

/70491/2019

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

No Labr/1017/(LC-IR)Date 28/11/19ORDER

WHEREAS an industrial dispute existed between M/S. S.P. Leather Tech Pvt. Ltd 38A/1, Golam Jilani Khan Road, Kolkata-700039 and their workman Abdul Rahim, 53/6 Golam Jilani Khan Road, Kolkata-700039 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 c Section 2A of the Industrial Dispute act, 1947 (14 of 1947) to the Judge, Seventh Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the Judge of the said Industrial Tribunal heard the Parties and frame the following issues as the "Issue" of the said dispute;

ISSUES

1. Whether the case is maintainable in both facts and in law?
2. Whether the alleged termination of service/refusal of employment w.e.f. 04.02.2013 justified?
3. Whether the applicant/ workman entitled re-instatement, back wages and other consequential statutory benefits from the date of alleged termination/refusal of employment?
4. Whether the applicant is entitled to any other relief?

AND WHEREAS the said Judge, Seventh 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,

Sd/-

Deputy Secretary  
to the Government of West Bengal



2019

No. Labr/1017/1(2) - IR (LC - IR)Dated 28/11/19.....

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 1354-L.T. dated 26/09/2019.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Sdl-  
Deputy Secretary

No. Labr/1017/2(5) - IR (LC - IR)Dated 28/11/19.....

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

1. M/s S.P. Leather Tech Pvt. Ltd., 38A/1, Golam Jilani Khan Road, Kolkata-700039
2. workman Abdul Rahim, 53/6, Golam Jilani Khan Road, Kolkata-700039
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 O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

mankar  
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. 41 of 2013**

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

**Abdul Rahim,**  
53/6, Golam Jilani Khan Road, Kolkata-700 039.

...Applicant

*-Versus-*

**M/s. S.P. Leather Tech Pvt. Ltd.**  
38A/1, Golam Jilani Khan Road, Kolkata-700 039.

...OP/Company

**A W A R D**

Dated : 19-09-2019

This case has been initiated on receiving of an application dated 16.12.2013 under Section 2A(2) of the Industrial Disputes Act, 1947, as amended, from the applicant Abdul Rahim against his employer M/s. S.P. Leather Tech Pvt. Ltd. in connection with refusal of employment w.e.f. 04.02.2013 by his employer seeking declaration that the same is unjustified, bad and illegal with a prayer of reinstatement in service with full back wages for the period of forced unemployment and consequential statutory benefits.

The case of the applicant, as made out in his written statement dated 16.12.2013, in brief, is that the applicant / workman worked as 'Assistant' in the OP/Company upto the month of January, 2013 and salary was disbursed from the head office; that he worked there for twelve years; that he received salary for the month of January, 2013 on **02.02.2013**; that he used to work in said company under supervision and control of the superior management and no adverse report was recorded against him during the tenure of his long service; that he went to join his duty on **04.02.2013**, but unable to join in the duty because Mr. Sandip Rajpuria directed him not to enter into the premises of said company and not to join in the duty; that on being asked about the reason of not allowing him into the premises of the OP/Company, Mr. Rajpuria could not show any reason; that he used to go to the company with the hope that he would be allowed to join duty by Mr. Rajpuria, but unfortunately, he was not allowed; that he was restricted to enter into the premises of the company upto **01.04.2013**. Finding no other alternative, he lodged a complaint with the Tiljala P.S. on **02.04.2013**; that he also sent a letter to the company on **14.05.2013** under registered post requesting the OP/Company to allow him to join in the duty, but the said letter was returned with the postal remark 'Not Claimed' and thereafter, on **12.06.2013** he

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sent a letter to the head office of the company, which was received by the company, but no reply was given by the company; that on **15.07.2013** he filed an application to the Labour Commissioner, Government of West Bengal, N.S. Buildings, Kolkata-1 intimating therein all the facts and grievances and seeking kind intervention for settling the dispute viz. refusal of employment on and from 04.02.2013 by way of conciliation at the earliest; that he drew salary amounting to Rs.9667/- per month; that he is still unemployed and struggling for justice. He tried his level best to get a job, but could not get any job till date.

