

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

No. Labr/265/(LC-IR)

Date : 11-03-19

ORDER

WHEREAS under the case no VIII-09/1995(VI) of the Industrial Dispute Act, 1947 the Industrial Dispute between M/s Indong Tea Estate, P.O. Matelli Dist: Jalpaiguri and their workmen represented by Cha Bagan Majdoor Union, W.B., Sramik Bhawan, P.O. Mal, Dist. Jalpaiguri regarding the issue mentioned in the said order, being a mater 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,

sd/-

Deputy Secretary
to the Government of West Bengal

Date : 11-03-19

No. Labr/265/1(5)/(LC-IR)

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

1. M/s : Indong Tea Estate, P.O.- Matelli Dist: Jalpaiguri .
2. Secretary, Cha Bagan Majdoor Union, W.B., Sramik Bhawan, P.O. -Mal, Dist. Jalpaiguri .
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, 11th Floor, Kolkata-700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

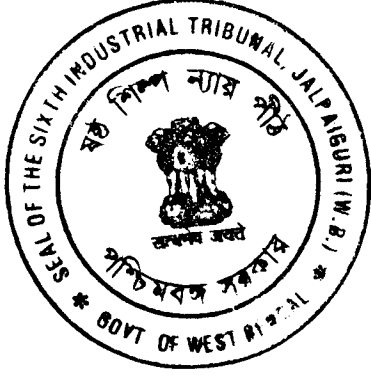


Deputy Secretary

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

Case No. VIII-09/1995 (VI)

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



M/s. Indong Tea Estate, P.O. Matelli,
Dist. Jalpaiguri.

-VS-

Their workmen represented by Cha
Bagan Majdoor Union, West Bengal,
Sramik Bhawan, P.O. Mal, Dist. Jalpaiguri.

Order No.156 dt. 21/01/2019

This case was heard on 11/01/2019 and today is fixed for passing order. This Industrial Dispute case was started on the basis of reference made by Government of West Bengal, Labour Department, vide Order No. 566-I. R./IR/9L-14/94 dated 27/03/1995 and Order No.01 dated 26/06/1995 of this Tribunal. Thereafter, the notices were issued to both sides for filing their statements and documents and both the workmen and employer appeared and filed their statements and documents. The employer terminated the services of Smt. Santa Mahali, Sri Ratia Orang, Sri Sanchrowa Orang(Bahira), Sri Sukra Orang and Sri Harilal Tirkey and being aggrieved by the order of termination the Cha Bagan Majdoor Union, P.O. Mal, Dist. Jalpaiguri, brought the matter for settlement before the Government of West Bengal and ultimately Labour Department, Government of West Bengal, held that an Industrial Disputes exists between M/s. Indong Tea Estate, P.O. Metelli, Dist. Jalpaiguri and their workmen represented by Cha Bagan Mazdoor Union, West Bengal, Sramik Bhawan, P.O. Mal, Dist. Jalpaiguri and accordingly Government referred the matter to this Tribunal for giving award after considering the point whether termination of services of Smt. Santa Mahali, Sri Ratia Orang, Sri Sanchrowa Orang(Bahira), Sri Sukra Orang and Sri Harilal Tirkey is justified or not and if the said order of termination is not justified what relief the workmen are entitled to.

It appears from the record that after hearing both sides preliminary issue regarding the validity of domestic enquiry was taken up for hearing and vide order no. 71 dated 26/07/2000, the then Judge of this Tribunal held that the domestic enquiry was not held fairly, properly impartially and legally and there was gross violation of rule of natural justice and accordingly no importance can be given to such enquiry proceedings. Vide Order dt. 26/07/2000 the Ld. Judge of this Tribunal fixed 14/11/2000 for examination of the witnesses by the employer afresh before this Tribunal for purpose of proving the charges against the concerned workmen. It is

me copy
B. N. Bhaduri
JUDGE
Sixth Industrial Tribunal
Jalpaiguri



found that several chances were given to the employer or adducing evidence to prove the charges, but ultimately on 15/06/2009 the Ld. Advocate for the employer submitted before the Tribunal that the employer side will not examine any witness and accordingly the then Ld. Judge vide order No. 126 dt 15/06/2009 closed the evidence of the employer. Thereafter, fixed 23/06/2009 for evidence of the workmen. It appears from the record that on 23/06/2009 the Lawyer for the workmen submitted that no evidence will be adduced on behalf of the workmen and accordingly the then Judge of this Tribunal fixed 29/07/2009 for arguments. It is found that since then several dates were adjourned for argument. But on some occasions workmen side remained absent and some occasions employer side remained absent and accordingly dates were adjourned upto 11/01/2019 for arguments. On 11/01/2019 workmen filed hazira through Ld. Advocate but employer side took no step. On that day Ld. Advocate for the workmen submitted that in view of the position of the record final order is required to be passed as after holding the departmental proceeding as invalid, no witness has been examined on behalf of both sides and naturally necessary order can be passed by this Tribunal.

