

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

No. Labr./1007 /(LC-IR)/ 22015(16)/670/2019

Date27/11/19

ORDER

WHEREAS an industrial dispute existed between M/S Shyam Electronics and Mr Chitra Ghosh (Halder) regarding the issues being a matter specified in the 2nd schedule of the Industrial Dispute act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 c Section 2A of the Industrial Dispute act, 1947 (14 of 1947) to the Judge, 7th Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

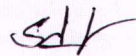
AND WHEREAS the said Judge, 7th Industrial Tribunal has submitted to the State Government its Award on the said Dispute.

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,



Deputy Secretary
to the Government of West Bengal

No. ~~Labr~~ 1/007/1(2) - ~~IR~~ (LC-IR)

Dated 27/11/19...

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 1373 dated 30.09.2019.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. ~~Labr~~ 1/007/2(5) - ~~IR~~ (LC-IR)

Dated 27/11/19...

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

- 1.M/s Shyam Electronics, 2B, Chittaranjan Avenue, Kolkata-700072
- 2 Mrs. Chitra Ghosh (Halder), 21/3, Nibedita Lane, Baghbazar, Kolkata-700003
- 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 O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata

Present: Shri Ashis Kumar Das, Judge,
Seventh Industrial Tribunal, Kolkata.

CASE NO. 05/2014

Under Section 2A (2) of the Industrial Disputes Act, 1947

Mrs. Chitra Ghosh (Haldar),
21/3, Nibedita Lane, Baghbazar, Kolkata-700 003.

...Applicant

-Versus-

M/s. Shyam Electronics.
2B, Chittaranjan Avenue, Kolkata-700 072.

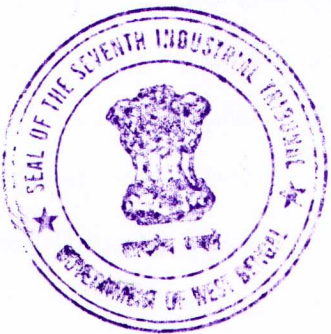
...OP/Company

A W A R D

Dated : 27-09-2019

This case has been initiated on receiving of an application dated 11.02.2014 under Section 2A(2) of the Industrial Disputes Act, 1947, as amended, from the applicant Mrs. Chitra Ghosh (Haldar) against her employer M/s. Shyam Electronics in connection with termination of her service by way of refusal of employment w.e.f. 01.08.2011 by her employer seeking declaration that the same is unjustified, uncalled for and illegal with a prayer for reinstatement in her service with full back wages for the period of forced unemployment and consequential statutory benefits/reliefs.

The case of the applicant, as made out in her written statement dated 11.12.2014, in brief, is that the applicant / workman came in employment roll on 01.01.1985 on the strength of an appointment letter under Rule 53 in Form – X in accordance with the provisions of Shops & Establishment Act, 1965 and she was working as an ‘Accounts Clerk’ in the OP/Company, when her last drawn salary was Rs.5,000/- inclusive of all allowances as reflected in the salary certificate dated 31.03.2011 ; that the applicant had been in employment roll for about more than thirty years, but the OP/Company terminated her service w.e.f. 01.08.2011 by violating pre-conditions and pre-requisites of the legislature, which is against the principle of natural justice ; that the applicant was not offered any opportunity for her self-defence and no charge-sheet, show-cause and / or any disciplinary proceedings against her was followed by the OP/Company prior to alleged termination, which is out and out vindictive, arbitrary and misutilization of power ; that the applicant challenged such letter of termination by placing a ‘Demand of Justice’ vide her letter dated 10.08.2011, which was also forwarded to a local union for doing the needful for protection of her right ; that the aforesaid letter of Demand of Justice was in vain and



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when the union official intervened into the matter, the OP/Company issued a furse and eye-wash withdrawal of the said letter of termination, but the applicant / employee was physically not permitted to resume her work. Thereafter, she requested the management repeatedly to reinstate her in accordance with the withdrawal letter of termination, but she was reprimented and insulted to enter into the office premises of the OP/Company ; that finding no other alternative, the applicant consulted with a legal person, who also challenged such illegal letter of termination of behalf of her and requested the management to sort-out the dispute, but to no effect ; that thereafter, the matter was brought to the notice of the Labour Commissioner, Government of West Bengal, for his kind intervention, which was duly acknowledged by the Deputy Labour Commissioner and an Assistant Labour Commissioner and also a Deputy Police Commissioner on 24.10.2013 as an abundant caution and necessary protection ; that after lapse of forty-five days, the applicant filed the present case before this Tribunal in view of provisions of Section 2A(2) of the Industrial Disputes Act, 1947 ; that it is very surprising to note that the services of the applicant / workman was terminated w.e.f. 01.08.2011 by way of refusal of employment without assigning any satisfactory reason, even they stopped her salary till today ; that the applicant requested the management to reinstate her with full back wages, but to no effect. Hence, this case for reinstatement of the applicant in service with full back wages and other consequential benefits, declaring that the termination of her services by way of refusal of employment is unjustified, uncalled for, illegal as well as violation of principles of labour laws.

