

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

No. Laba/267/(LC-IR)

Date : 11.03.19

ORDER

WHEREAS an industrial dispute existed between M/S Kamala Tea Company Limited, 240/B, A.J.C. Bose Road,, Kolkata-20 and their workman Satyendra Sharma, C/O Calcutta Motor Drivers' Union, 55, Biplabi Rashbehari Basu Road, Mehta Building, Block-B, 2nd Floor, Kolkata-1 regarding the issue, being a matter specified in the Third schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Second Labour Court specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS the said Judge, Second Labour Court has submitted to the State Government its Award under section 10(1B)(d) 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/267/1(5)/(LC-IR)

Date ...11-03-19...

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

1. M/s: Kamala Tea Company Limited, 240/B, A.J.C. Bose Road,, Kolkata-20 .
2. Sri Satyendra Sharma, C/O: Calcutta Motor Drivers' Union, 55, Biplabi Rashbehari Basu Road. Mehta Building, Block-B, 2nd Floor, Kolkata-1 .
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The 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.



Deputy Secretary

No. Labr/267/2(2)/(LC-IR)

Date ...11-03-19

Copy forwarded for information to :-

1. The Judge, Second Labour Court , West Bengal, with respect to his Memo No. 171-LT dated 05/02/2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

An application U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 filed by **Satyendra Sharma**, Son of Sri Balchand Sharma, residing at C/o. Calcutta Motor Drivers' Union, 55, Biplabi Rashbehari Basu Road, Mehta Building, Block-B, 2nd Floor, Kolkata-700 001 against **M/s. Kamala Tea Company Limited**, 240/B, A. J. C. Bose Road, Kolkata-700 020.

(Case No. 01/2012, U/S. 10(1B)(d) of Industrial Disputes Act, 1947)

BEFORE THE SECOND LABOUR COURT, WEST BENGAL, KOLKATA
PRESENT: **SRI ARABINDA PANTI**, JUDGE
SECOND LABOUR COURT
KOLKATA.

Date : 31.01.2019

A W A R D

The case of the applicant in brief is that he was engaged as driver in the year 1985 by the Opposite Party and he was working till his termination from service i.e. on 26.06.2006. At the outset his service was placed under M/s. Suman Tea Company owned by the same owner i.e. present Opposite Party. The Opposite Party Company is the owner of so many tea gardens and engaged in tea business and earns huge profit. The Opposite Party used to pay very meagre wages to the labours and employees them beyond scheduled working hours without extra payment. The applicant used to draw salary @ Rs. 3400 P.M.

It is the further case of the applicant that he was all along sincere and tried his best to satisfy the Opposite Party. Still then, all on a sudden the Opposite Party terminated the service of the applicant w.e.f. 26.06.2006 without giving prior notice and without assigning any reason, but only by verbal order his service was terminated. No charge sheet was issued. No domestic enquiry was held. No compensation/monetary benefit was given to the applicant.

Accordingly, the termination of service of the applicant by the Opposite Party is not only whimsical but also illegal and unfair labour practice as per the claim of the applicant. The applicant time and again requested the Opposite Party orally and in writing to reinstate him, but all are in vain. Finding no other alternative, the applicant preferred the instant dispute to the Labour Commissioner. Attempts were made by the Labour Commissioner to settle the dispute in tripartite level, but nothing could be achieved due to non-compromising attitude of the Opposite Party. He thereafter, got certificate under Form(S) and has filed his case praying for reinstatement of service with full back wages.



The Opposite Party namely M/s. Kamala Tea Company Ltd. entered appearance in this case and filed written statement contending inter-alia the case made out by the applicant and the allegations levelled against the Opposite Party.

It is the case of the Opposite Party that the applicant worked under it as driver on and from 01-04-1992 to 31-05-2005. In the month of May, 2005, the applicant gave verbal proposal to the company that he was not willing to continue his job from June, 2005 and if the company desires the Maruti Alto LX, Car No. WB02R 67 08 for his use, then he will not claim any dues after his resignation. But since then, the applicant never came to the office and did not return the said car to the Opposite Party.

