

I/107450/2020

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

No. Labr/1685/(LC-IR)/22015(16)/14/2020

Date : 27.11.2020

ORDER

WHEREAS an industrial dispute existed between M/s SBL Pvt. Ltd., 7, B.B.Ganguly Street, 1st floor, Kolkata - 700012 and Sri Arun Bera, C/o W.B.M.S.R.U. Rest House, 11, R.K. Bhattacharjee Lane, Kadai, Beharampur, Murshidabad - 742101 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

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

AND WHEREAS, the Judge of the said Fifth Industrial Tribunal, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947).

AND WHEREAS the said Judge Fifth Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 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/107450/2020

: 2 :

No. Labr/1685/1(5)
...../(LC-IR)

Date : 27.11. 2020

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

1. M/s SBL Pvt. Ltd., 7, B.B.Ganguly Street, 1st floor, Kolkata - 700012.
2. Sri Arun Bera, C/o W.B.M.S.R.U. Rest House, 11, R.K. Bhattacharjee Lane, Kadai, Beharampur, Murshidabad - 742101.
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/...../(LC-IR)

Date : 2020

Copy forwarded for information to :-

1. The Judge, Fifth Industrial Tribunal, West Bengal, with respect to his Memo No. 275 -L.T. dated 02.03.2020.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the matter of an Industrial Dispute between M/s. SBL Pvt. Ltd. having its Head Office at SBL House, 2, Commercial Complex, Shrestha Vihar, Delhi – 110 092 and local office at 7, B. B. Ganguly Street, 1st Floor, Kolkata – 700 012 and their workman Shri Arun Bera, C/o. W.B.M.S.R.U. Rest House, 11, R.K. Bhattacharjee Lane, Kadai, Beharampur, Murshidabad – 742 101.

Case No. 01/2015 U/s. 10(1B)(d)]

BEFORE THE FIFTH INDUSTRIAL TRIBUNAL: WEST BENGAL

P R E S E N T

SRI TAPAN KUMAR DAS, JUDGE

5th Industrial Tribunal, Kolkata.

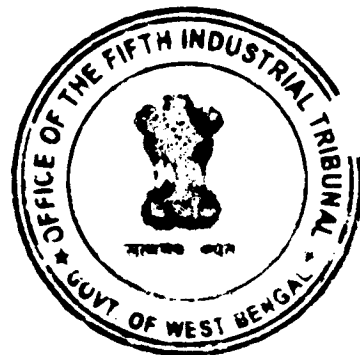
(Dated_25th Day of February, 2020)

A W A R D

The instant industrial dispute emanates from an application filed by the workman Shri Arun Bera, C/o. W.B.M.S.R.U. Rest House, 11, R.K. Bhattacharjee Lane, Kadai, Beharampur, Murshidabad – 742 101 against his employer M/s. SBL Pvt. Ltd. having its Head Office at SBL House, 2, Commercial Complex, Shrestha Vihar, Delhi – 110 092 and local office at 7, B. B. Ganguly Street, 1st Floor, Kolkata – 700 012 for adjudication under Section 10 of Industrial Disputes Act, 1947.

This case has been brought by the employee, Shri Arun Bera by filing an application U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 seeking relief that termination of his service w.e.f. July, 07, 2014 by the Opposite Party i.e. M/s. SBL Pvt. Ltd. is illegal and void *ab initio* and also he has sought for relief of reinstatement in service with full back-wages and other consequential benefits.

It is the case of the applicant/employee that he joined in service on 22.11.2003 in M/s. SBL Pvt. Ltd. and he was placed under probation at the initial stage of appointment. That after completion of his probation period, his service was confirmed as “Medical Representative” in the said Opposite Party Company. The O.P. Company is dealing with the business of homeopathy medicine and other allied services in India. Initially, the applicant was posted at Guwahati in the State of Assam and thereafter he was transferred to Kolkata, West Bengal and lastly, he was transferred to Beharampur in the District, Murshidabad to work as medical representative. The O.P. Company did not give the due increments of the employees



for three (3) years and so the employees repeatedly demanded their dues from the company and then the company had given 10% increment in January, 2014 and further 20% increment in July, 2014 to its employees but the said increment was not given to the applicant by the company. It is the further case of the applicant that in one occasion he was intimated that he should not espouse the just and genuine causes of the workman else his service will be determined in any way or other. It is the case of the applicant that his service was controlled and regulated from local office of the company in Kolkata and he had to regularly report and send all payments details of dealers to the said office. Meetings, conferences etc. was also held in the local office which guided the services of the workman even though he was posted at Berhampur, Murshidabad. While the applicant was working at Berhampur, at that time he was given a garget of 171% of previous year's achievement of sales which was a near impossible task but still the workman gave his best efforts and achieved 28% growth in sales. In 2014-15 also he performed far above the level which a normal workman whatever achieved by the dint of sheer hard work and perseverance. That while the company found that the workman was still performing satisfactorily then having no other way to victimize him, the management transferred the applicant from Berhampur to Ernakulam in Kerala State which is far distant from West Bengal. The management was very much aware that the applicant would be put in trouble receiving the order of transfer and would be impossible for him to join there. He was transferred from Berhampur to Ernakulam by an order of transfer dated 30.06.2014 w.e.f. 07.07.2014. After receiving the order of transfer the applicant submitted his representation to the management on 03.07.2014 for reconsideration of order of transfer but the management did not reply to the same and it was rejected by implication. That the applicant had made several approaches to the management and its high officials but there was no fruitful result and thereafter on 27.07.2014 he again submitted representation for reconsideration of order of transfer. Thereafter the management took further vindictive steps to determine the service of the applicant by issuing order of termination of service on 09.08.2014 w.e.f. 07.07.2014 in spite of the fact that the applicant discharged his regular duty and service to the company till July 15, 2014.