OP/Company appeared and filed written statement-in reply on 15.07.2014, wherein they have denied each and every material allegations brought by the applicant against them. According to the OP/Company, the application under Section 2A(2) of the Industrial Disputes Act, 1947, as amended, is not maintainable in law ; that the said application is hit by the principles of estoppel and acquiescence and also bad for misjoinder and nonjoinder of the parties ; that the applicant/employee was drawing a salary of Rs.2000/- as per office records ; that on the basis of the letter of applicant demanding justice, the letter of termination was withdrawn and they intimated the applicant by their letter dated 23.08.2011, but the applicant did not join her duties and instead authorized Mr. Ajoy Mondal to negotiate on her behalf. Negotiations continued and on the basis of the authorization given to the abovenamed person, the matter was settled, as he was not interested to resume duty and ultimately the matter was set at rest. The applicant never came to attend office after receipt of letter dated 23.08.2011. It is also stated that as there is no industrial dispute, question of the instant case allegedly under sub-Section 2A of Section 2 of the Industrial Disputes Act, 1947, as amended, does not arise. It is also stated that as the notice terminating the service was withdrawn and she was asked to join



immediately, question of issuing charge-sheet or show-cause notice or holding domestic enquiry or disciplinary proceedings does not arise. Therefore, the OP/Company did not violate any law of the land. The applicant, due to her own conduct of non-joining service immediately after receipt of withdrawal of the letter of termination of her service, is not entitled to any relief, as claimed. In view of the facts and circumstances, the OP/Company has prayed for dismissal of the case with costs.

In order to establish his case, applicant / workman has examined himself as PW-1 and proved documents, marked as Exhibits-1 to 10. On the other hand, the OP/Company has examined one witness namely, Smt. Priti Chandhoke, who is the daughter and also Power of Attorney holder of her mother, who is the Proprietor of the OP/Company, as OPW-1 and proved documents, marked as Exhibits-A to G.

Considering the pleadings of both the parties, following issues have been framed for proper adjudication of this case :-

ISSUE (S) :

1. Whether the case is maintainable both in law and facts ?
2. Whether the alleged termination of service/refusal of employment of the applicant/workman w.e.f. 01.08.2011 is justified ?
3. Whether the applicant/workman is entitled to reinstatement in service ?
4. To what other relief / reliefs, if any, the applicant is entitled to ?

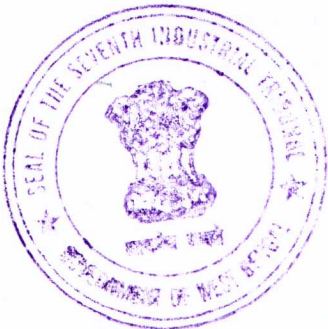
FINDINGS

Issue Nos. 1 to 4 :

All these issues being interlinked character are taken up together for the sake of brevity and for convenience of consideration.

The argument, as advanced by the Ld. Advocate for the OP/Company, are as follows :-

1. that it is true that the OP/Company issued letter of termination dated 30.07.2011 (Exhibit-3) against the applicant and terminated the service of the applicant w.e.f. 01.08.2011 and it is also true that thereafter, considering the letter dated 10.08.2011 (Exhibit-4), issued by the applicant, demanding justice, the OP/Company withdrew their said letter of termination dated 30.07.2011 by issuing another letter dated 23.08.2011 (Exhibit-5), but thereafter, the applicant did not join her duties ;



