

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/. 869 / (LC-IR)/22015(16)/12/2022 Date: 21-09 2023

**ORDER**

WHEREAS an industrial dispute existed between M/s. Durgapur City Clinic & Nursing Home Pvt. Ltd. @ Durgapur City Hospital & Clinic Pvt. Ltd., 4<sup>th</sup> & 5<sup>th</sup> Street, Central Park (Doctor Colony) Dist. - Paschim Bardhaman, Pin - 713216 and workman Smt. Chhabi Dey, W/o Sri Dilip Dey, 18/10 Sarada Pally, Benachiti, P.O. - Durgapur, Dist. - Paschim Bardhaman, Pin - 713213 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. 03/2020 U/s 2A (2) on the said Dispute vide memo no. 155 -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,

Solt  
Assistant Secretary  
to the Government of West Bengal



1/439236/2023

( 2 )

No Labr/<sup>869</sup>...../1(2) - IR Dated <sup>21-09-</sup>.....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. 155 -I.T. dated 05/09/2023.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

<sup>Sdt</sup>  
Assistant Secretary

No. Labr/<sup>869</sup>...../2(5) - IR Dated <sup>21-09-</sup>.....2023

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

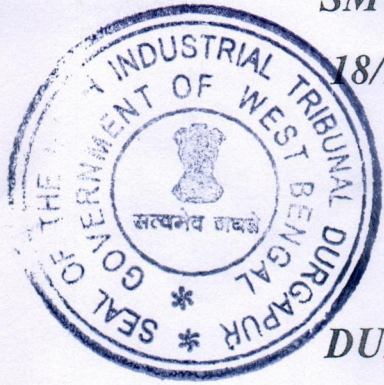
1. M/s. Durgapur City Clinic & Nursing Home Pvt. Ltd. @ Durgapur City Hospital & Clinic Pvt. Ltd., 4<sup>th</sup> & 5<sup>th</sup> Street, Central Park (Doctor Colony) Dist. - Paschim Bardhaman, Pin - 713216.
2. Smt. Chhabi Dey, W/o Sri Dilip Dey, 18/10 Sarada Pally, Benachiti, P.O. - Durgapur, Dist. - Paschim Bardhaman, Pin - 713213.
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 (11<sup>th</sup> 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.

<sup>30</sup>  
Assistant Secretary

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IN THE MATTER OF INDUSTRIAL DISPUTES BETWEEN  
SMT.CHABI DEY, W/O – SRI DILIP DEY, RESIDENT OF  
18/10, SARADAPALLY, BENACHITI, P.O – DURGAPUR,  
DIST.-PASCHIM BARDHAMAN, PIN-713213.



VS.

DURGAPUR CITY CLINIC AND NURSING HOME (PVT.)  
LTD @ DURGAPUR CITY HOSPITAL & CLINIC (PVT.) LTD.,  
4<sup>TH</sup> & 5<sup>TH</sup> STREET, CENTRAL PARK (DOCTORS  
COLONEY), DIST.-PASCHIM BARDHAMAN, PIN- 713216.

Case No. 03/2020 U/s 2A(2) of the Industrial Disputes Act, 1947.

BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL,  
DURGAPUR.

PRESENT:-SRI SUJIT KUMAR MEHROTRA,

JUDGE, 9<sup>TH</sup> INDUSTRIAL TRIBUNAL,

DURGAPUR.

Ld. Lawyer for the petitioner/workman :- Mr.S.K.Panda &  
Smt.Anita Maji.

Ld. Lawyer for the O.P/Employer :- Mr.S.K.Panda

The Award dated 31<sup>st</sup> August, 2023

The instant case under the amended provisions of U/S 2A(2) of the Industrial Disputes Act, 1947 ((herein after referred to as the Act, 1947) has the foundation on an application filed by the above named petitioner/workman praying for reinstatement alongwith all service benefits.

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JUDGE  
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Shorn of unnecessary facts of the impugned petition of the petitioner/workman is that she was appointed in the post of Receptionist in the Front Office of the O.P /Hospital on 18.01.1993 and since then she discharged her duty unblemishly, uninterruptedly till the date of her illegal termination on 31.12.2017 by the management of the O.P/Hospital.

