

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

No. Labr/1005/(LC-IR)/22015(16)/317/2018

Date : 27/11/19..

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order N 554-IR/IR/10L-09/2015 dated 05.06.2015 the Industrial Dispute between M/S New Friend Engineering, 229/1A, A.P.C. Road, Kolkata-700004 and their workmen represented by Shr Dulal Chandra Kayal and others, Vill- Nabasan, P.O.- Bhatberia, P.S. – Falta, 24 Parganas (S) Pin-743503 regarding the issues mentioned in the said order, being a matter specified in the Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Third Industrial Tribunal, Kolkata.

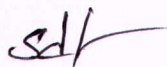
AND WHEREAS the Judge of the said Third Industrial Tribunal, Kolkata, has submitted to the State Government its award on the said Industrial Dispute.

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,



Deputy Secretary
to the Government of West Bengal

No. Labr/1005/1(5)/(LC-IR)

Date : 27/11/19..

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

1. M/S New Friends Engineering, 229/1A, A.P.C. Road, Kolkata-700004
- 2 Dulal Chandra Kayal and others, Vill- Nabasan, P.O.- Bhatberia, P.S. – Falta, 24 Parganas (S), Pin-743503
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

Date : 27/11/19..

No. Labr/1005/2(2)/(LC-IR)

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, Kolkata with reference to his Memo No. 1365-L.T. dated 27.09.2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata 700001.

Deputy Secretary

BEFORE THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL
PRESENT: **SRI SUBERTHI SARKAR, JUDGE, THIRD INDUSTRIAL TRIBUNAL.**

CASE NO.. VIII-26/2015

DATE – 25th September,2019

Workmen represented by Shri Dulal Chandra Kayal and others, Vill.-Nabasan, P.O.-Bhatberia, P.S.-
Falta, 24 Parganas(S), Pin -743 503

.....Applicant

-VS-

M/s. New Friends Engineering, 229/1A, A.P.C. Road, Kolkata - 700004

..... Opposite Party

A W A R D

This matter was referred by the Government of West Bengal, Labour Department, Vide G.O. No. 554-IR/IR/10L-09/2015 dt. 05.06.2015 relating to an Industrial Dispute between M/s. New Friends Engineering, 229/1A, A.P.C. Road, Kolkata – 700 004 and their workmen, represented by Shri Dulal Chandra Kayal and others, Vill.-Nabasan, P.O.-Bhatberia, P.S.-Falta, 24 Parganas(S), Pin -743 503 to this Tribunal for adjudication of the following issues: -

I S S U E(S)

1. Whether there is any employer-employee relationship between the workmen (as per list enclosed) and M/s. New Friends Engineering, 229/1A, A.P.C. Road, Kol-700 004?
2. Whether the refusal of Employment w.e.f. 30.3.2007 of the workmen by the owners of the establishment “M/s. New Friends Engineering” is justified?

What relief, if any, are the workmen entitled to?

1. The case of the workmen in brief is that Shri Dulal Chandra Kayal alongwith other 21 employees under reference were the employees of M/s. Friends Engineering Works i.e. OP/ Company, engaged in the production under the supervision and control of the management of the Company. The other 21(twenty-one) employees out of 25(twenty-five), had duly authorised the present workman Shri Dulal Chandra Kayal to conduct the instant case on behalf of them. They all performed their assigned duties up to 22.01.2004. Thereafter, when they went to resume their duties as usual, they noticed the office of the factory are closed. Accordingly, they contacted with the Union namely North Calcutta Engineering Sramik Union to settle the problem and the later made several representations in protest to the management and also to the Labour Commissioner, Dy. Labour Commissioner, Government of West Bengal through different letters. The applicant

contd.....

and other 21 employees came to know that the management of the OP/Company declared suspension of work by a purported notice dt. 08.01.2004. But no such notice was posted in notice board nor on the gate of the Company and accordingly, the petitioners had no knowledge about the same. Thereafter, the management of the OP/Company and the union executed a by-partite settlement on 30.03.2007 and withdrew the suspension of work. However, the management of the OP/Company changed its existing name and reopened the said Company with a new name 'M/s. New Friends Engineering' at 229/1A. A.P.C. Road, Kolkata – 700 004 with some workmen of M/s. Friends Engineering Works as per choice of the management. In the by-partite settlement it was agreed that the Company and its management will withdraw suspension of work and within 15(fifteen) days from the date of resuming production in the factory would give letters to the workmen to join into the service. But the petitioners while went to join on 30.03.2007 and on several days of the subsequent periods they were not allowed to resume their duties. On the contrary, they were told by the management, Mr. Paltu Halder, Don Halder that their services were terminated w.e.f. 30.03.2007. It is contended that the petitioners were illegally terminated from the service in contravention of the Section 25F read with Section 2(OO) of the Industrial Disputes Act. No letter of termination was issued to the petitioners and such termination was not outcome of any disciplinary action after the issuance of charge-sheet. As such, the applicants sent a letter to the Labour Commissioner on 16.07.2010 which was received by the later on 19.07.2010 stating interalia their grievances. The Asstt. Conciliation Officer, Mr. R. Ghosh Basu started conciliation proceedings with file no. 48/10, but having no result. Ultimately, the dispute was referred by the Government of West Bengal, Labour Dept. to this Tribunal for adjudication and thereafter the name of the Company was amended by issuing corrigendum dt. 15.03.2016 with necessary correction. Accordingly, the petitioners prayed for reinstatement with full back wages.