2. that the salary certificate, which has been marked as Exhibit-2, is a concocted document because of the fact that in spite of several reminders, the original salary certificate has not been produced by the applicant ; that though the applicant has deposed that she submitted Income Tax return, but she did not think it necessary to produce said document to show that she used to receive salary of Rs.5000/- per month ; that her letters disclosed that she used to receive salary of Rs.2,400/- per month and therefore, in view of such admitted position, it can safely be said that Exhibit-2 is a false and concocted document ;
3. that the applicant/workman authorized one Mr. Ajoy Mondal, General Secretary of Calcutta Shops & Establishment Shramik Sansad (W.B.) to pursue her matter and for doing the needful by her above referred letter dated 10.08.2011 (Exhibit-4), with whom management of the OP/Company held series of meetings for negotiation of the matter on his prayer vide his letter dated 19.08.2011 (Exhibit-A) and ultimately, the letter of termination, so issued, was accepted by the applicant and she withdrew all her claims and also allegations against the OP/Company and therefore, the dispute concerning the applicant was closed and the said authorized person namely, Mr. Ajoy Mondal, accordingly, confirmed the said fact to the OP/Company by his letter dated 07.01.2012 (Exhibit-G), issued on the official pad of Calcutta Shops & Establishment Shramik Sansad and so, there is no existence of any industrial dispute in between the OP/Company and applicant and therefore, the application under Section 2A(2), filed by the applicant, is not maintainable both in facts and law.

Concluding his argument, Ld. Advocate submitted that the applicant has miserably failed to prove her case and so, she is not entitled to get any relief as prayed for and therefore, her case is liable to be dismissed. He has cited a decision of the Hon'ble Supreme Court, being Civil Appeal Nos. 7164 - 7166 of 2014 (Arising out of SLP (C) Nos. 23016 - 23018 of 2012) dated 04.08.2014. He has also filed written notes of argument, which I have also carefully perused.

The argument, as advanced by the Ld. Advocate for the applicant, are as follows :-

1. that the applicant/workman came in employment roll on 01.01.1985 and had been in continuous service for more than thirty years with an unblemished records of services with the OP/Company ;



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2. that the applicant/workman was working as Accounts Clerk, when her last drawn salary was Rs.5,000/- inclusive all allowances, so ventilated in the Company's letter dated 31.03.2011 (Exhibit-2) ;
3. that prior to issuance of the letter of termination (Exhibit-3), the applicant/workman was never offered any opportunity for her self-defence. No charge-sheet, show-cause and / or any disciplinary proceedings were followed by the OP/Company also ;
4. that the applicant challenged such illegal termination of service by sending a Demand of Justice on 10.08.2011 (Exhibit-4) and thereafter, the OP/Company withdrew the said letter of termination by issuing a letter dated 23.08.2011 (Exhibit-5), but the applicant was not physically permitted to join her duties, rather she was insulted when she had gone to join her duties ;
5. that this sort of episode was brought to a legal person, who also challenged the illegality of termination on behalf of the applicant and requested the management to sort-out this dispute, but to no effect ;
6. that thereafter, finding no other alternative, the applicant took shelter before the conciliatory machinery conveying redressal grievances to Assistant Labour Commissioner and also to Deputy Police Commissioner on 24.10.2013 as an abundant caution and necessary protection ;
7. that the applicant in accordance with the provisions of law awaited for forty-five days and thereafter, took shelter of this Tribunal by filing the present application under Section 2A(2) of the Industrial Disputes Act, 1947 with a prayer for reinstatement in service with full back wages along with consequential statutory benefits as the alleged termination of her service is void ab initio, irregular, illegal and inoperative ;
8. that the applicant as PW-1 deposed about her case and also proved some documents in support of her case.

In view of the facts and circumstances, Ld. Advocate has submitted that the applicant has been able to prove her case successfully and so, she is entitled to get relief, as prayed for. He has also filed written notes of argument and also reply of arguments and also cited 3 (Three) decisions viz. (i) 1976 LAB IC page-769; (ii) 2013 (139) FLR Page-541; & (iii) 2014 (5) Supreme Court, page-617, in support of his argument, which I have also carefully perused.



In the instant case, the following facts are not disputed :-

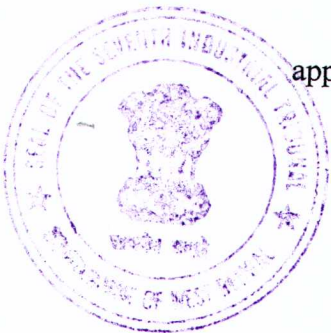
- (i) that the applicant Mrs. Chitra Ghosh (Halдар) was appointed in the OP/Company viz. M/s. Shyam Electronics w.e.f. 01.01.1985 (Exhibits-1 & C) as Accounts Clerk and worked there prior to the date of alleged termination i.e. till 31.07.2011 ;
- (ii) that the OP/Company terminated the service of the applicant w.e.f. 01.08.2011 (Exhibits-3 & D) ;
- (iii) that on receipt of such letter of termination, the applicant challenging such termination demanded justice by sending a letter dated 10.08.2011 (Exhibits-4 & E) to the OP/Company ;
- (iv) that on receipt of said letter demanding justice, the OP/Company by their letter dated 23.08.2011 (Exhibits-5 & F), addressed to the applicant, withdrew their letter of termination dated 30.07.2011 (Exhibits-3 & D), asking the applicant to join in the office positively within two days from the receipt of that letter.

