

I/70892/2019

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

No. Labr./1030/(LC-IR)/22015(16)/673/2019

Date : 2/12/19...

ORDER

WHEREAS an industrial dispute existed between M/s JMD Services Pvt. Ltd., 128, Jodhpur Garden, Kolkata - 700 045 and Sri Kishor Jana (Security Guard No. 1176), 26/1B, Tarak Chatterjee Lane, P.O. – Hatkhola, Kolkata – 700 005 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,

Sdf

Deputy Secretary

to the Government of West Bengal

Date : 2/12/19

No. Labr./1030/(12) – IR

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 1496 - L.T. dated 19.11.2019.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Sdf

Deputy Secretary

No. Labr./1030/2(5) – IR

Date : 2/12/19

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

1. M/s JMD Services Pvt. Ltd., 128, Jodhpur Garden, Kolkata - 700 045.
2. Sri Kishor Jana (Security Guard No. 1176), 26/1B, Tarak Chatterjee Lane, P.O. – Hatkhola, Kolkata – 700 005.
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.

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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.38 of 2019

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

Sri Kishor Jana
(Security Guard No.1176)
26/1B, Tarak Chatterjee Lane,
P.O. Hatkhola, Kolkata-700005.

... Applicant

Versus

M/s. JMD Services Pvt. Ltd.
128, Jodhpur Garden, Kolkata-700045.

...OP/Company

A W A R D

Order No.05, dated 14-11-2019

Applicant Kishor Jana is present with his Ld. Advocate.

OP/Company is also present through its Ld. Advocate.

Mr. Biplab Das, Admin. & HR as well as authorised signatory of the OP/Company, is also present. He also files authorisation letter dated 22.09.2019 through petition.

Today is fixed for hearing of compromise petition, filed jointly by the parties on 24.09.2019.

Joint petition for compromise dated 24.09.2019 is taken up for hearing.

Applicant Sri Kishor Jana is examined, cross-examination is declined and discharged as PW-1.

Mr. Biplab Das, authorised signatory of the OP/Company, is also examined, cross-examination is declined and discharged as OPW-1. Authorisation letter dated 24.09.2019 is marked as Exhibit-A for the OP/Company.

Heard Ld. Advocate for both the parties. Also heard the applicant and Mr. Biplab Das, authorised signatory of the OP/Company, in person. considered.

The case record is taken up for passing order.

This is a case under Section 2A (2) of the Industrial Disputes Act, 1947 filed by Sri Kishor Jana against his employers viz. (1) M/s. JMD Services Pvt. Ltd. & (2) M/s. Edward Keventer Pvt. Ltd. in connection with termination of his service by his employers.

It appears from the Order No.03 dated 24.09.2019 that on the prayer of applicant, the name of OP No.2 i.e. M/s. Edward Keventer Pvt. Ltd. has been expunged / deleted from the cause title of the statement of claim.

Contd....



Contd....Order No.05, dated 14-11-2019

Perused the joint petition for compromise along with Memorandum of Settlement dated 24.09.2019, authorisation letter dated 22.09.2019 (Exhibit-A), Statement of Claim under Section 2A(2) of the Industrial Disputes Act, 1947 as well as evidence of the applicant Sri Kishor Jana (PW-1) and Sri Biplab Das (OPW-1), so adduced in support of said compromise petition. It appears from the evidence of PW-1 and OPW-1 that the matter in dispute has already been settled in between the parties in view of the terms and conditions as mentioned in the Memorandum of Settlement, so annexed with the petition for compromise dated 24.09.2019.

The joint compromise petition dated 24.09.2019 and Memorandum of Settlement dated 24.09.2019, have duly been signed by the applicant Sri Kishor Jana and Sri Biplab Das, on behalf of the OP/Company voluntarily. Since the matter has already been settled between the parties to the proceedings, I am of the view that this Tribunal should not stand in the way of their such settlement / compromise, which appears to be legal and valid, and so, this Tribunal finds no impediment in allowing such prayer, made jointly by the parties voluntarily.

Hence, it is,

ORDERED

that the joint petition of compromise dated 24.09.2019 is allowed and accordingly, the Case No.38 of 2019 under Section 2A(2) of the Industrial Disputes Act, 1947 be and the same is disposed of in terms of the Memorandum of Settlement dated 24.09.2019.