According to him, this type of termination by way of refusal of employment without charge-sheet and domestic enquiry is illegal, unjust and violation of the principles of natural justice.

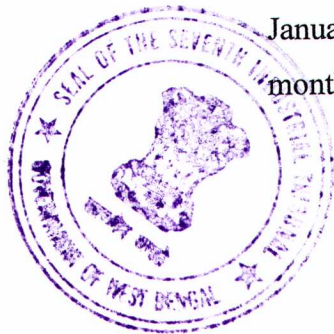
It is also stated that he was not given compensation as per Section 25F of the Act and other conditions were also not complied with. He is maintaining his family with the help of relatives and friends.

The industrial dispute was raised on 15.07.2013 by him and after lapse of forty-five days, he filed the present petition before this Tribunal under sub-section 2 of Section 2A of the Industrial Disputes Act, 1947. Hence, this case for passing an Award of reinstatement of his service with full back wages and consequential statutory benefits with the declaration that such forced refusal of employment on and from 04.02.2013 is unjustified, bad and illegal.

OP/Company appeared and filed written statement-in reply on 21.08.2014, wherein they have denied each and every material allegations brought by the applicant against them. According to OP, the application under Section 2A(2) of the Industrial Disputes Act, 1947, as amended, is not maintainable since there was no refusal of employment and/or termination of service of the applicant on and from 04.02.2013 as alleged; that the applicant joined in the OP/Company in the month of April, 2008 with a salary of Rs.4,000/- per month and started working as a store keeper in the godown situated at 11B, Paymantal Garden Lane, Kolkata-700015; that in course of his employment he took advance on several occasions from the company. On reconciliation of his advance account, it was observed that he had an advanced amount of Rs.23,500/- as on 05.01.2013 taken from the company, which remains due and payable to the company.

It is their specific case that the applicant remained absent from duty on and from **30.01.2013**. On **02.02.2013** he came to the office to collect his salary for the month of January, 2013 and the same was disbursed to him on that day i.e. on **02.02.2013** after adjustment of advance of Rs.500/-. Although he was absent for five days in the month of January, 2013, yet at his request only one day's salary was deducted from his salary for the month of January, 2013. After the disbursement of salary for the month of January, 2013

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on **02.02.2013**, he was specifically told to clear off the rest advance amounting to Rs.23,000/- as early as possible. He again remained absent on **04.02.2013 onwards** and did not send any information to the company either verbally or in writing for his unauthorized absence; that while checking the materials was done in the month of January, 2013, it was found that lots of stocks and other materials from the godown were missing. It was observed that he sold the materials from the store behind the knowledge of the management and took away the sell proceeds without intimating the company; that while such illegal activity was pointed out to him by the Directors, he misbehaved with them; that he was provided with a mobile phone with SIM No. 9330388003 for the purpose of the business of the company and it was found that he utilized the company's said mobile phone for his personal business during working hours hampering the business of the company. He was repeatedly instructed not to do so, but he became furious and threatened the Director with dire consequences. Finding no other alternative, the company was compelled to disconnect the mobile connection provided to him; that the applicant is still in the roll of the company. The applicant has the liberty to report for duty as his service was never refused nor he was terminated at any point of time. As there was no termination, question of reinstatement with full back wages and other consequential benefits, as prayed by the applicant, does not arise and so, the case of the applicant is not maintainable and the applicant is not entitled to get any relief, as prayed for.

In order to establish his case, applicant / workman has examined himself as PW-1 and proved documents, marked as Exhibits-1 to 8. On the other hand, the OP/Company has examined one witness namely, Sandip Kumar Rajpuria, the Director of the OP/Company as OPW-1 and proved documents, marked as Exhibits-A (series), B & C.

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 in both facts and in law?
2. Whether the alleged termination of service/refusal of employment w.e.f. 04.02.2013 justified?
3. Whether the applicant/workman entitled re-instatement, back wages and other consequential statutory benefits from the date of alleged termination/refusal of employment?
4. Whether the applicant is entitled to any other relief?