It is the specific case of the applicant that after withdrawal of letter of termination dated 30.07.2011 (Exhibit-3), when she went to the office of the OP/Company to resume her duties, she was not permitted to join, rather she was insulted. On the other hand, the case of the OP/Company is that after issuance of such letter of withdrawal of termination (Exhibit-5), the applicant instead of joining her duties, authorized Mr. Ajoy Mondal to negotiate the matter on her behalf and negotiations continued and the matter was settled, as she was not interested to resume her duties and the matter was set at rest.

Now, let us see the evidence, so adduced by the parties.

According to the evidence of the applicant (PW-1), that the letter of "Demand of Justice" was in vain and the Company issued an eye-wash withdrawal of letter of termination in spite of which she was not physically permitted to resume on work at her usual place of work. She has further deposed that thereafter, on number of dates she turned up to resume her work and requested the management to reinstate her in accordance with withdrawal of termination letter, rather she was reprimanded as well as insulted to enter into the office premises. In cross-examination, she has admitted that she was asked by the OP/Company to resume her duty and further stated that accordingly, she had been to the office of the OP/Company, but she was not allowed to resume her duty.

Firstly, it appears from clause-3 of the letter of withdrawal of termination of the applicant dated 23.08.2011 (Exhibit-5) that she was directed to join the office positively



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within two days from the date of receipt of that letter, failing which it would be presumed that she is interested to join and work in their firm and discharge her duties. PW-1 has neither stated in her written statement nor during her evidence about the date on which she received the letter of withdrawal of termination dated 23.08.2011 (Exhibit-5) and the date on which she had been to the office of the OP/Company to join her duties. Had she been really gone to the office of the OP/Company to join her duties within two days from the date of receipt of said letter of withdrawal (Exhibit-5), she would have certainly mentioned the said date in her written statement and also during her evidence before this Tribunal, which she did not think it necessary. **Secondly**, she has also not mentioned specifically the name of the person / persons, attached to the office of the OP/Company, in her written statement and also during her evidence, as to who restrained her to resume her duty and insulted her when she had gone to join her duties, after such withdrawal of letter of termination. **Thirdly**, she has admitted during her cross-examination that her husband was also an employee of the OP/Company and further admitted that at the relevant time he was an employee of the OP/Company and in the year 2012/2013, her husband left his service. She has neither stated in her written statement nor deposed before this Tribunal that the date on which she had been to the office of the OP/Company to resume her duties after withdrawal of her termination, her husband was absent and/or on leave. Therefore, it can safely be presumed that the date on which she had been to the office of the OP/Company, if at all gone, to resume her duties after such withdrawal of termination, her husband was present in the office of the OP/Company. She could have easily produced and examined her husband to corroborate her oral testimony to the effect that she was not permitted/allowed to resume her duties and also insulted in the office of the OP/Company, when she went there after withdrawal of her termination, but she did not think it necessary. **Fourthly**, during cross-examination she has clearly admitted that when she was refused to resume her duty, she did not lodge any complaint or diary with the Police Station or before any other authority. Had she been really restrained from joining her duties after withdrawal of her termination, she would have certainly informed the matter to the management of OP/Company in writing and also with the local Police Station, which she also did not think it necessary.

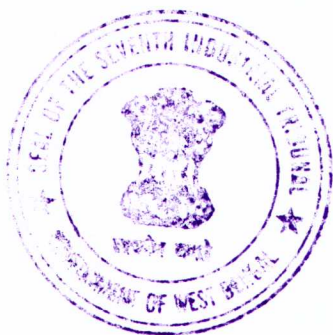
In view of my above made discussions and findings, suspicion arises regarding the truthfulness of oral testimony of applicant (PW-1) to the effect that she went to the office of the OP/Company after withdrawal of her termination of service, but she was not allowed to resume her duties and for which no reliance can be placed on her such uncorroborated oral testimony.