Considered the submission and the entire materials on record. It is found that by Order No. 71 dated 26/07/2000 it was held by this Tribunal that the domestic enquiry was not held fairly, properly, impartially and legally and besides that there was gross violation of rule of natural justice and as such no importance can be given to such enquiry proceeding. No appeal was filed against the said order. This Tribunal gave ample opportunity to the employer and workmen to adduce their evidence for and against the charges but no evidence was adduced. Both the employer and workmen specifically submitted before the Tribunal that they will not adduce any evidence.

It is established principle that in a case of no enquiry or no valid enquiry, a chance is to be given to the management to adduce fresh evidence and thereafter the workmen also to be given chance to adduce their evidence. It appears from the record that chances were given to the management to adduce fresh evidence after holding that the domestic enquiry was not valid but management failed to adduce any evidence. It is also settled principle of law that if management does not want to adduce any fresh evidence the Tribunal cannot deny such opportunity to the workmen on this ground. It appears that this Tribunal also gave chance to workmen to adduce their evidence though management did not adduce any evidence. Ultimately, the workmen also submitted that they will not adduce any evidence.

In the case of Neeta Kaplish -VS- Presiding Officer (reported in AIR 1999 SC 698) and (1999) 1 SCC 517, the Hon'ble Supreme Court held that where the Labour Court has already found that the domestic enquiry was not properly and fairly conducted, but the management does not lead any fresh evidence on merits, the workman is well within his rights to say that he too would not lead any fresh evidence, and his claim cannot be rejected. He is entitled to be

True Copy
Signature
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Sixth Industrial Tribunal
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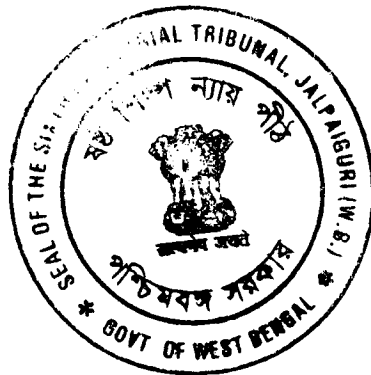
granted the relief then and there. So when the employer/management did not adduce any evidence to prove the charges on merit the workman in this case rightly exercised their option and submitted that they will not adduce any evidence. So in view of the aforesaid decision of the Hon'ble Supreme Court the workmen are entitled to be granted the relief then and there. It is found that though on 15/06/2009 the employer submitted that it will not adduce any evidence to prove the charges on merits and the workmen also submitted on 23/06/2009 that they will not adduce any evidence then the workmen were entitled to the relief sought for immediately thereafter. But the then Ld. Judges of this Tribunal did not pass any order and adjourned the cases on several dates for arguments. However, in view of the above facts and circumstances there is no other alternative but to hold that the termination of services of Smt. Santa Mahali, Sri Ratia Orang, Sri Sanchrowa Orang(Bahira), Sri Sukra Orang and Sri Harilal Tirkey dated 10/09/1992 is liable to be set aside and the concerned workmen are to be reinstated and they should be allowed to get arrear wages and other benefits applicable to them on and from the date of termination till the date of reinstatement. Hence, it is

ORDERED

That this case be and the same is hereby allowed on contest. The order of termination/dismissal dated 10th September, 1992 of the workmen, namely, Smt Santa Mahali, Sri Ratia Orang, Sri Sanchrowa Orang(Bahira), Sri Sukra Orang and Sri Harilal Tirkey is hereby set aside. The employer is directed to reinstate all the workman mentioned above within one month from the date of publication of this award in Gazette notification. The employer/management is further directed to pay arrear wages to all the workman mentioned above from the date of their illegal dismissal till the date of reinstatement.

Dictated & corrected by me

(B. N. Bhaduri)
sdh Judge
Sixth Industrial Tribunal
Jalpaiguri



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

True copy
sdh
JUDGE
Sixth Industrial Tribunal
Jalpaiguri