## 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 the instant case is not maintainable as the OP/Company never terminated the applicant ;
2. that the employer-employee relationship between the parties are still exists ;
3. that it is the specific case of the applicant that he went to join his duties on 04.02.2013, but unable to join as Mr. Sandip Rajpuria directed him not to enter into the premises of the Company and also not to join in the duties and when he asked the reason, Mr. Sandip Rajpuria could not show any reason for such refusal of employment, but during cross-examination the applicant (PW-1) has admitted that his place of work was situated at 38A/1, Gulam Gilani Khan Road, Kolkata-700039 and that his duty hours was from 10 a.m. to 7 p.m. and further admitted that the office of Mr. Sandip Rajpuria, who is the owner as well as Director of the OP/Company, is situated at Royd Street and Mr. Rajpuria used to visit factory after 2 p.m. If that be so, question of asking him by Mr. Sandip Rajpuria, not to enter into the Company premises and also not to join in the duties on 4<sup>th</sup> February, 2013, does not arise at all. Moreover, during cross-examination, PW-1 has further admitted that he has no document to show that on 04.02.2013, he attended the office, but was not allowed to enter ; that the office of the OP/Company, where he used to seat and work, was closed ; that he does not know whether Sandip Rajpuria was in the office on 04.02.2013 as he was not allowed to enter ; that it is correct to say that on 04.02.2013 he had no occasion to have any talk with Sandip Rajpuria ;
4. that according to the applicant (PW-1), he was not allowed to join his duties in the Company day by day upto 01.04.2013 without any reason and thereafter, he lodged a complaint with the Tiljala Police Station for their kind intervention and copy of said Police complaint has been marked as Exhibit-3, but it has not been mentioned in the four-corners of Exhibit-3 that Mr. Sandip Rajpuria directed him not to enter into the office premises or not to join duties on 04.02.2013. Had he been really restrained to enter into the office premises or to

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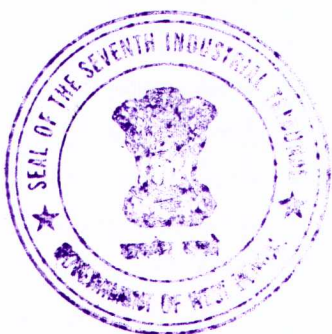
join his duties by Mr. Sandip Rajpuria on 04.02.2013, he would have certainly mentioned the said fact in the Police complaint (Exhibit-3), which he did not think it necessary, though the said complaint was lodged after about two months of the alleged incident of restraining. Non-mentioning of said vital fact in the Police complaint clearly proves that there was no such incident of restraining him to enter into the office premises as well as joining his duties on 04.02.2013 by Mr. Sandip Rajpuria. Moreover, PW-1, during his cross-examination, has admitted the said fact by saying that it is true that vide Exhibit-3 he complained before the P.S. that he was not provided salary by the OP/Company, but did not mention that his service was terminated by the OP/Company. In view of such admission as well as non-mentioning such vital fact in the Police complaint (Exhibit-3), reliance should not be placed on his such oral testimony ;

5. that it is the specific case of the OP/Company that the applicant Abdul Rahim remained absent on and from 04.02.2013 ; that he is still in the roll of the Company ; that there was no refusal of employment on and from 04.02.2013 as alleged ; that the applicant has the liberty to report for duty as his service was never refused nor he was terminated at any point of time. So, question of his reinstatement with full back wages and other consequential benefits, as claimed, does not arise at all. OP/Company has examined one witness namely, Sri Sandip Kumar Rajpuria, the owner as well as Director of the OP/Company, as OPW-1, who has deposed in support of the case of OP/Company and there is nothing in his cross-examination to disbelieve his such oral testimony.

Concluding his argument, Ld. Advocate submitted that the applicant has miserably failed to prove his case and so, he is not entitled to get any relief as prayed for and therefore, his case is liable to be dismissed. He has cited two decisions viz. (i) 2002 (III) CLR 488 & (ii) 2000 (84) FLR 144.

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

1. that the applicant was / is a workman under the OP/Company as per provision of Section 2(s) of the Industrial Disputes Act, 1947. So, the case is maintainable.
2. that the OP/Company brought several allegations against the applicant, but failed to prove the same by producing relevant document / documents ;
3. that the OP/Company has also failed to prove that the applicant remained absent from his duties on and from 30.01.2013 onwards and again on and from 04.02.2013 onwards, which they could have easily proved by producing the attendance register, but did not think it necessary ;





4. that the OP/Company ought to have filed the attendance register to show that the applicant's name had been in the roll of the company ;
5. that OP/Company has failed to prove by adducing cogent evidence that the applicant was / is gainfully employed ;
6. that the applicant has proved by adducing cogent evidence that he was prevented to enter into the office of the OP/Company on 04.02.2013 and also prevented from joining in his duties on that day and further proved that he has not been gainfully employed elsewhere from the date of refusal of his employment.

In view of the facts and circumstances, Ld. Advocate has submitted that the applicant has been able to prove his case successfully and so, he is entitled to get relief, as prayed for. He has cited 5 (five) decisions viz. (i) 2015 LLR 785; (ii) 2015 LLR 790; (iii) 2009-II-LLJ-9 (SC); (iv) 2017 LLR 463 & (v) 2016 LLR 1244.

Now, let us see the evidence, so adduced by the applicant, at first.

In the instant case, it is not disputed that the applicant Abdul Rahim joined in the OP/Company and worked there till 29.01.2013 since last twelve (12) years and he received salary for the month of January, 2013 on 02.02.2013 from the OP/Company for the last time.

According to the evidence of the applicant (PW-1), when on 04.02.2013 he went to the OP/Company to join his duties, Mr. Sandip Rajpuria, who is the owner as well as the Director of the OP/Company, directed him not to enter into the premises of the OP/Company and also not to join his duties. On being asked by him as to the reason of such action, Mr. Rajpuria could not show any reason for such refusal of employment on and from 04.02.2013. He used to go to the Company with the hope that he would be allowed to join his duties by Mr. Sandip Rajpuria, but he was not allowed to join his duties day-by-day upto 01.04.2013 and thereafter, finding no other alternative he lodged a complaint with the Tiljala P.S. on 02.04.2013 for their kind intervention.

But, during cross-examination, he could not maintain his stand. He has admitted that his place of work was situated at 38A/1, Gulam Gilani Khan Road, Kolkata-700039 and that his duty hours was from 10 a.m. to 7 p.m. and further admitted that the office of Mr. Sandip Rajpuria, who is the owner as well as Director of the OP/Company, is situated at Royd Street and Mr. Rajpuria used to visit factory after 2 p.m. If that be so, question of giving direction to him by Mr. Sandip Rajpuria not to enter into the Company premises and also not to join in the duties on 4<sup>th</sup> February, 2013 at 10 a.m., does not arise at all.

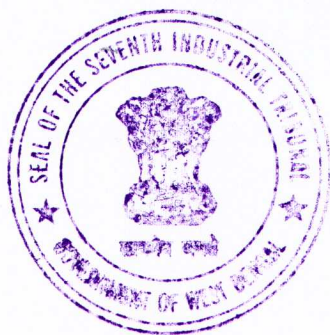
**Secondly**, he has further admitted that on 04.02.2013 he had no occasion to have any talk

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with Mr. Sandip Rajpuria. If that be so, question of giving of above referred direction to him by Mr. Sandip Rajpuria on 4<sup>th</sup> February, 2013 again, does not arise at all. **Thirdly**, during cross-examination, PW-1 has further admitted that he has no document to show that on 04.02.2013, he attended the office, but was not allowed to enter. **Fourthly**, the office of the OP/Company, where he used to seat and work, was closed. If that be so, question of giving any such direction, as referred above, by Mr. Sandip Rajpuria to him on 04.02.2013 again does not arise at all. **Fifthly**, he lodged a complaint with the Tiljala Police Station and copy of said Police complaint has been marked as Exhibit-3, but it has not been mentioned in the four-corners of Exhibit-3 that Mr. Sandip Rajpuria directed him not to enter into the office premises or further directed him not to join duties on 04.02.2013. Moreover, he has admitted in his cross-examination that he did not mention in Exhibit-3 that his service was terminated by the OP/Company. Had he been really restrained to enter into the office premises or prevented from joining his duties by Mr. Sandip Rajpuria on 04.02.2013, he would have certainly mentioned the said vital fact in the Police complaint (Exhibit-3), which he did not think it necessary and for which suspicion arises regarding the truthfulness of his oral testimony with regard to the alleged fact of refusal of employment. **Sixthly**, it appears from Exhibit-3 (the Police Complaint) that he lodged the complaint with the Tiljala P.S. on 02.04.2013, whereas the alleged incident of refusal of employment was taken place on 04.02.2013. Therefore, he lodged the complaint with the Police after about fifty-six (56) days of alleged refusal of his employment. There is no explanation of such long delay in lodging the complaint with the P.S. Had there been any such incident of refusal of his employment really occurred on 04.02.2013, he would have certainly lodged the complaint with the P.S. after such refusal i.e. on 04.02.2013 or on the next day i.e. on 05.02.2013, which he did not think it necessary. Lodging of complaint after about fifty-six (56) days of alleged refusal of employment again brings doubt regarding the truthfulness of his entire oral testimony in this regard. **Seventhly**, on the other hand, it is the case of the OP/Company that there was no refusal of employment of the applicant on and from 04.02.2013 ; that the applicant remained absent on and from 04.02.2013 and onwards ; that the applicant is still in the roll of the OP/Company and he has the liberty to report for duty as his service was never refused nor he was terminated at any point of time. In this regard, OPW-1 namely, Mr. Sandip Kumar Rajpuria, who is the owner as well as the Director of the OP/Company, has clearly stated during his cross-examination also that the applicant Abdul Rahim is in the roll of the Company and further stated that he never said to the workman i.e. applicant not to come to their Company since 04.02.2013. Therefore, since the name of the applicant is still in the roll of the OP/Company, it cannot be said under any circumstances that the applicant was refused from employment and / or terminated at any point of time by the OP/Company.





In view of my above made discussion and findings and also accepting the argument 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 that he was refused from his employment w.e.f. 04.02.2013 by Mr. Sandip Rajpuria, the Director of the OP/Company.

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 :-

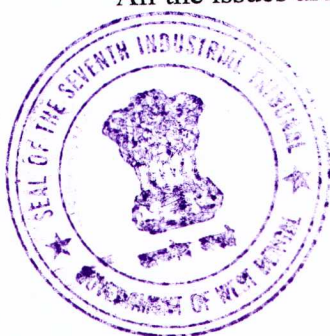
*"Notwithstanding anything contained in Section 10, any such workman, as is specified in sub-Section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to 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 the applicant has miserably failed to prove that he was refused from his employment w.e.f. 04.02.2013 and as it is also established that he is still in the roll of the OP/Company, I have no other alternative but to hold that there is no industrial dispute in between the applicant and OP/Company, as alleged, in view of provision of Section 2A(1) of the Industrial Disputes Act, 1947 and therefore, this case is not maintainable in law.

Since the applicant has failed to prove his case, I need not discuss the case of the OP/Company further and also the decisions, as cited by the Ld. Advocates for both the parties, unnecessarily to make the judgment lengthy.

Therefore, applicant is not entitled to get any relief, as prayed for.

All the issues are thus disposed of.



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**In the result, the case fails.**

Hence, it is,

**ORDERED**

that the case being No. 41 of 2013 under Section 2A(2) of the Industrial Disputes Act, 1947 be and the same is dismissed on contest against the OP/Company namely, M/s. S.P. Leather Tech. Pvt. Ltd. without any order as to costs.

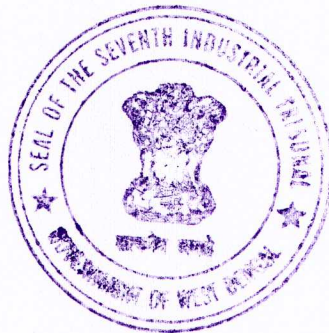
This is my Award.

Dictated & corrected by me

sd/-

Judge

**Judge**  
Seventh Industrial Tribunal



sd/-

(ASHIS KUMAR DAS)  
Judge,  
Seventh Industrial Tribunal,  
Kolkata  
19/09/2019

**Judge**  
Seventh Industrial Tribunal