

I/83255/2020

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

No. Labr./ 41.../(LC-IR)/22015(16)/23/2018

Date : 26/12/2020

ORDER

WHEREAS an industrial dispute existed between M/s Blossom Restaurant, 55B, Abheda Nanda Road (Hedua), P.S. - Burtolla/Beadon Street, Kolkata - 700 006 and their workman Smt. Sarbani Dey, 31, Bethune Row, Kolkata - 700 006 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;

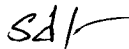
AND WHEREAS the said Judge, Seventh Industrial Tribunal has submitted to the State Government its Award on the said Dispute.

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,



Deputy Secretary
to the Government of West Bengal

(2)

No. Labr/141/1(2) - IR

Date: 26/02/2020

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 106 - L.T. dated 28.01.2020.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. Labr/141/2(5) - IR

Date: 26/02/2020

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

1. M/s Blossom Restaurant, 55B, Abheda Nanda Road (Hedua), P.S. - Burtolla/Beadon Street, Kolkata - 700 006.
2. Smt. Sarbani Dey, 31, Bethune Row, Kolkata - 700 006.
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (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

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

Present: Shri Ashis Kumar Das, Judge,
Seventh Industrial Tribunal, Kolkata.

CASE NO. 17 of 2019

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

Smt. Sarbani Dey

31, Bethune Row, Kolkata-700 006, W.B.

...Applicant

-Versus-

M/s. Blossom Restaurant

55B, Abhedha Nanda Road (Hedua),
P.S. Burtolla/Beadon Street, Kolkata-700 006.

...OP/Company

A W A R D

Dated : 24-01-2020

Applicant namely, Smt. Sarbani Dey is present with her Ld. Advocate.

OP/Company namely, M/s. Blossom Restaurant is present through its Ld. Advocate.

Today is fixed for filing suggested issues by the parties and also framing of issues.

No suggested issues have been filed by the parties.

At this stage, a verified petition has been filed by the applicant Sarbani Dey 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 OP/Company submits that OP/Company will not file any written objection against the above petition for withdrawal of the instant case.

The petition for withdrawal, filed today, is taken up for hearing.

Heard Ld. Advocates for both the parties. Also heard the applicant Sarbani Dey in person, who submits that she has filed the present petition for withdrawal of the instant case voluntarily with a liberty to file a fresh case in terms of existing law and she put her signatures on each and every page of the said petition. Considered.

Case record is taken up for passing order.

Perused the present petition for withdrawal along with written statements, filed by the parties and also 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, Sarbani Dey on **24.06.2019** against her

Contd....

employer OP/Company namely, M/s. Blossom Restaurant in connection with termination of her service by way of refusal of employment w.e.f. 25.09.2016 declaring that such termination of service is illegal, unlawful and unjustified, with a prayer to reinstate her in service with full back wages / salary and other consequential benefits.

Now, the point which comes for consideration is that as to whether the applicant can be permitted to withdraw the instant case 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 or not ?

Let me now see the relevant provision of the Industrial Disputes Act, 1947.

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 **24.06.2019**, 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 24.06.2019, 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 24.06.2019.

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.

Hence, it is,

ORDERED

that the petition dated 24.01.2020 for withdrawal of the instant case is allowed without costs.

Applicant namely, Sarbani Dey is permitted to withdraw the instant Case No. 17 of 2019 under Section 2A(2) of the Industrial Disputes Act, 1947, with a liberty to sue afresh in terms of existing law.

The instant proceedings stands disposed of as withdrawn.

This is my Award.

Let six 6 (six) copies of the Award be sent to the Appropriate Authority for information and taking necessary action.

Dictated & corrected by me

sd/-

Judge

Seventh Industrial Tribunal



sd/-

(ASHIS KUMAR DAS)
Judge,
Seventh Industrial Tribunal,
Kolkata

24/01/2020

Judge
Seventh Industrial Tribunal