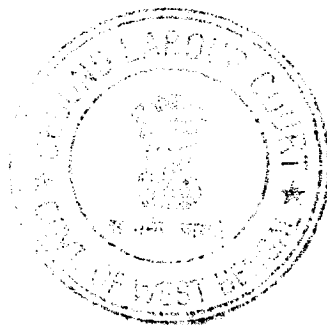
The Opposite Party denies and disputes the year of joining in service of the applicant and his termination by the Opposite Party. This company also takes the defence that this case is bad in law and not maintainable on the point of jurisdiction and limitation. That apart, according to the Opposite Party, the applicant was in the habit of unauthorised habitual absenteeism. Although he got certificate under Form(S), yet the Labour Commissioner has issued it beyond the period of limitation and that is bad in law. The Opposite Party prays for rejection of the application.

The applicant adduced evidence as PW1. He was cross examined in full by the Opposite Party, but the Opposite Party did not adduce evidence either orally or documentary. The documents marked from the side of applicant are as follows:

- Exbt. 1 Copy of that letter, dated 10.04.2010
- Exbt. 1/1 & 1/2 Copies of A/D Card
- Exbt. 2 Letter to the Labour Commissioner, dated 23.08.2010
- Exbt. 3 series Labour Commissioner called a joint meeting
- Exbt.4 Copy of the letter to the Labour Commissioner
- Exbt.5 Santosh Agarwal, Director issued a certificate to the applicant
- Exbt.6 Copy of challan issued by M. V. Department

The decisions referred by Ld. Representative of the applicant are depicted below:

1. **1994 (69) FLR 17 (Delhi High Court), (Municipal Corporation of Delhi-and-Shri Sukhvir Singh & Others).**
2. **2013 (139) FLR 541(SC) (Deepali Gundu Surwase-and-Kranti Junior Adhyapak & Others).**
3. **1991 (63) FLR 679 Between Riaz Ahmed and Munir Ismail Mohammed of Bombay and another.**



Upon pleadings of both the Parties, the following issues have been framed:

ISSUES

1. Is the application U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 (West Bengal amendment) filed by the applicant maintainable in law?
2. Whether the service of applicant came to an end with effect from 26th June, 2006 and was justified and proper?
3. Whether there is jural relationship between the applicant and O.P as employee-employer?
4. Whether the applicant is entitled to get relief/reliefs as per law and equality?

DECISION WITH REASONS

ISSUE NO. 1

This issue is taken up alone for brevity of discussion and taking decision.

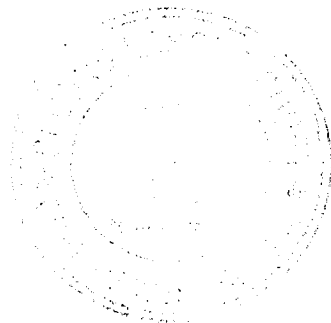
This issue relates to maintainability of this case within the meaning of Industrial Disputes Act, 1947. Section 10 of this act empowers the appropriate Government to refer the dispute before a tribunal or a court for an enquiry to a dispute appearing in between the employer & employee. Since after termination of service, the applicant preferred an application to the Labour Department, Govt. of West Bengal ventilating her grievances and praying for relief. The copy of that letter has been marked as Exbt.2. There is no denial to that effect by the O.P. Getting no relief as per his representation to the Labour Department, he preferred the application before this court. The applicant in his written statement has mentioned that the conciliation officer failed to conciliate the matter. He issued a certificate under Form(S) vide Memo No. S/1635/90/10/LC dated, 08-12-2011.

Fact remains that, the Opposite Party did not come to adduce evidence and to take part in the argument. The Opposite Party though has taken the defence regarding the limitation and for non-issuing of the certificate within the time limit and this defence has been taken in the written statement, but no argument was advanced from the side of this Opposite Party in this regard. That apart, this court has jurisdiction to try this case.

In view of the above, this court thinks that this case is maintainable. Thus, this issue disposed of.