Petitioner's/workman's further petition case is that due to her illness she was compelled to take sick leave from her said job after duly informing the responsible officer of the O.P/establishment, over telephone and that when on 31.12.2017 after recovery she went to join her service the management of O.P/Hospital did not allow her to join her service.

She further averred that as her repeated request with the management of the O.P/Hospital did not yield any result she was compelled to agitate the same for conciliation before the Asstt. Labour Commissioner, Durgapur by submitting an application on 29.03.2019. As the conciliation proceedings failed to achieve any result the Conciliation Officer issued the failure report dated 14.02.2020 and thereafter she filed the impugned petition praying for adjudication of the industrial disputes between her and the O.P/Hospital/employer.

CR reveals that after filing of the impugned application by the workman this court issued notice upon the O.P/Hospital and ultimately, the O.P/Hospital appeared on 17.03.2021 through its ld. lawyer and contested the impugned application of the workman by filing its written statement on 15.07.2022 whereby it denies all the allegations of the workman save and accept the workman's/applicant's appointment as Receptionist and working in the same post for sometime.

Its positive case, as per its WS, is that workman/applicant never discharged her duty in unblemished manner but she was involved with some dishonest staffs in the act of defalcation of money. It has further been stated that although the management did not take any action against her for her being involved with objectionable work but she intentionally and voluntarily



left the service. It has further been stated that the workman/applicant never submitted any petition before the management, as stated by her in her impugned petition, and accordingly it prays for dismissal of the impugned case against it.

CR reveals that this tribunal vide order no.20 dated 02.08.2022 framed the following issues for adjudication of the industrial disputes between the parties:

- 1) Is the instant case barred by limitation?
- 2) Whether the petitioner/workman is entitled to get the relief, as prayed for?
- 3) Whether the employer otherwise terminates the service of the petitioner/workman or she voluntarily left her service?



### Argument from the side of the petitioner / workman

Ld. Sr. lawyer submitted that from the pleading of the parties as well as oral evidence of the petitioner/workman and the witness of the management of the O.P/Hospital it is the undisputed fact that he petitioner/workman was working as Receptionist since the date of her appointment on 18.01.1993 and she was not allowed to join her duty by the management of the O.P/Hospital on 31.12.2017 and accordingly the same amounts to illegal termination of service of the petitioner/workman.

Ld. lawyer further submitted that from the oral evidence of the petitioner/workman it has also been proved that she could not join her duty since the middle part of 2016 due to her illness and she informed the management of the O.P/Hospital about the same.

He further submitted that the management of the O.P/Hospital never issued any show-cause notice to the petitioner/workman for her alleged unauthorised absent from duty and accordingly, it cannot be said that petitioner/workman voluntarily left her service. On the contrary, the

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management's conduct clearly prove that they illegally did not allow the petitioner/workman to join her duty in the last part of 2017 and accordingly, the service of the workman/petitioner be reinstated in her service alongwith all the benefits.

**Argument from the side of the O.P/Hospital**

Per contra, the ld. lawyer submitted that although it is a fact that petitioner/workman was employed as Receptionist but her service has never been terminated by the management of the O.P/Hospital and she herself left the service without informing the management of the O.P/employer.

It was also contended that in the month of Jan./Feb, 2017 some incidents occurred in the cash section of the O.P/Hospital regarding defalcation of the money by some of its staffs in which the petitioner/workman was also involved and subsequently, the matter was informed to the local administration and thereafter those staffs including the petitioner/workman also tendered apology to the management of the O.P/Hospital and they were pardoned as they decided to leave their job. So it cannot be said her service was ever been terminated.

He also submitted that no evidence has been adduced by the petitioner/workman to prove her pleading case that she was suffering from any serious illness for such a long period and the same prevented her from not attending her duty from the middle part of 2016. It was also submitted by the ld. lawyer that the petitioner/workman's claim of her taking sick leave and duly intimating the concerned officers of the O.P/establishment has got no merit as she failed to produce any documentary evidence to substantiate her such pleading case and accordingly he prayed for dismissal of the instant case against the O.P/employer.

