

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

No.Labr/...../(LC-IR)/22015(16)/292/2018

Date : 5/12/2018.

ORDER

WHEREAS an industrial dispute existed between M/s. Dipti Construction of Vill.- Basudebpur, P.O.- Khanjanchak under P.S.- Durgachak within Dist.- Purba Medinipore, a contractor of M/s. Haldia Petrochemicals Ltd., Haldia in Purba Medinipore and their workman Sri Tapan Chakraborty of Vill. Kumarchak, P.O.- Khanjanchak, Durgachak in Purba Medinipore regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(2A) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Second Industrial Tribunal, specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Judge of the said 2nd I.T. heard the parties under section 10(2A) of the I.D. Act, 1947 (14 of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

ISSUES

1. **Whether refusal of employment of Tapan Chakraborty on and from 01.07.2003 was justified or not, and**
2. **What relief is the workman entitled to as per law?**

AND WHEREAS the said Judge Second Industrial Tribunal has submitted to the State Government its Award under section 10(2A) of the I.D. Act, 1947 (14 of 1947) 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,

Sd/—
Deputy Secretary
to the Government of West Bengal

No. Labr/1040/15/(LC-IR)

Date 5/12/19

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

1. M/s. Dipti Construction of Vill.- Basudebpur, P.O.- Khanjanchak P.S.- Durgachak Dist.- Purba Medinipore
2. Sri Tapan Chakraborty of Vill. Kumarchak, P.O.- Khanjanchak, Durgachak in Purba Medinipore
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Buildings, (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.

Mankar

Deputy Secretary

No. Labr/1040/2(2)/(LC-IR)

Date 5/12/19

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, West Bengal, with respect to his Memo No. 1462 dated 13.11.2019
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the matter of an industrial dispute between M/s. Dipti Construction of Vill. – Basudebpur, P.O. – Khanjanchak under P.S. – Durgachak within Dist. Purba Medinipore, a contractor of M/s. Haldia Petrochemicals Ltd., Haldia in Purba Medinipore and their workman Sri Ganesh Khalua of Vill. Kumarchak, P.O. – Khanjanchak, Durgachak in Purba Medinipore.

(Case No. VIII-06/2016)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT: SHRI SRIBASHJ CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

Date of passing award – 30.09.2019

A W A R D

This case arose by way of order of reference vide No. 09-I.R./IR/11L-116 /16 dt. 04.01.2016 by order of Governor signed by Assistant Secretary to the Government of West Bengal, Labour Department, I.R. Branch, East India House, 2nd Floor, 20B, Abdul Hamid Street, Kolkata – 700069 mentioning that an industrial dispute exists between M/s. Dipti Construction of Vill. – Basudebpur, P.O. – Khanjanchak under P.S. – Durgachak within Dist. Purba Medinipore, a contractor of M/s. Haldia Petrochemicals Ltd., Haldia in Purba Medinipore and their workman Sri Ganesh Khalua of Vill. Kumarchak, P.O. – Khanjanchak, Durgachak in Purba Medinipore relating to the issues as mentioned in the order of reference stated to be being matters / matter specified in the second schedule to the Industrial Disputes Act, 1947, further mentioning that it is expedient that the said dispute should be referred to an industrial Tribunal constituted under Section 7A of the Industrial Disputes Act, 1947, and therefore in exercise of power conferred by Section 10 read with section 2A of the Industrial Disputes Act, 1947, the Governor is pleased by this order of reference to refer this dispute to this Tribunal stated to be constituted under Notification No. 803-I.R./IR/3A-2/57 dt. 11.03.1957 for adjudication requiring this Tribunal to submit award to the state Government within a period of three months from the receipt of this order of reference by this Tribunal in terms of sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 subject to other provisions of the Act, the issues as have been framed in the above mentioned order of reference being,

- 1) Whether refusal of employment of Ganesh Khalua on and from 01.07.2013 was justified or not, and
- 2) What relief is the workman entitled to as per law.

The case record shows that after receipt of order of reference summons were issued to both parties as per order of reference and after receiving summon workman Ganesh Khalua appeared engaging lawyer Ld. Salil Kr. Maity, Ld. Amar Jyoti Burman and the O.P. Company M/s. Dipti Construction as mentioned in the order of reference also appeared engaging Ld. Lawyer Mr. Arnab Saha. The case record further shows that workman Ganesh Khalua filed written statement on 06.04.2017 and then opportunity was given as per law to the company to



file written statement but the case record shows that the company took a few adjournments on the ground of filing written statement but last of all it became absent without any step, and then the company M/s. Dipti Construction was directed to show cause mentioning as to why necessary order would not be passed due to its absence for long without any step by order dt. 01.06.2017. The case record further shows that in the meantime Ld. Lawyer for the workman filed one petition for addition of M/s. Haldia Petrochemicals Ltd. as added party and last of all this matter of addition of M/s. Haldia Petrochemicals Ltd. as added party came to an end by the judgement of Hon'ble Calcutta High Court in W.P. No. 5094(W)/2019. Further despite issuing of show cause to the company M/s. Dipti Construction mentioning as to why necessary order would not be passed due to its absence for long without any step as mentioned earlier, the company i.e. M/s. Dipti Construction did not appear to file the show cause, it also did not file any written statement and then the case was fixed for ex-party hearing.

