

40894/2019

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

No. Labr/263. /(LC-IR)

Date : . . 11.03.19

**ORDER**

WHEREAS under the case no VIII-07/2007(VI) of the Industrial Dispute Act, 1947 the Industrial Dispute between M/S Travel Corporation ( India ) Pvt. Ltd and Shri Bharat Mukhia, C/o Sri Gopal Sharma, Upper Merry Villa, Zig Zag Road, Darjeeling-734101 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, 6th . Industrial Tribunal, West Bengal.

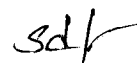
AND WHEREAS the Judge of the said 6th. Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

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,



Deputy Secretary  
to the Government of West Bengal

No. Labn. (263/1(5)) (LC-IR)

Date : . . 11.03.19

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

1. M/s Travel Corporation ( India ) Pvt. Ltd., "Chander" Mukhi, Narima Point, Mumbai-400021 .
2. Shri Bharat Mukhia, C/O; Sri Gopal Sharma, Upper Merry Villa, Zig Zag Road, Darjeeling-734101.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, 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

No. Labn. (263/2(2)) (LC-IR)

Date : . . 11.03.19

Copy forwarded for information to :

1. The Judge, 6th. Industrial Tribunal, West Bengal with reference to his Memo No.17-L.T. dated 28/01/2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -01.

Deputy Secretary

Before the Judge, Sixth Industrial Tribunal  
North Bengal Region at Jalpaiguri  
Nawab Bari Judicial Complex  
Jalpaiguri.

Case No. VIII-01/2012 (VI)

Present: Sri B. N. Bhaduri, Judge,  
Sixth Industrial Tribunal, North Bengal Region at Jalpaiguri  
Nawab Bari Judicial Complex, Jalpaiguri.



Bharat Mukhia  
S/o Late Jit Bahadur Mukhia  
Ex-Employee of  
Travel Corporation ( India) Pvt. Ltd.  
Darjeeling  
C/o Sri Gopal Sharma  
Upper Merry Villa  
Zig Zag Road  
P.O., P. S. & Dist. Darjeeling-734101.  
.....Petitioner.

-VS-

Travel Corporation ( India) Pvt. Ltd.  
Having its corporate office at  
'Chander' Mukhi,  
Narima Point  
Mumbai-400021  
Maharashtra.

.....O.P./Employer.

Order No.28 dt. 22/01/2019

The maintainability point of this case was heard on 16/01/2019 and today is fixed for passing order. It is found that the employee, Bharat Mukhia, has filed this case against Travel Corporation ( India) Pvt. Ltd. According to the petitioner/employee the opposite party is a profit making industry and the petitioner was appointed by the opposite party to work in their Company's branch office at Room No. 4 & 5, Bellavista Apartment, Gandhi Road, Darjeeling, Pin Code No.734101. It is the further case of the petitioner that the opposite party Company closed the aforesaid branch at Darjeeling on 1<sup>st</sup> April, 2001 and by letter dated 20/03/2001 the service of the petitioner/workman was terminated as his service was no longer required. According to the petitioner he preferred application before Assistant Labour Commissioner, Darjeeling, for his intervention in the matter and after prolonged process the Assistant Labour Commissioner passed ex parte decision against the management on 21/09/2007. According to the petitioner as the said ex parte order was not complied with by the opposite party, he rushed to the Hon'ble High Court, Calcutta, for his redressal but the Hon'ble High Court, Calcutta, opined that the dispute between the workman and the opposite party be referred to the Industrial Tribunal at Jalpaiguri and thereafter petitioner filed this case before this Tribunal on 24/09/2001. The employee/petitioner has prayed for holding that the decision of closer of the branch office of the management/opposite party is illegal, unjust, motivated and liable to be set aside. The petitioner has also prayed for directing the employer/opposite party to reinstate the petitioner

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Sixth Industrial Tribunal  
Jalpaiguri



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with full back wages treating that he was in service throughout the period. The petitioner has also prayed for directing the opposite party to settle all the financial, mental and physical damages made to the petitioner and other reliefs which this Tribunal deems fit and proper.

It is found that the case was registered on 30/01/2014. Thereafter, notices were issued to the opposite party. It is found that the opposite party appeared and prayed for supplying documents to be relied upon by the petitioner for filing written statement. But inspite of several chances petitioner did not supply the same. In such situation the opposite party could not file written statement. However, on 04/01/2019 both parties appeared and on careful consideration of the record this Tribunal noticed that hearing is required at first regarding maintainability of this case and accordingly fixed 16/01/2019 for hearing the maintainability point in presence of both sides. On that day Ld. Advocates for both sides filed haziras and the hearing was made and accordingly today is fixed for passing order.