*sd/* JUDGE  
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### **Evidence of the Parties**

*In discharge of her legal obligation to establish her petition case the petitioner/workman only examined herself as P.W-1 and produced the following documentary evidence from her side :*

- 1) Renewal of Appointment letter dated 01.11.2022 –Exbt..1,
- 2) Payslip for the month of .....,2017---Exbt..2,
- 3) Copy of Advocate's letter dated 01.03.2019 ---Exbt.3,
- 4) Copy of another Advocate's letter dated 21.02.2019 addressed to her ---Exbt..4,
- 5) Received copy of her letter dated 29.03.2019 addressed to the Deputy Labour Commissioner, Durgapur---Exbt..5.

*On the other hand, O.P/Hospital examined its one of the then Director namely, Mr. Shayam Sundar Dutta as O.P.W-1 and copy of written complaint dated 02.09.2018 lodged by the O.P/Hospital with O.C, City Centre, Durgapur has been marked as Exbt. A from its side.*

### **Decisions with Reasons**

#### **Issue No.1 :**

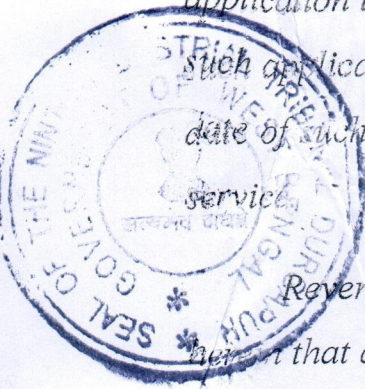
*This issue speaks about the maintainability of the impugned petition under the amended provisions of the Act, 1947 as the same confers right to an individual workman to directly approach this Labour Court or this Tribunal for adjudication of an industrial dispute between her and the O.P/employer.*

*As per Sub-sec. (1) of the amended provisions of Sec.2A if any employer discharges, dismisses, retrenches or otherwise terminates the service of individual workman, then any dispute or difference between the workman and his employer connected with such termination or dismissal, as the case may be shall be deemed to be an industrial dispute.*



In other words, any dispute or difference between the workman and his employer having connection with the alleged dismissal, discharges, retrenches or otherwise termination of the service is to be deemed an industrial dispute purpose of the Act, 1947.

Sub-sec.2 speaks about time limit by which such an application has to be filed before the tribunal. According to the said provision such application has to be filed after expiry of 45 days from the date the workman made an application to the Conciliation Officer. But Sub-sec. (3) clearly provides that such application has to be made before the expiry of 3(three) years from the date of such discharge, dismissal, retrenchment or otherwise termination of service.



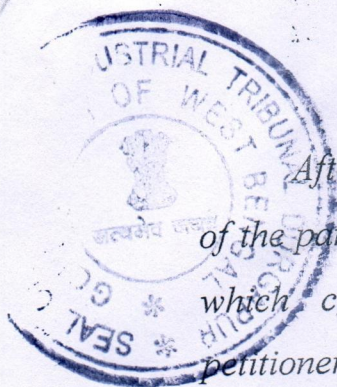
Revert back to the fact of the case in hand it is needed to mention here that as per the petitioner's/workman's pleading case she was illegally terminated from her service on 31.12.2017 and she submitted an application for conciliation with the Conciliation Officer of Govt. of Bengal on 29.03.2019. Exbt.5 i.e copy of the petitioner's/workman's application with the Deputy Labour Commissioner, Durgapur also supports her such contention.

Moreover, it is evident from the CR that the impugned application under the amended provisions of the Act, 1947 has been filed before this tribunal on 03.03.2020 i.e within the stipulated period of the amended provisions U/S 2A(2) of the Act, 1947.

It is all the more pertinent to mention herein that the O.P/Hospital in its pleading nowhere specifically stated when the petitioner/workman voluntarily left her service under it. In other words, there is nothing in the pleading of the O.P/Hospital challenging such alleged date of alleged termination of service of the petitioner/workman. Accordingly, to consider this issue this tribunal has to rely upon the above discussed pleading case of the parties.

