer the case of **Kerala Fisherman Welfare Fund Board Vs. Fencifood**, Appeal (Civil) Number 3058 of 1995 decided on 25.04.1995.

The Hon'ble Apex Court in the case of **S. Gopal Reddy Vs. the state of A.P** reported in (1996) SCC(4) 596 also reiterated its same view.



Adverting to the interpretation of clause (iv) of sec.2(s) of the Act, 1947 it can be seen that the framers of the legislatures used the word "or" in between the words "mensem" and "exercises" to express their intention to lay down another criteria for not considering a person within the ambit of 'workman'. But the legislatures have used , (comma) in between the words "supervisory capacity and draws wages" which means that a person who is employed in a supervisory capacity and draws wages exceeding 10,000/- (ten thousand) rupees per mensem does not come within the definition of 'workman' under the Act, 1947.

If for the sake of argument I do accept that , (comma) is to be interpreted in a disjunctive manner, then the same does not give any effective meaning in consonance with the object of the Act of 1947 to the sentence "being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem" as well as the word "or" used in between the word "mensem" or exercises. Accordingly, clause (iv) of sec.2(s) of

I.D. Act, 1947 excludes any person to be a workman if he is employed in a supervisory capacity and draws wages exceeding Rs. 10,000/- per mensem in one category and in second category if he exercises either by nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

Considering above discussed pleading case as well as argument of the petitioner/workman I am of the considered view that before going into the merit of the same it is necessary to have a look at the law on the bone of contention regarding applicant employee's claim of a workman under the Act, 1947.

*The Hon'ble Supreme Court in the case of **Arkal Govind Raj Rao (Supra)** discussed the term "workman" under the Act, 1947 and in Para 6 observed that where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties these additional duties cannot change the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person....."*

The Hon'ble Court in para 16 further held as under:-

The test that one must employ in such a case is what was the primary, basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not be detract from the truth.

The Hon'ble Supreme Court further observed that difference in salary is hardly decisive, nor the designation of a clerk by itself is decisive. Focus has to be on the nature of duties performed.

The Hon'ble Supreme Court in the case of **S.K. Verma Vs. Mahesh Chandra**, AIR 1984 SC 1462 at Para 4 held that "so we are adopted pragmatic and pedantic approach and we proceed, in providing the question whether development officers in the Life Insurance Company are workmen to first consider the broad question on which side of the line they fall, labour or management, and then to consider whether there are in good reasons for moving them over from one side to other.

The Hon'ble Gujarat High Court in the case of **Natvarlal U Modi (Supra)** had the occasion to discuss the actual meaning of "workman" as provided in the Sec.2(s) of the I.D. Act, 1947 and held that mere designation is not decisive but it is the nature of the duty which is important and relevant for determination whether a person is a workman under the Act, 1947 or not.

The Hon'ble Karnataka High Court in the case of **Vishakantaiah T. N (Supra)** discussed all the above discussed Supreme Court's decision and other decisions and held that "the broad intention of the legislature is to take the entire labour force and exclude managerial forces. The designation of an employee is not of which importance and what important is the nature of duties being performed by him. The determinative factor is the main duties of the concerned employees and not some other work incidentally done. In other words, what is in substance the work which employee does or what is in substance he is employed to do".

It has further been held that the principal or main work in the employment of a person will have to be determined from the letter of appointment, the nature of duty the employee is to perform in the course of his employment and other attending circumstances. The question whether an employee is a workman or not is not a pure a question of fact. It is a mixed

question of fact and law. In arriving at the conclusion the tribunal first has to address itself to the various duties assigned to the employee and then draw a conclusion of law as to whether in the light of duties assigned to him, the employee would be a workman or not.

The Hon'ble Karnataka High Court laid down the following guiding principles to be followed when the status of a workman is disputed under the I.D. Act, 1947 touching jurisdictional issue of the tribunal. The same as are follows:

- 1) The court shall adopt a pragmatic and not pedantic approach.
- 2) What the court has to see is, what is the primary or substantial duty which the person is performing. Is the said work managerial, administrative or supervisory in nature?
- 3) What is the remuneration paid for?
- 4) Then to consider which side of the line they fall labour or management, and then to consider whether there are any good reason for moving them over one side to other.
- 5) In arriving at conclusion the nomenclature attached to the designation should not blur the mind of the court.
- 6) Similarly, some additional or incidental duties attached to the main work should not be given undue weightage.
- 7) Substantial duty performed by the person should be covered by the terms of the order of appointment, terms of contract if entered into, oral evidence and such other material the court deems fit to rely on.

From above discussed case laws of the Hon'ble Supreme Court as well as various High Courts it is crystal clear that in determining whether a person is a 'workman' within Sec.2(s) of the I.D. Act, 1947 it is the primary nature of the duties performed by him which is to be taken into consideration and not the designation attached to his post and monthly wages.



[Signature]
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Keeping in mind the above settled proposition of law in determining the status of a workman under the Act, 1947 we are to discuss the pleading case as well as evidence of the petitioner/workman.