I further find from the cross-examination of PW-1 wherein she has admitted that she authorized Mr. Ajoy Mondal, General Secretary of Calcutta Shops & Commercial Establishment Shramik Sansad (W.B.) to pursue the matter and for doing his needful by Exhibit-4. Exhibit-4, which is a letter dated 10.08.2011, issued by the applicant to the Partner of the OP/Company, corroborates her above oral testimony. Therefore, it can safely be said that she authorized Mr. Ajoy Mondal, General Secretary of Calcutta Shops & Commercial Establishment Shramik Sansad (W.B.), Regn. No. 19187, to pursue the matter and for doing his needful. OP/Company has proved two letters – one dated 19.08.2011 and another dated 07.01.2012, with reference to termination of service of Smt. Chitra Ghosh (Haldar) issued to OP/Company by the said authorized representative of the applicant namely, Mr. Ajoy Mondal, which has been marked as Exhibits-A & G respectively. Exhibit-A goes to show that the representative of the applicant Mr. Ajoy Mondal requested the OP/Company to fix a date for conference across the table with them to enable them to proceed further in the above matter viz. illegal termination of permanent service of Smt. Chitra Ghosh (Haldar) w.e.f. 01.08.2011 by letter dated 30.07.2011, without complying with the mandatory provisions of law. Exhibit-G goes to show that after holding several meetings with regard to negotiations in between OP/Company and the said representative of the applicant namely, Mr. Ajoy Mondal, the termination of service of the applicant Smt. Chitra Ghosh (Haldar) was accepted by her on their intervention and she withdrew all claims as well as her allegations against the OP/Firm and the dispute concerning her was closed.

Therefore, I find that in view of Exhibit-A, meetings were held to negotiate / settle the matter and I further find that the matter in dispute was settled and that was communicated to the OP/Company by the authorized representative of the applicant namely, Mr. Ajoy Mondal by Exhibit-G. So, on the basis of Exhibit-G, it can safely be held that the matter in dispute viz. termination of service of the applicant was closed on or before 07.01.2012.

The instant case was filed before this Tribunal on 11.02.2014 i.e. more than after two years of such settlement. It also appears from Exhibit-10 that the applicant raised dispute before the Deputy Labour Commissioner as well as Labour Commissioner, West Bengal, Kolkata on 24.10.2013 by her said letter dated 23.10.2013 i.e. after about one year and nine months of such settlement. No document / letter addressed to the OP/Company, has been filed or proved by the applicant to show that such settlement through her representative Mr. Ajoy Mondal was not in consultation with her and/or was not accepted by her. On the other hand, she raised the dispute with regard to alleged illegal termination of her service before the Labour Commissioner after about one year and nine months of



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such settlement and filed this case before this Tribunal more than two years of such settlement without explaining the delay of raising such dispute and for which suspicion again arises regarding the truthfulness of her entire oral testimony as well as her case.

This case has been filed by the applicant under Section 2A(2) of the Industrial Disputes Act, 1947.

Section 2A (1) of the Act (As amended) runs as follows :-

"Where any employer discharges, dismisses, retrenches, refuses employment or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment, refusal of employment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

Section 2A(2) of the said Act runs 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 the 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, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government."

Therefore, since it is established that the letter of termination of service of the applicant had been withdrawn by the OP/Company and after such withdrawal, the applicant instead of joining her duties authorized Mr. Ajoy Mondal to negotiate her matter and accordingly, such matter in dispute has been negotiated and closed, it cannot be held under any circumstances that there is existence of any industrial dispute in between the applicant and her employer viz. OP/Company in connection with or arising out of discharge, dismissal, retrenchment, refusal of employment or termination of the applicant as referred in Section 2A(1) of the Industrial Disputes Act, 1947. So, this case is not maintainable in law. Consequently, in view of my aforesaid discussion and findings and also accepting the argument, referred above, as advanced by the Ld. Advocate for the OP/Company, I have no other alternative but to hold that the applicant has miserably failed to prove her case and so, she is not entitled to get any relief, as prayed for.



Since the applicant has failed to prove her case, I need not discuss the decisions, cited by the parties, unnecessarily to make the judgment lengthy.

All the issues are thus disposed of.

In the result, the case fails.

Hence, it is,

ORDERED

that the case being No. 05 of 2014 under Section 2A(2) of the Industrial Disputes Act, 1947 be and the same is dismissed on contest without any order as to costs.

This is my Award.

Dictated & corrected by me

sd/-

Judge

Judge
Seventh Industrial Tribunal

sd/-

(ASHIS KUMAR DAS)
Judge,
Seventh Industrial Tribunal,
Kolkata
27/09/2019

Judge
Seventh Industrial Tribunal