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After taking into consideration of the above discussed pleading case of the parties as well as the evidence, documentary evidence, I find nothing which could suggest me to decide the instant issue against the petitioner/workman. Thus, I decide this issue in favour of the petitioner/workman.

### Issue No.3 :

*This issue is the crux of the industrial disputes between the parties.*

*It is the pleading case of the petitioner/workman that she was appointed in the post of Receptionist on 18.01.1993 by the O.P/Hospital. Her such pleading case has been admitted by the O.P/Hospital in its written statement. That apart, petitioner in her oral evidence-in-chief on affidavit also stated about her such appointment and her such evidence has not been denied by the O.P/Hospital in her cross-examination.*

*O.P.W-1 who was one of the Directors of the O.P/Hospital in her evidence-in-chief also admitted petitioner's/workman's such claim of appointment. Besides that, it is evident from Exbt.1 i.e Renewal of appointment letter date 01.11.2012 issued by the Medical Superintendent of the O.P/Hospital, that the appointment of the petitioner/workman takes effect from 18.01.1993 in the post of Receptionist. So, undisputedly, the petitioner was working as Receptionist in the O.P/Hospital since the date of her appointment that on and from 18.01.1993.*

*Petitioner/workman in para no.4 of her WS stated that due to illness she was compelled to take sick leave from her job and she used to inform about the same in due time to the responsible officer of the O.P/Hospital. However, she neither in para no.4 nor in other part of pleading anywhere stated since when she took the alleged sick leave due to her alleged illness as well as about nature of her illness and how and when she informed about the same to the responsible officer of the O.P/Hospital. Not only that, she in her evidence-in-chief also did not speak about any specific date when she became ill and when she recovered from her alleged ailment and about the*

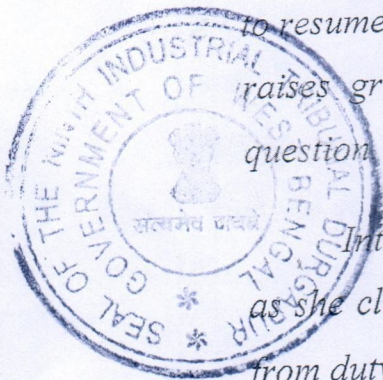


nature of treatment which she got. Furthermore, she failed to produce any documentary evidence in support of her such illness or treatment, if there be any in the instant case.

From the above discussed pleading case as well as evidence of the petitioner/workman it is crystal clear that her pleading as well as her evidence-in-chief on affidavit is vague in nature regarding her claim of illness which compelled her to remain unauthorisedly absent from her duty for such a long period of more than 2(two) years.

In my considered view, had it been a fact that petitioner was suffering from any serious nature of illness for such a long period, then she must have taken medical treatment for her such illness. Accordingly, she must have documents regarding her such treatment. Curiously enough, petitioner's/workman's evidence is absolutely silent about her nature of alleged illness as well as the treatment which might have been taken by her for her alleged ailment and when she was declared fit by her treating Doctor to resume her duty. Such conduct on the part of the petitioner/workman itself raises great shadow over reliability and authenticity of her evidence in question.

Interesting aspect came out of the cross-examination of the petitioner as she clearly stated that she did not submit any application for her absent from duty as well as she did not submit any medical certificate regarding her illness on 31.12.2017. If it is a fact that the petitioner/workman was sick and was under medical treatment for considerable long period and was declared fit by her treating Doctor on 31.12.2017, i.e the day when she went to resume her duty, but she not allowed by the management of the O.P./establishment, then she must have submitted the application and medical fit certificate with the management of the O.P/establishment. It is not the case of the petitioner/workman that on the 31.12.2017 she submitted her leave application alongwith medical fit certificate but with the



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management of the O.P/establishment but inspite thereof she was not allowed to join her duty.