As per pleading of the petitioner he was appointed on 21.10.2013 in the post of Deputy Spinning Master by the O.P/employer in its spinning mills at Barjora, Bankura and he performed his duty diligently and after being satisfied with his service the management confirmed his service after one year from the date of his joining. Exbt.1 i.e appointment letter issued by the Managing Director of the O.P/establishment, also proved the appointment of the petitioner in the post of Deputy Spinning Master on a Basic Pay of Rs.10,000-250-13,750-350-18,250-400-2,2250/- + Grade Pay of Rs.200/- + VDA and other allowances as applicable.

Exb.5 i.e the order of the Managing Director dated 13.10.2014 also proved that the service of the petitioner has been confirmed with effect from 01.07.2014 in the same pay scale. Besides that, Exbt.1 further speaks about the other facilities provided to the petitioner attached with his such post such as providing free family accommodation in the colony of the mill. It is pertinent to mention herein that although Exbt.1 and Exbt.5 proved the appointment and working of the petitioner as Deputy Spinning Master but it do not speak about actual nature of duty performed by the petitioner.

Now, let us see what sort of evidence has been adduced by the petitioner to establish his case that he was although appointed in the manager/supervisor post but he was actually not performing the duty of supervisor in the O.P/establishment.

The petitioner in his impugned petition U/S 2A nowhere stated about the actual nature of his duty which he used to perform in the O.P/establishment. His impugned petition is absolutely silent about the contention of his ld. Lawyer, as made at the time of argument that he actually used to perform the duty of a workman in the O.P./establishment

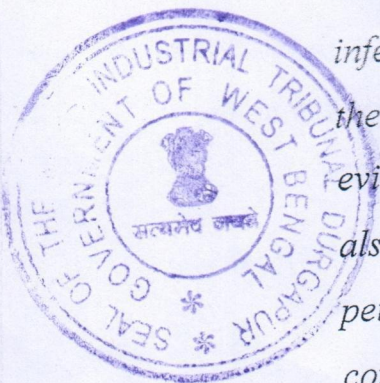
and he did not use to perform the duty of a manager/supervisor in the O.P./establishment.

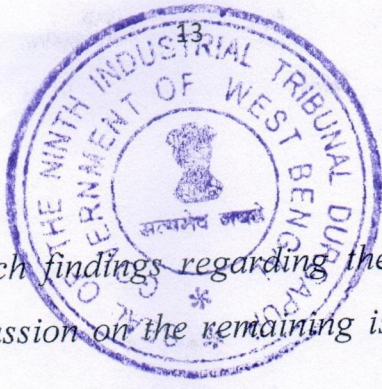
In my considered view, the petitioner has to plead about such contention of his ld. lawyer and thereafter he has to produce cogent and reliable evidence to prove that his nature of duty was that of a workman of the mill and not as a supervisor/manager of the mill. But, in the instant case, the petitioner's pleading as well as his evidence-in-chief are absolutely silent about his such claim. In other words, there is practically nothing before this tribunal to hold that the nature of the workman/petitioner was as that of a workman of the mill and not as that of a supervisor/manager of the O.P./establishment. In other words, there is nothing either in the pleading or in the evidence of the petitioner to establish that he was although appointed in the post of Deputy Spinning Master and was drawing around Rs.16,000/- p.m as wages but he was actually performing the duty of a workman of the mill and not that of a supervisor in nature.

As I have already mentioned herein above that the Exbt.1 reveals about the amenities provide to the petitioner by virtue of his post, so an inference can easily be drawn therefrom that the same is provided only to the employee who works in the manager/supervisor post especially when no evidence has been adduced to establish that all the ordinary workers are also entitled to get same amenities. Furthermore, the pay scale of the petitioner also does not support the contention of his ld. lawyer for considering him as a workman as per Sec.2(s) of the Act, 1947.

Having regard to my above discussion, I do not have any sort of hesitation to come to the findings that the petitioner miserably failed to prove that he is a 'workman' under the Act, 1947.

In view of such findings I am of the view that this tribunal lacks jurisdiction to adjudicate the industrial disputes between the parties, as raised by the petitioner under the Act, 1947. Thus, I decide both these issues against the petitioner.





In view of my such findings regarding the issue nos. 1 & 2 there remains nothing for discussion on the remaining issues. Thus, the same are disposed of accordingly.

In the result, the instant case fails.

ORDERED

that the instant case under the amended provisions of Sec. 2A(2) of the Industrial Disputes Act, 1947 is dismissed in ex-parte against the employer Kangsabati Co-operative Spinning Mills Ltd. but without cost.

Send a copy of this award to the Additional Chief Secretary, Labour Department, Govt. of West Bengal for information and necessary action from his end.

D/C by me.

Sd/- *Seijit Kumar Malwabra*
Sd/- Judge, 31.08.23,

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Sd/- *Seijit Kumar Malwabra*
Sd/- Judge, 31.8.23,

9th I.T, Durgapur

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