In the written statement the workman Ganesh Khalua has raised that the workman happened to be the land-loser and thus an evicted person due to acquisition of his land in Holdia Sub-division for establishment of industries including M/s. Haldia Petrocomplex Ltd. and in the hired cluster of flats for officials of different categories under name and style of Priyangbada Housing Estate owned by Haldia Development Authority the workman Ganesh Khalua was engaged as a plumber along with 22 others through the company M/s. Dipti Construction and the rest were given the post of security guard, maintenance staff, sweeper etc. It is also mentioned that the workman Ganesh Khalua was appointed as plumber in that Priyangbada Housing Estate with others and the initial stage contractor was M/s. R.K. Enterprise, after it came to M/s. Avishek Engineering, then to M/s. Satyan Construction and then to M/s. P.K. Construction and then to M/s. Goutam Trading. But the workman Gautam Chakraborty and others continued working in their respective capacity in that Priyangbada Housing Estate and the wages of the workman as per West Bengal Contract Labour (Regulation & Abolition) Central Rules 1871 used to be prepared by the contractors engaged by company M/s. Haldia Petrochemicals Ltd. without any break of the service of the workman. it is also stated that the workman had been continuing working for more than 16 years continuously to the full satisfaction of the company. It is also stated that the company M/s. Haldia Petrochemicals Ltd. after that decided to leave the Priyangbada Housing Estate and to shift at its own housing complex at Rayanchak – Ramgopalchak and being apprehended of being terminated from service due to shifting by the company, the workman and others met the management of the company which promised to them that their services would not be terminated and then the workman along with other workmen of his group made a joint application before Deputy Labour Commissioner, Haldia on 16.12.2011 requesting his intervention so that their services remain protected. It is also stated that the company disbursed salary to the workman and others for December, 2011 with promise to the workman that their services would not be terminated arising out of such shifting but the company last of all during July, 2013 only kept 16 out of 23 workmen and the workman in the case was also left out and his salary was stopped from July, 2013. Then this workman along with a few other made a representation before Deputy Labour

Commissioner on 24.07.2013 praying for reinstatement in his service and the present workman also made a representation on 05.09.2013 individually before the Labour Commissioner praying for re-engaging in the job under the contractor. It is stated that the service of the workman was taken away arbitrarily making discrimination in the way that excepting 16 of the group of workmen comprising 23 workmen were engaged / allowed to be continued in the service leaving the rest including the present workman illegally. It is next stated that after that Assistant Labour Commissioner called for a joint conference on 11.03.2014 and again on 08.04.2014 but to no result and then the workman along with others on 02.03.2016 made a separate representation before Labour Commissioner, Haldia praying for re-instatement in their services, and then the Assistant Labour Commissioner a separate meeting on 18.03.2016 and a further joint meeting on 31.03.016 after issuing notice to both side but to no result again. It is also stated that Assistant Labour Commissioner further called for joint conference on 31.03.2016 and again on 17.04.2016 and again non 21.04.2016 and again on 04.06.2016 but no result yielded. It is next stated that after that the present workman with a few others through one MR. Soumentranah Jana requested Deputy Labour Commissioner to get copies of his order passed arising out of such joint conference by representation dr. 09.06.2016 but those copies were not given and then present workman with others sent a lawyer notice to Assistant Labour Commissioner, Haldia and after that the contractor engaged two of the left out workmen but not the present workman and ultimately the order of reference ns question was issued. It is next stated that the present workman had been continuing his work continuously for more than 16 years and his service is perennial in nature but he was retrenched from the service without any notice, by stopping his salary for no reason and it has been alleged that all these illegalities are done by the company which also violated the principles of natural justice and the company illegally discriminated the workman by retrenching him from service while others of his group being in similar position were allowed to remain in the service and also raised allegation against the concerned labour commissioner stating that he did not take proper initiative to settle the dispute.it is also stated that he is a poor workman and due to his illegal termination he has been suffering. The workman has prayed for an award so that he can be re-instated in his service in which he was entrusted in the new housing complex of Haldia Petrochemicals Ltd. and also for direction to pay entire arrear from July, 2012.

During hearing of the case on merit workman Ganesh Khalua examined himself as P.W.- 1 and he also adduced documentary evidences which are:

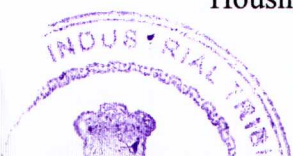
- 1) a letter dt. 21.10.2011 to C.E.O. of Haldia Development Authority by general manager of Haldia Petrochemicals Ltd. (Ext. 1),
- 2) attendance-sheet (Ext. 2 series),
- 3) a copy of letter addressed to Deputy Labour Commissioner at Haldia by proprietor of Dipti Construction (Ext. 3),
- 4) A copy of letter dt. 14.05.2016 addressed to General Manager, Haldia Petrochemicals Ltd. by authorised signatory of Dipti Construction (Ext. 4),



- 5) copy of letter addressed to Deputy Labour Commissioner, Haldia by Sukhendu Shekhar Samanta, proprietor of M/s. Dipti Construction dt. 23.03.2016 (Ext. 5), and
- 6) copy of letter addressed to General Manager, Haldia Petrochemicals Ltd. (Ext. 6)

During argument Ld. Lawyer for the workman has submitted that the workman had been working under the company (contractor) for more than 16 years continuously without any break, Ld. Lawyer added that for the purpose of constructing the industry at Haldia i.e. Haldia Petrocomplex Ltd., an wider area of land was required and the same was acquired for this purpose and that land included the land of the workman and after that the workman became shelter-less and at the same time income-less. The company engaged him in the hired housing complex under name and style of Priyangbada Housing Estate by the principal employer Haldia Petrochemicals Ltd. as a plumber along with some others and subsequently the principal employer M/s. Haldia Petrochemicals Ltd. shifted its office/officers to its own complex at different place and during that time most of the engaged workers were also given employment at that new complex excepting a group of 23 workers including the workman even though the workman had been in continuous service for more than 16 years to the full satisfaction of the company. Ld. Lawyer has also argued that even during the time of conciliation proceeding before Assistant Labour Commissioner at Haldia a few of the left out 23 workers were further engaged in the new housing complex of M/s. Haldia Petrochemicals Ltd. but the present worker was left out without any reason and thereby the company illegally discriminated against the workman who falls in the group of workmen similarly situated, most of whom have been allowed to continue in their services and Ld. Lawyer raised that before such retrenchment no opportunity was given to the workman in compliance with the principles of natural justice and the workman was retrenched from his service in violations of the compulsory requirement of law. Ld. Lawyer further raised in his argument that during the time of shifting from the old Priyangbada Housing Estate to the new housing complex under ownership of M/s. Haldia Petrochemicals Ltd., the company promised to the left out workman including the present workman that their services would not be terminated by any means and the workman believed the company / contractor, yet the contractor retrenched the workman most illegally. Referring the documents admitted in this case as evidence including Ext. 4, Ld. Lawyer has submitted that the workman both jointly and individually made representation for his re-instatement before the management of the company and also before the Deputy Labour Commissioner but during the time of conciliation proceeding nothing yielded and the contractor i.e. M/s. Dipti Construction in his letter addressed to General Manager of M/s. Haldia Petrochemicals Ltd. who is the principal employer mentioned that the workman under order of reference had been working as a plumber at Priyangbada Housing Estate and he has already given all his salaries to him and thus from this document (Ext. 4) it is admitted that the workman had been working under the company continuously without any break to the full satisfaction of the management of the company but he has been retrenched illegally.

The workman as P.W.-1 deposed that he was engaged as a plumber in the Priyangbada Housing Estate owned by Haldia Development Authority along with a group of 22 others in



different position such as guard, maintenance staff etc. from the very inception of that housing estate initially by contractor R.K. Enterprise and subsequently the contractors changed and he present company i.e. M/s. Dipti Construction also kept him engaged as a plumber. P.W.-1 also deposed that he was getting salary accordingly as per West Bengal Contract Labour (Regulation & Abolition) Central Rules 1871 and thus P.W.-1 had completed 16 year of continuous service to the full satisfaction of the company and his last drawn salary was Rs. 5400/-. P.W.-1 also deposed that the during the time of shifting from the old Priyangbada Housing Estate to the new housing estate complex, the company promised that service of the workman would not be retrenched but just at the time of completion of the shifting a group of 16 workmen were continued to work in the new complex excepting the rest including the present workman and the salary of the P.W.-1 was stopped from July, 2013 and P.W.-1 was retrenched from service without any notice. P.W.-1 also deposed that he jointly made representation over the matter of his retrenchment before the Labour Commissioner on 24.07.2013 and he individually on 05.09.2013 and on the basis of that representation joint conference was called for a few times i.e. on 22.11.2013, 11.03.2014, 08.04.2014, 02.03.2016, 18.03.2016, 31.03.2016 but last of all no result yielded and Deputy Labour Commissioner also did not take sufficient step and after getting a legal notice from the workman and others demanding for reinstatement in the service at the new housing complex, the order of reference was made. P.W.-1 also deposed that those who have been allowed to continued with their services at the new housing complex and those who have been left out formed a group similarly situated and the P.W.-1 has been left out without assigning any reason and in violation of compulsory requirement of law and also principles of natural justice and such discrimination on the part of the company is illegal. P.W.-1 also deposed that the just immediately before the matter of shifting from the Priyangbada Housing Estate to the new housing estate of the principal employer the company promised that he would not be retrenched and he believed that promise by the company but ultimately he was retrenched from the service, he also deposed that he is a land-loser and now after retrenchment he has become income-less. Ext. 2 series shows that the workman had been in the continuous service and this document (Ext. 2 series) support the deposition of P.W.-1 that from the very inception he was engaged as a plumber and he was continued in his service for 16 years without any break and to the satisfaction of the company and the letter addressed to Deputy Labour Commissioner, Haldia by proprietor of M/s. Dipti Construction proves that the Deputy Labour Commissioner, Haldia took up the matter for conciliation and a further letter by proprietor of M/s. Dipti Construction (Ext 4) proves that the workman was terminated from service over which P.W.-1 deposed that he was terminated illegally and the company did not keep the promise that he would not be terminated.

Having considered the oral evidence of the workman as P.W.-1 and the documentary evidences Ext. 6, it has been established that the workman had been working as a plumber after appointed by the company for this purpose for more than 16 years and during the time of shifting from the old housing estate i.e. Priyangbada Housing Estate to the new housing estate belonging to the principal employer, the company promised that the workman would not be terminated



from service, yet the company terminated his service and at the same time though the entire group of the workman remained in similarly situated position, the workman was unjustifiably discriminated against in the way that some of them were allowed to continue with their posts but the workman was treated differently and he was terminated. The evidences further justify the submission of Ld. Lawyer for the workman that the company promised to not to terminate the service of the workman and the workman remained in the hope that he would not be terminated but last of all he was terminated for no reason at all (Ext. 4) and thus a legal right that arose due to doctrine of reasonable expectation on the part of the workman has been violated. As per evidence of P.W.-1 he lost his land for the purpose of industrial complex there and now he has been terminated from service and has become income-less. Though it is one sided being ex-party, yet the workman has become able to prove his case sufficiently.

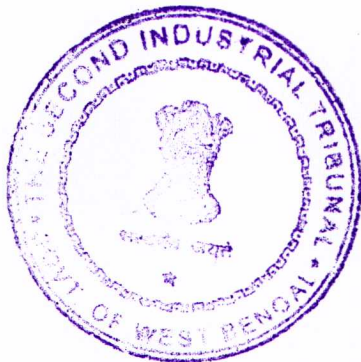
It is therefore,

ORDERED.

that the issues, whether the refusal of employment of workman Ganesh Khalua on and from 01.07.2013 was justified or not and what relief, if any, is the workman entitled to as per law are decided in favour of workman Ganesh Khalua, Vill – Kumarchak, P.O. – Khanjanchak, Durgachak in Dist. Purba Medinipore ex-party and the termination of workman Sri Ganesh Khalua by way of refusal of employment w.e.f. 01.07.2013 is declared illegal, in operative and void ab initio and the same is quashed and it is also held that the workman Ganesh Khalua is entitled to be re-instated in his service as was entrusted to him with full back-wages and accordingly the management of the company M/s. Dipti Construction, Vill.- Basudebpur, P.O. – Khanjanchak under P.S. – Durgachak within Dist. Purba Medinipore is directed to reinstate the workman in his service immediately and also directed to pay entire back wages to him immediately and this be treated as an award of this Tribunal in view of the order of reference vide No. 10-I.R./IR/11L-116 /16 dt. 04.01.2016. there is no order as to cost. It is directed that necessary number of copies of this judgement and award be prepared as required by rules and sent to the Ld. Additional Chief Secretary to the Government of West Bengal, Labour Department, N.S. Buildings, 12th Floor, 1, k.S. Roy Road, Kolkata-700001.

Dictated & corrected by me.

sd/-
Judge



sd/-
(Sribash Chandra Das)
Judge
Second Industrial Tribunal
30.09.2019