The joint petition of compromise dated 24.09.2019 and Memorandum of Settlement dated 24.09.2019, be made part of this Award.

This is my **Award**.

Let 6 (six) copies of the **Order / Award** be sent to the appropriate Authority for taking necessary action.

Dictated & corrected by me

sd/-

Judge

Judge
Seventh Industrial Tribunal



sd/-

(Ashis Kumar Das)
Judge,
Seventh Industrial Tribunal,
Kolkata
14/11/2019

Judge
Seventh Industrial Tribunal

BEFORE THE LEARNED SEVENTH INDUSTRIAL TRIBUNAL
WEST BENGAL : KOLKATA

for my
deposited
and
for no,
24.2.19

Case No. 38/2019 u/s 2A(2) of 2019

In the matter of

An alleged Industrial Dispute

- Between -

Sri Kishor Jana

Son of Manindra Jana,

26/1B, Tarak Chatterjee Lane

P.O. Hatkhola, Kolkata

PIN 700005

..... Applicant

- A N D -

M/s.JMD Services Pvt. Ltd.

128, Jodhpur Gardens

Kolkata

The humble Joint Petition on behalf of the parties
above named.

MOST RESPECTFULLY SHEWETH

KISHOR JANA

1. That the above matter is pending before your Honour
2. That during the pendency of the case before this Ld. Tribunal, the parties have started bi-partite discussion to settle the case amicably outside the Tribunal.
3. That after protracted discussion in an atmosphere of cordiality, a Memorandum of Settlement has been arrived at between the parties on the 24th September 2019 and the terms and conditions have been incorporated therein. In terms of the said settlement the present case has been settled fully and finally.

A Xerox copy of the said Memorandum of Settlement dated 20th day of September 2019 is annexed hereto and marked as Annexure - 'A'

4. That the petition is made bonafide and for end of justice.

In the circumstances it is therefore humbly prayed that the Ld. Tribunal may be graciously pleased to pass an award in terms of the said settlement disposing the case and / or pass any other order or orders as Your Honour may deem fit and proper.

And for this act of kindness your petitioner as in duty bound shall ever pray.

For the Opposite Party

Workman

JMD Services Pvt. Ltd.

Ripab Das
Authorized Signatory

KISOR JANA

SON OF MANENDRA JANA (late)

26/1B, Tarak Chatterjee Lane

P.O - Hatkhola, Kolkata

Pin - 700005.

24.9.19
for 12.9.19
JMD
for 12.9.19
JMD

MEMORANDUM OF SETTLEMENT

Name of the Parties
and addresses

: M/s. JMD Services Pvt Ltd, 128 Jodhpur Gardens,
Kolkata 700045

-A N D-

: Sri. Kishor Jana,
Son of Manindra Jana
26/1B. Tarak Chatterjee Lane
P.O. Hatkhola, Kolkata
PIN 700005

Representing the Company

1. Mr. Biplab Das

Representing the Workman

1. The Applicant Workman Sri Kishor Jana
Himself.

SHORT RECITAL OF THE CASE

Sri Kishor Jana, the Applicant Workman raised a dispute before the Asst. Labour Commissioner, Govt. of West Bengal, alleging there that his service was illegally transferred from one site to another site. Ultimately before submission of written comments before said Learned Commissioner, the Applicant Workman preferred an application before this Learned Tribunal under section 2A (2) of the Industrial Disputes Act and the said case had been registered as case no.38/2019 of 2019 wherein he alleged that his service had been terminated by the Management of M/s. JMD Services Pvt Ltd., although the Management never terminated the service of the Applicant Workman in any point of time. During the pendency of the case before the Learned Tribunal, the parties started discussion to resolve the issue in an atmosphere of cordiality where the Applicant Workman expressed to the Management his regret that he did not discuss with the Management on the above said points of dispute and he wrongly approached to the conciliation machinery for redressal before verifying with the Management. Accordingly after bipartite discussion the following points placed by the Workman to the Management have been settled:-

1. Introduction of Minimum Wages in accordance with the law.

JMD Services Pvt. Ltd.