2. The OP/Company appeared in this case and filed written statement on 20.03.2018, but ultimately, they did not appear to contest and left the case. Thus, the present case proceeded ex-parte against the OP/Company.
3. In order to prove their case, the petitioners adduced one witness namely Shri Dulal Chandra Kayal i.e. one of the employee and authorized by other 21 employees. The petitioners produced and proved the following documents:

S.L. No.	Exhibit	Name of Documents	Documents Date	Exhibit Date
01	1	Copy of notice issued by the O.P/ Company.	08.01.2004	07.08.2019
02	2 (6 Sheets)	Copy of the by-partite settlement.	30.03.2007	07.08.2019
03	3 (3 Sheets)	Copy of the written representation.	16.07.2010	07.08.2019
04	4 (2 Sheets)	Copy of representation by the Union.	13.02.2004	07.08.2019

05	4/1	Copy of representation by the Union.	20.05.2004	07.08.2019
06	4/2 (2 Sheets)	Copy of representation by the Union.	13.08.2004	07.08.2019
07	4/3 (2 Sheets)	Copy of representation by the Union.	20.06.2005	07.08.2019
08	5	Copy of the letter written by the Union to the Labour Commissioner.	11.04.2007	07.08.2019
09	6	Copy of Memo No. 678/48/10/LCN.	08.09.2010	07.08.2019
10	6/1	Copy of Memo No. 680/48/10/LCN.	23.05.2013	07.08.2019
11	6/2	Copy of Memo No. 771/48/10/LCN.	20.06.2013	07.08.2019
12	6/3	Copy of Memo No. 983/48/10/LCN.	26.08.2013	07.08.2019

On the contrary the OP/Company did not appear to contest and did not adduce any evidence in this case.

4. The P.W.-1 has narrated the case of the petitioners in details. **Exhibit '1'** is the copy of notice of suspension of work dt. 08.01.2004. **Exhibit '2'** is the by-partite agreement mentioning therein that the suspension of work was withdrawn and that within 15 days from the date of production the Company will issue letters to the workmen inviting them to join in the duty. In the annexures of **Exhibit '2'** the name of Shri Dulal Chandra Kayal is mentioned therein along with other employees. **Exhibit '3'** is the copy of representation issued to the Labour Commissioner by the petitioner Shri Dulal Chandra Kayal and other employees alleging the refusal of employment to the workmen effected on 30.03.2007. **Exhibit '4' to 4/3** are the representations by the union through letters. **Exhibit '5'** is the copy of representation written by the union to the Labour Commissioner. The petitioners alleged that the Company, under whom the petitioners were employed started to run the business with a name, "New Friends Engineering" with the malafide object to deprive the applicant from joining into their service and also for the monetary benefit. **Exhibit '6/3'** is the copy of letter bearing memo no. 983/48/10/LCN dt. 26.08.2013 issued by the Asst. Labour Commissioner to the Proprietor of M/s. New Friends Engineering for re-conciliation. It appears from the evidence of PW-1 that no letter of termination was issued to the petitioners and that the said termination was not outcome of any disciplinary action. Accordingly, from the evidence of PW-1 and documents on record the case of the petitioners is proved as ex-parte. The issues are thus decided in favour of the petitioners. There is no reason to disbelieve the unchallenged testimony of PW-1 along with the exhibited documents. In result the case of the petitioners is proved 'ex-parte'.

Hence it is -

Ordered

That the written statement filed by the workmen is allowed on 'Ex-parte' but without cost. The petitioners/ workmen are entitled to get reinstatement with full back wages since the termination of service w.e.f. 30.03.2007. OP/Company is hereby directed to pay full back wages to the petitioners

within a period of 90 days of the date of passing this award, in default the petitioners are entitled to put the award in execution.

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

Dictated & corrected by me.

Judge.



(Suberthi Sarkar)
Judge,
Third Industrial Tribunal,
Kolkata - 1
25.09.2019