On the other hand, O.P.W-1, who was one of the Directors of the O.P/Hospital in his evidence-in-chief stated that there was an incident of defalcation of money of some of its staff in which the petitioner was also involved with those staffs but the management did not take any action against them and ultimately the petitioner voluntarily left her such job. He very categorically stated that the petitioner's/workman's service was never terminated but she voluntarily left the job. He in his cross-examination also stated that the petitioner workman was absent from her duty from January, 2018. Nothing practically comes out in the cross-examination of the O.P.W-1 which could be considered as cogent reason for not relying upon his evidence on oath.

The most interesting of cross-examination of O.P.W-1 is that the petitioner/workman nowhere denies or challenges the evidence -in-chief of the O.P.W-1 regarding the alleged involvement of the petitioner / workman with the dishonest staffs in the alleged incident of defalcation of money of the O.P/Hospital. Such conduct on the part of the petitioner/workman renders such evidence-in-chief of O.P.W-1 intact. Moreover, from Exbt. A i.e received copy of the complaint of the O.P/Hospital with the O.C of the concerned P.S, it is revealed that the same was lodged regarding some financial irregularities made by some of its staffs. Although the same does not speak about the name of any of its specific staff involved in the alleged monetarily irregularities but the said documents certainly corroborates oral evidence of O.P.W-1 on that aspect. So, it cannot be said that defence taken by the O.P/Hospital has got no foundation. Accordingly, the same raises reasonable suspicious regarding the claim of the petitioner/workman against the O.P/Hospital.

Furthermore, it is also evident from the cross-examination of P.W-1 that although she was primarily appointed as Receptionist but sometimes



she had to work in the cash section of the O.P/Hospital alongwith other staffs. She in her cross-examination although denies her having any knowledge of the incident of misappropriation of money in the O.P/establishment as well lodging complaint with the police but the proximity of time of her not attending office with the occurrence of the alleged incident do not inspire confidence in me to rely upon her such evidence on oath, especially when she failed to produce any documentary evidence in support of her alleged sickness for such a long period of time.

Taking into account of all these facts, circumstances and evidence of the parties there remains no place of haziness to understand that the evidence from the side of the petitioner/workman with respect to her pleading case of alleged termination of her service are quite insufficient to prove the petitioner/workman's case within the Act of 1947.

On the contrary, it is evident from Exbt.4 i.e ld. lawyer's notice dated 21.02.2019 sent from the side of the O.P/Hospital that the petitioner/workman voluntarily left her job without any intimation on 01.01.2018. During the course of argument, the ld. lawyer for the petitioner/workman by taking recourse to the reply vide Exbt.3 tried to convince this tribunal that the petitioner/workman did not leave her job voluntarily but she could not attend her job due to serious illness and she duly applied about the leave but as I have already discussed above that no cogent evidence has been adduced from the side of the petitioner/workman to establish such claim, so I find no reason to rely upon the contents of the Exbt.3.

Having regard to my above discussion I am of the view that petitioner/workman miserably failed to prove that her service was terminated by the O.P/Hospital/employer but evidence from the side of the O.P/Hospital/employer reveals that she voluntarily left her service. Thus, I decide this issue against the petitioner/workman.





**Issue No.2 :-**

*In view of my above findings regarding the issue no.3 discussion on this issue does not arise at all.*

*To conclude my discussion I am of the view that petitioner/workman miserably failed to prove her case of alleged illegal termination of her service by the O.P/Hospital/employer.*

*In the result the impugned case fails.*

*Hence, it is*

**Ordered**

*that the instant case U/S 2A(2) of the Industrial Disputes Act, 1947 as preferred by the petitioner /workman is dismissed on contest but without any cost.*

*Let a copy of this award send to the Addl. Chief Secretary for his information and taking necessary action from his end.*

*D/C by me*

*sd/- Sri Sajit Kumar Mehra*  
Judge 31.8.23,

*9<sup>th</sup> I.T, Durgapur.*

**JUDGE**

**NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL**

*sd/- Sri Sajit Kumar Mehra*  
sd/- 31.8.23,  
Judge,

*9<sup>th</sup> Industrial Tribuna,. Durgapur*

**JUDGE**

**NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL**