

I/70889/2019

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

No. Labr./1027/(LC-IR)/22015(16)/24/2019

Date : 2/12/19

ORDER

WHEREAS an industrial dispute existed between (i) Sri Utpal Guha, Proprietor, M/s Star Security & Detective Agency, 84 A, Park Street, Kolkata – 700 017; (ii) Municipal Commissioner of Kolkata, Municipal Corporation Establishment, 5, S.N. Banerjee Road, Kolkata - 700013 and their workman Sri Monotosh Jana, 27 D, Doctor Lane, Kolkata - 700014 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, Seventh Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

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,

Deputy Secretary

to the Government of West Bengal

Date : 2/12/19

No. Labr./1027/1(2) – IR

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 1386 – L.T. dated 01.10.2019.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Deputy Secretary

No. Labr./1027/2(5) – IR

Date : 2/12/19

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

1. Sri Utpal Guha, Proprietor, M/s Star Security & Detective Agency, 84 A, Park Street, Kolkata – 700 017.
2. Municipal Commissioner of Kolkata, Municipal Corporation Establishment, 5, S.N. Banerjee Road, Kolkata - 700013.
3. Sri Monotosh Jana, 27 D, Doctor Lane, Kolkata – 700014.
4. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
5. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
6. 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.09 of 2018

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

Sri Monotosh Jana
Mathurapur, P.S.-Polashpur, Dist. Purba Medinipur,
PIN-721456 (Mailing Address : 27D, Doctor Lane, Kolkata-700014)

... Applicant

Versus

(1) Sri Utpal Guha, Proprietor,
M/s. Star Security & Detective Agency ; &

(2) Municipal Commissioner of Kolkata
Municipal Corporation Establishment,

...Opposite Parties

Order No.15, dated 01-10-2019.

Applicant is present through his authorised Ld. Representative.

OP Nos. 1 & 2 are present through their Ld. Advocates.

Today is fixed for passing order on jurisdictional point.

Case record is taken up for passing order.

The hearing on the point as to whether this Tribunal has power and jurisdiction to adjudicate the matter in dispute was taken up as preliminary issue on 06.09.2019, in view of Order No. 4 dated 30.05.2018 passed by this Tribunal.

Heard Ld. Advocates for the OP Nos.1 & 2 and also the authorised representative of the applicant at length on the point of jurisdiction. After conclusion of hearing, the authorised representative of the applicant has submitted written notes of argument. Perused the said written notes of argument.

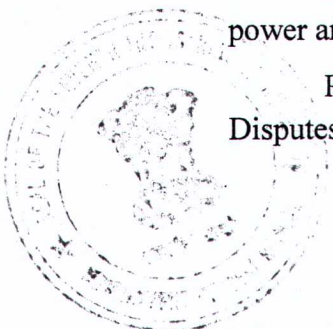
In course of hearing, Ld. Advocate for the OP No.1 drawing attention of this Tribunal to the prayer portion of the main application i.e. statement of claim, filed by the applicant, submitted that this Tribunal has got no power or jurisdiction to consider such prayer in view of provisions of Section 2A (2) or 10 (1)(d) of the Industrial Disputes Act, 1947 and so, the instant case is liable to be dismissed for want of jurisdiction. He further submitted that the OP No.1 has also challenged the jurisdictional point in Part-1 of their written statement, filed on 30.05.2018.

Ld. Advocate for the OP No.2 submitted that OP No.2 has also challenged the jurisdictional point in their written statement dated 16.07.2018.

According to the Ld. Representative for the applicant, this Tribunal has got ample power and jurisdiction to adjudicate the matter in dispute.

Perused the application under Section 2A(2) and Section 10(1)(d) of the Industrial Disputes Act, filed by the applicant Sri Monotosh Jana before this Tribunal on 08.03.2018

Contd....



Contd... Order No.15, dated 01-10-2019

along with its written objection dated 30.05.2018 and dated 16.07.2018, filed by the OP Nos. 1 & 2 respectively.

The applicant by filing the above application dated 08.03.2018 has prayed for an order to frame issues u/s. 10 of Contract Labour (R & A) Act, 1970 on the basis of a contract of agreement made in between OP No.2, principal employer, and OP No.1, Contract Sham or otherwise or sham, for adjudication and to direct OP No.2 and OP No.1 to produce relevant documents before this Tribunal and to pass further orders as this Tribunal deems fit and proper.

This case has been registered under Section 2A(2) of the Industrial Disputes Act, 1947 (vide Order No.01, dated 08.03.2018).

Now, let us see the provisions of Section 2A (1) & (2) of the Industrial Disputes Act, 1947.

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

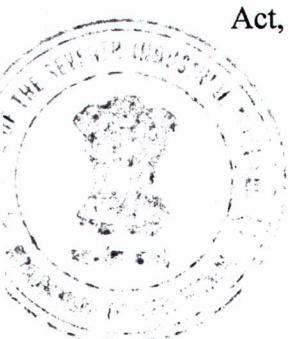
*"Where any employer **discharges, dismisses, retrenches, refuses employment or otherwise terminates** the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment, refusal of employment 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."*

The applicant has though stated in para. 5 of his original application (statement of claim) dated 08.03.2018 about an illegal and wrongful termination of his service, but he has not prayed for an order to adjudicate such dispute and / or reinstatement in service with the declaration that the alleged termination is void, illegal and unjustified. In absence of specific prayer to adjudicate the dispute arising out of illegal termination of his service and / or reinstatement in service declaring such termination is illegal, unjustified and void, this Tribunal cannot invoke the power and jurisdiction to adjudicate the dispute, so raised by the applicant, as conferred in Section 2A(2) of the Industrial Disputes Act, 1947. Moreover, the applicant cannot pray for relief under provisions of two Sections of law viz. (i) u/s. 2A(2) of the Industrial Disputes Act, 1947 and (ii) u/s. 10(1)(d) of the Industrial Disputes Act, 1947 simultaneously.

Contd....



[09/2A(2)/18]

Contd... Order No.15, dated 01-10-2019

Therefore, in view of my above made discussion and findings as well as considering the materials on record and also accepting the above referred arguments, as advanced by the Ld. Advocates for the opposite parties, I have no other alternative but to hold that this Tribunal has no power and jurisdiction to adjudicate the matter in dispute. So, this case is not maintainable in law and thus, the same is liable to be dismissed.

Hence, it is,

O R D E R E D

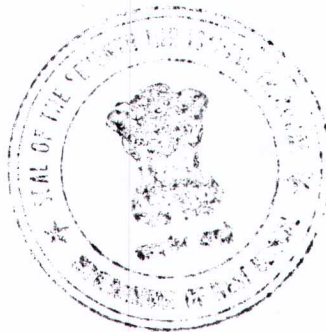
that the case being No. 09 of 2018 under Section 2A(2) of the Industrial Disputes Act, 1947 be and the same is dismissed against the opposite parties on contest, without any order as to costs.

This is my **AWARD**.

Dictated & corrected by me

sd/-
Judge

Judge
Seventh Industrial Tribunal



sd/-
(Ashis Kumar Das)
Judge,
Seventh Industrial Tribunal,
Kolkata
01/10/2019

Judge
Seventh Industrial Tribunal