Biplab Das
Authorised Signatory.

KISHOR JANA

2. Appointment letter.
3. Attendance Register
4. Pay Slip
5. Overtime payments
6. Leave and Holidays
7. Other statutory entitlement as per law.
8. The present wages drawn by the concerned employees are more than the existing minimum wage rates declared by the appropriate Government.
9. Appointment letters are issued on acceptance of offer letter and after completion of training period.
10. Attendance registers are maintained in proper form.
11. Pay slip is issued and will be distributed properly.
12. Overtime wages are paid as and when applicable.
13. Normal holidays permissible under the rules are allowed.
14. Bonus is paid to eligible employees as and when applicable.
15. All statutory benefits as applicable under the Contract Labour (Regulation & Abolition) Act, 1970 are enjoyed by the concerned employees.

The Parties sit for discussion on the above referred issues to find out an amicable solution and after bipartite discussion between the parties here to mutually arrive at an amicable settlement of the dispute on the following terms and condition.

TERMS OF SETTLEMENT

It is agreed by and between the parties hereto as follows :-

- a) That Sri Kishor Jana, the Applicant Workman will get the minimum wages as declared by the appropriate Government. The present wages drawn by the concerned employee is more than the existing minimum wage rates which will not be reduced.
- b) Appointment letters will be issued on acceptance of offer letter and after completion of training period which the Applicant Workman already received.
- c) Attendance registers will be maintained as per existing proper form.
- d) Pay slip will be issued as per present existing form and will be distributed properly.
- e) Overtime wages will be paid as per present existing norms as and when applicable.
- f) Normal holidays permissible under the rules are allowed.
- g) Bonus is paid to eligible employees as and when applicable.

JMD Services Pvt. Ltd.

Ripab Das
Authorized Signatory.

KISHOR JANA

- h) All statutory benefits as applicable under the Contract Labour (Regulation & Abolition) Act, 1970 are enjoyed by the concerned employees.
- i) The nature of work performed is that of Security Guards
- j) The appointment letter carries the 'transfer' clause and any such transfer is normal and as per requirement of the client.
- k) There was no case of termination and as such, the question of reinstatement does not arise.
- l) Working hours are set as per requirement of the clients which is within the statutory limits.
- m) Leave, wages and working hours and holidays are regulated as per rule.
- n) The above named employee is deployed as Security Guards and thus does not perform any other job which is technical and clerical in nature.
- o) The continuity of service under the present contract depends on the period of contract with the Principal Employer through an agreement. Since the job is contractual in nature, the period of service will also depend on the validity period of the contract with the Principal Employer.
- p) That the parties agree to file a joint petition of compromise along with the Memorandum of Settlement before the Learned Seventh Industrial Tribunal with a joint prayer to pass an award on the basis of this settlement.
- q) This settles the disputes fully and finally and both the parties herein have decided to sign this Memorandum of Settlement with a communication in clear terms that all the disputes so raised have been settled to their entire satisfaction and they do not have any pending dispute in this regard.

IN WITNESS HEREOF, the parties hereto put their signature on this 24th day of September 2019.

Representing the Company

JMD Services Pvt. Ltd.

 Authorised Signatory

Employee

KJSUORJANA
 SON OF MANINDRA JANA (Late)
 26/1B, Tarak Chatterjee Lane
 P.O. Hatkhola, Kolkata
 PIN - 700005.

କିଶୋର ଜାବା, ମିତା, ଅମିନୁ ଜାବା,
ଆ: - 26/15. ଜାକ ଟ୍ରାଜେଜି ଲେବ, ଗୋ: ହାଟ୍ ଫୋରା,
ହାକକାଟା, ମିବ: ୧୦୦୦୦୦ ଓ ମିକ୍ସର ଗ୍ରାସି ଡାଫ
ବହାମା,

ଆକାର କମ୍ପାନୀ VMD Services Pvt. Ltd ଓ
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ଆ: - 26-02-2012.

କିଶୋର

KISHOR JANA

26/15. ଜାକ ଟ୍ରାଜେଜି ଲେବ

ଗୋ: - ହାଟ୍ ଫୋରା, ହାକକାଟା

ମିବ: - ୧୦୦୦୦୦,