

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

No. Labr./109/(LC-IR)/22015(16)/553/2019 Date : 13/02/2020

ORDER

WHEREAS an industrial dispute existed between (1) NIS Management Pvt. Ltd., business office at 489, Madurdaha, 1st Floor, Kalikapur, Kolkata – 700 107, Regd Office at 58/99, Prince Anwar Shah Road, Kolkata – 700 045; (2) NH Narayana Multi Specialty Hospital at Andul Road, Vill -Chunabhati, P.O. -Radhadasi, P.S. -Sankrial, Dist. -Howrah – 711 109 and their workman Mr. Lokenath Chowdhury, S/o Sri Amitava Chowdhury, Vill -Jigacha, Asutosh Ghosh Road, P.O. -G.I.P. Colony, P.S. -Jagacha, Dist. -Howrah – 711 112 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14of 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,

Sd/-

Deputy Secretary
to the Government of West Bengal

I/81477/2020

(2)

No. *Labr/109/1(2)* - IRDate : *13/02/2020*

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 56 - L.T. dated 14.01.2020.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Sd/-

Deputy Secretary

No. *Labr/109/2(5)* - IRDate : *13/02/2020*

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

1. NIS Management Pvt. Ltd., 58/99, Prince Anwar Shah Road, Kolkata - 700 045.
2. NH Narayana Multi Specialty Hospital, Andul Road, Vill -Chunabhati, P.O. -Radhadasi, P.S. -Sankrial, Dist. -Howrah - 711 109.
3. Mr. Lokenath Chowdhury, S/o Sri Amitava Chowdhury, Vill -Jigacha, Asutosh Ghosh Road, P.O. -G.I.P. Colony, P.S. -Jagacha, Dist. -Howrah - 711 112.
4. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
5. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 6. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Sd/-

Deputy Secretary

In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata

CASE NO. 20 of 16

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

Mr. Lokenath Chowdhury vs. NIS Management Pvt. Ltd. & Anr.

Order No.39, dated 14.01.2020

Applicant Mr. Lokenath Chowdhury is present.

Both the opposite parties are present through their Ld. Advocates.

Today is fixed for hearing of three petitions all dated 05.11.2019, out of which one petition has been filed on behalf of OP No.1 and rest two have been filed on behalf of OP No.2.

At this stage, one verified petition has been filed by the applicant Mr. Lokenath Chowdhury praying for permission to withdraw the instant case with a liberty to file a fresh case in terms of existing law mainly on the ground that Section 2A(2) of the Industrial Disputes Act, 1947 has been repealed by the Repealing and Amending Act, 2016 (No.23 of 2016) w.e.f. 09.05.2016.

Ld. Advocate for the opposite parties submit that they will not file any written objection against the above petition for withdrawal of the instant case.

All the above referred three petitions, filed on behalf of OP Nos. 1 & 2 respectively along with present petition for withdrawal, filed by the applicant, are taken up for hearing.

Heard the applicant Mr. Lokenath Chowdhury in person, who submits that today he has filed a verified petition for withdrawal of the instant case voluntarily with a liberty to file a fresh case in terms of existing law and he put his signatures on each and every page of the said petition. Also heard Ld. Advocates for the opposite parties. Considered.

Perused the petition dated 05.11.2019 filed on behalf of OP No.1 praying for permission to cross-examine PW-1 on recall. Also perused the petition dated 05.11.2019 filed on behalf of OP No.2 praying for permission to cross-examine PW-1 on recall. Also perused another petition dated 05.11.2019 filed on behalf of OP No.2 praying for an order to direct the claimant / applicant to serve a copy of the affidavit-in-chief, so filed by him, upon them. Also perused the written objection dated 09.12.2019 filed by the applicant against the petitions filed on behalf of the opposite parties to cross-examine him (PW-1) on recall. Considered.

The applicant has filed today the above petition for withdrawal of the instant case. Also perused the said petition for withdrawal along with statement of claim / written statement and materials on record.

This is a case under **Section 2A(2) of the Industrial Disputes Act, 1947, as amended**, filed by the applicant/workman namely, Mr. Lokenath Chowdhury on **23.05.2016** against his employer OP/Company namely, (1) NIS Management Pvt. Ltd. & (2) NH Narayana Multi Specialty Hospital, in connection with termination of his service seeking declaration that such termination of service is illegal, with a prayer to reinstate him in service with full back wages and other consequential benefits.



Contd....

Before the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), **Section 2A** of the said Act was as follows :-

2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

By the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), Section 2A was renumbered as sub-section (1) and by the same Act i.e. Act 24 of 2010 sub-section (2) and sub-section (3) came to be inserted after section 2A (1) of the I. D. Act. The said amendment came into effect on and from 15th September, 2010 and after such amendment section 2A runs as follows :-

[2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]

Thereafter, by the Repealing and Amending Act, 2016 (No.23 of 2016), the whole Industrial Disputes (Amendment) Act, 2010 (24 of 2010) has been repealed. The said **Repealing and Amending Act, 2016 (No.23 of 2016) came into effect on and from 09.05.2016**, as it appears in The Gazette of India (Extraordinary, Part-II, Section 1). In absence of any specific provision to the contrary, the Repealing and Amending Act, 2016 (No.23 of 2016) is to be held operative prospectively. So, original Section 2A of the Industrial Disputes Act, 1947 came into force again on and from 09.05.2016.

Admittedly, this case has been filed under Section 2A (2) of the Industrial Disputes Act, 1947, as amended, on **23.05.2016**, which is after repealing of the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), repealed by the Repealing and Amending Act, 2016

(No.23 of 2016). So, it is clear that on the date of filing of the instant case i.e. on 23.05.2016, there is no existence of Section 2A(2) of the Industrial Disputes Act, 1947 and/or Section 2A(2) of the Industrial Disputes Act, 1947 had no application on 23.05.2016.

Therefore, in view of my above made discussion and findings, I think that the applicant should be permitted to withdraw the case for the interest of justice with a liberty to sue afresh in terms of existing law. Consequently, the above referred three petitions, all dated 05.11.2019, filed on behalf of OP Nos. 1 & 2 respectively, call for no order.

Hence, it is,

ORDERED

that the applicant Mr. Lokenath Chowdhury is permitted to withdraw the instant Case No. 20 of 16 under Section 2A(2) of the Industrial Disputes Act, 1947 with a liberty to sue afresh in terms of existing law.

All the three petitions dated 05.11.2019, filed on behalf of opposite parties and the petition for withdrawal of the instant case, filed by the applicant today, are thus, disposed of.

Consequently, the proceeding stands disposed of as withdrawn.

This is my **Award**.

Let 6 (six) copies of this Order/Award be sent to the appropriate authority for information and taking necessary action.

Dictated & corrected by me

sd/-

Judge

Judge
Seventh Industrial Tribunal



sd/-

(Ashis Kumar Das)

Judge,

Seventh Industrial Tribunal,
Kolkata

14/01/2020

Judge
Seventh Industrial Tribunal