It is found that the petitioner/employee filed this case in view of the provision of Section-10(1B)(c) of Industrial Disputes Act, 1947. In view of the provision of Section-10(1B) where in a conciliation proceeding of any Industrial Dispute relating to an individual workman no settlement is arrived at within a period of 60 days from the date of raising the dispute, the party raising the dispute may apply to the Conciliation Officer in such manner in such form as may be prescribed, for a certificate about the pendency of the conciliation proceeding. The Conciliation Officer on receipt of such application shall issue a certificate within 7 days from the date of receipt of the application and a copy of certificate is to be sent to the appropriate Government for information. As per provision of Section-10(1B)(c) the party may, within a period of 60 days from the receipt of such certificate or where such certificate has not been issued within 7 days, within a period of 60 days commencing from the day immediately after the expiry of 7 days, file an application in such form in such manner and in such particulars of demands as may be prescribed to such Labour Court or Tribunal as may be specified by the appropriate Government by notification. As per provision of Section-10(1B)(d) the Labour Court or Tribunal specified under Clause(C) shall within a period of 30 days from the date of receipt of an application under Clause(C), give a hearing to the parties and frame the specific issues in dispute, and shall thereafter proceed to adjudicate on the issues so framed as if it were an Industrial Dispute referred to in Sub-Section(1). So the first condition to file a case before the Industrial Tribunal as per provision of Section-10(1B) is that an application is to be made to the Conciliation Officer for issuing certificate of pendency and after getting that certificate the case

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*W. S. M. S. M.*  
JUDGE  
Sixth Industrial Tribunal  
Jalpaiguri

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can be filed in Tribunal directly. It is found that in the petition, the petitioner has stated that such certificate was issued by the Assistant Labour Commissioner on 27/07/2006. But on careful scrutiny of the record it appears that no such certificate was issued on that day. It is also found that the certificate is to be issued by the Conciliation Officer regarding pendency of the matter in the Form-S as per Rule 12A(3) of the West Bengal Industrial Disputes Rules, 1958 but that certificate has not been filed with the petition before this Tribunal. So the condition precedent for filing the case before this Tribunal has not been complied with.

Moreover, it is clear from the petition of the petitioner that the Assistant Labour Commissioner, Darjeeling, passed ex parte order on 21/09/2007 and if it is so then when the case was filed on 24/09/2012 before this Tribunal no conciliation proceeding was pending. It is also to be mentioned here that the petitioner has admitted that the Company was closed on 1<sup>st</sup> April, 2001 and this case was filed before this Tribunal in the year, 2012. It is settled position of law that after closer of Company no case can be filed for directing the management/employer to reopen the Company. It is also to be mentioned here that the petitioner has prayed for declaration that the closer of the branch office at Darjeeling is illegal, unjust and motivated and liable to be set aside. It is settled position of law that no one has any justification, authority or power to call upon the employer to justify the closer. In view of the provision of Section-25 FFA of the Industrial Disputes Act, if the justifiability of the closer cannot be brought into a issue any reference of Industrial Dispute asking the Tribunal to examine the justifiability of the closer undoubtedly is invalid, illegal and de hors Section-25FFA and other provisions of the Act. In view of the provisions of Industrial Disputes Act it is also not for the Industrial Tribunal to enquire into the motive for closer and to enquire whether it was bona fide or mala fide. Therefore, this Tribunal has no jurisdiction to declare that the alleged closer of the branch office is illegal, unjust and motivated. The petitioner has also prayed for directing the employer to reinstate him with full back wages but the said prayer is misconceived as because when the case is filed long after the closer of the branch office by the management, this Tribunal has no jurisdiction to issue direction upon the opposite party/ employer to reinstate concerned employee.

It is also to be mentioned here that the petitioner has stated in his petition for filing this case that the Hon'ble High Court, Calcutta, opined that the dispute has to be referred to the Industrial Tribunal at Jalpaiguri but no such order of the Hon'ble High Court, Calcutta, has been filed. Therefore, in view of the above discussions it is clear that this case is not maintainable at all in law and accordingly this case is liable to be dismissed being not maintainable. Hence, it is

ORDERED

That this case is disposed of being not maintainable in law.

Dictated & corrected by me.

*sdt* (B.N.Bhaduri)  
Judge,  
Sixth Industrial Tribunal  
Jalpaiguri



*sdt* (B.N.Bhaduri)  
Judge,  
Sixth Industrial Tribunal  
Jalpaiguri.

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*B.N.Bhaduri*  
JUDGE  
Sixth Industrial Tribunal  
Jalpaiguri