ISSUE NO. 3

This issue is taken up alone for convenience of discussion and taking decision. The applicant in his written statement as well as in his oral testimony has deposed that he was engaged in the Opposite



Party concern as driver in the year 1985 and his service was terminated from 26.06.2006. The Opposite Party by filing written statement has stated that the applicant worked as driver on and from 01.04.1992 to 31.05.2005. The period of work defers from the case of each other. The applicant by filing affidavit has substantiated his case. Although, in cross examination suggestion was given that the applicant worked in the company from the year 1992. But the applicant denied this suggestion. Even the Opposite Party did not take any attempt to prove its case rather to disprove the case of the applicant regarding period of service by adducing any type of evidence.

Here in this case, the period of service of the applicant matters little. Admittedly, he was a driver under the Opposite Party. Therefore, employer-employee relationship exists in between the Opposite Party and the applicant.

Thus, this issue No. 3 is disposed of infavour of the applicant.

ISSUE No. 2

This issue is taken up together alone for convenience of discussion and taking decision. It is the case of the applicant that the Opposite Party terminated his service on 26th day of June, 2006. The Opposite Party did not admit this fact rather stated in its written statement that in the month of May, 2005 the applicant proposed verbally to the company that he would not continue his job from the Month of June, 2005, but this fact has not been proved by fortified evidence. In such a situation, the decisions of the Hon'ble Delhi High Court and the Hon'ble Bombay High Court as referred by Ld. Representative of the applicant go to show that in case of abandonment of service, the Opposite Party should hold an enquiry before treating the service as terminated.

1. **1994 (69) FLR 17 (Delhi High Court), (Municipal Corporation of Delhi-and-Shri Sukhvir Singh & Others)**
2. **1991 (63) FLR 679 Between Riaz Ahmed and Munir Ismail Mohammed of Bombay and another.**

From the judgement of the Hon'ble Delhi High Court in the above-mentioned case it is clear that the Hon'ble Court was pleased to hold that

“..... if he had abandoned the employment certainly that could have been a ground for holding an enquiry against him and passing necessary order.....”

By the same way it is crystal clear from the judgement of the Hon'ble Bombay High Court that **“..... the story of the employer that the Petitioner abandoned his service cannot be accepted. Even if we assume, for a moment, that there was such voluntary abandonment of service**

on the part of the Petitioner, as held by this Court in *Gauri Shanker Vishwakarma v. Eagle Spring Industries Private Ltd. and others*, it was incumbent upon the first respondent to hold an inquiry before treating the service as terminated on this ground. The first Respondent did not do so. The termination of the service of the Petitioner must, therefore, be held to be illegal and void.....”.

In fact, in the instant case no enquiry was held. No compensation was given to the applicant by the company as per the Act.

Accordingly, in the considered view of this court the termination of service of the applicant on and from 26th day of June, 2006 is unjustified.

Thus, this issue is also disposed of in favour of the applicant.

ISSUE NO. 4

Now remains this only issue relating to the relief and equity which are admissible to the applicant. All the above three issues have been disposed of by this court in favour of the applicant. The Opposite Party could not illicit out any fact which might favour it. On the contrary, by adducing cogent, fortified documentary and oral testimony, the applicant has successfully proved his case beyond all reasonable shadow of doubt. In the sum the case succeeds. The applicant is entitled to get relief as per his prayer. More so, the decision held by Hon'ble Supreme Court held in **2013 (139) FLR 541(SC) (Deepali Gundu Surwase-and-Kranti Junior Adhyapak & Others)** supports the case of the applicant.

Thus, this issue is disposed of.

Hence, it is

Ordered

that the instant petition U/s. 10 (1B)(d) of Industrial Disputes Act, 1947 is hereby allowed on contest but without cost. The applicant is hereby entitled to get reinstatement of his service and full back wages. The Opposite Party is hereby directed to reinstate the applicant to his original position of service and to pay him full back wages starting from 26th day of June, 2006 till his reinstatement, along with other consequential benefits within a period of 90 days from the date of passing this award, in default the applicant is at liberty to put the award in execution.

This is the award passed by this court.

Dictated and corrected by me

sd/-
Judge

sd/-
(Arabinda Panti)
Judge, 2nd Labour Court
Kolkata.
Judge
Second Labour Court W.B.