That the applicant submitted his representation dated 11.08.2014 to the company and requested it for reconsideration of the order of transfer and also raised in industrial dispute before the Labour Commissioner, Govt. of West Bengal

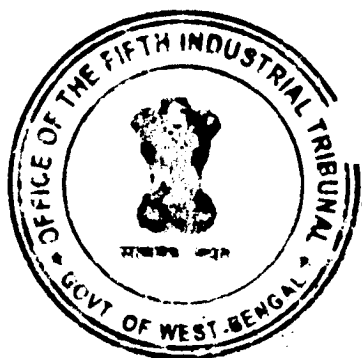


regarding his illegal and unjustified termination of service. A conciliation proceeding accordingly was initiated by the designated Conciliation Officer and the O.P. Company entered appearance in the said conciliation proceeding and as the company took adamant and uncompromising stand over the issue, the matter could not be settled there and as such the applicant was compelled to invoke the Provision 10(1B)(d) of the Act and obtained certificate to that effect. That this Tribunal has got ample territorial jurisdiction to entertain the application of the applicant. The applicant had no intentional laches and delay in filing this application and if it is found, such delay may be condoned for the interest of justice. From the nature of the duties performed by the applicant during his service, it would be evident that he is a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. That no other show-cause or charge sheet was ever issued to the applicant nor any domestic enquiry was conducted prior to termination of the applicant from the service and therefore, act of the management in this regard is bad in law. The applicant did not able to secure any further employment in spite of best efforts since his termination of service. Hence, he has prayed for relief in the form of Award to the effect that the termination of service of the applicant w.e.f. 07.07.2014 made by the O.P. Company is illegal and void *ab initio* and also has for an order of reinstatement in service with full back-wages and other consequential benefits.

M/s. SBL Pvt Ltd. has contested the case by filing written statement and has denied the allegation of the workman made in the application U/s. 10(1B)(d).

It is the case of the company that the applicant/employee was the employee of SBL Pvt. Ltd., SBL House, 2 Commercial Complex, Shrestha Vihar, Delhi – 110092. His appointment order was issued from above address of the company. Hence this Tribunal has got no territorial jurisdiction in the matter.

It is further stated that the employee was not a workman as defined under the Industrial Disputes Act, 1947. It is the specific case of the company that the employee abandoned his employment by absenting him from duty without permission w.e.f. 1st July, 2014. He did never report for duty at Ernakulam Head Quarter. It is further stated in the Written statement that he has welcome to report at Ernakulam Head Quarter till today without prejudice to each other. When the employee did not join on duty at his transferred place at Ernakulam, then the employer had no other alternative but to issue termination order dated 09.08.2014. Since his service were dispensed with because he was not willing to work according



to the contract of employment and as such natural conclusion was drawn that he was abandoned employment of SBL Pvt. Ltd. The company has admitted that the concerned employee had performed his duty at Guwahati, Kolkata and Beharampur as per terms of employment. The contents of Para 4 of the application of the employee are not correct. The contents of Para 5 of the application are also not correct and misleading as all his service matters were controlled from SBL Pvt. Ltd., Delhi Head Quarter. The contents of Para 6 of the application are irrelevant and infraction so far matter of termination is concerned. It is denied that his performance was above average. The allegation made in Para 7 of the application are incorrect. It is the fact that he was transferred to Ernakulam in terms of employment vide letter dated 30.06.2014. That the contents of Para 8, 9 and 10 are incorrect and so denied. The employee was relieved from his duty immediately after issuance of order of transfer dated 30.06.2014. The employee was repeatedly asked to report at Ernakulam in terms of his employment. The statement made in Para 13,14, 15, 16, 17, 18, 20, 21, 22 are incorrect and so denied by the management. That the contents of Para 19 of the application are misrepresentation of the fact since the employee himself abstain from duty and no domestic enquiry was required. That the employee was a medical representative and job of medical representative is very easily available. That the applicant is gainfully employed so he did not obey the order of transfer. In the past he was also transferred from one place to another. Hence the company has prayed for dismissal of the application made by the employee.

Considering the pleadings of both parties, this Tribunal has framed the following issues vide order No. 5 dated 16.04.2015 and vide Order No. 34 dated 11.05.2017 :-

ISSUES

1. Is the case maintainable?
2. Whether the tribunal has jurisdiction to try the case?
3. Whether the termination of service of the workman Shri Arun Bera w.e.f. 07.07.2014 is justified, legal or not.
4. To what other relief, if any, is the workman entitled to?

In the instant case the applicant as well as the management have adduced their oral evidence of W.W. – 1 : Arun Bera and M.W. – 1 : Indrajit Bose and also



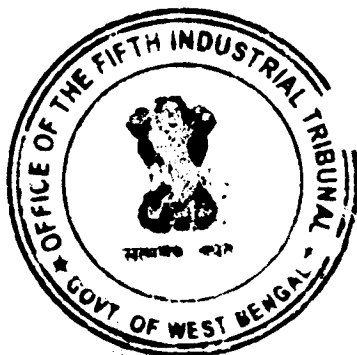
have adduced documentary evidence which are marked as Ext. – 1 to Ext. – 11 for the employee and Ext. – A to Ext. – K for the company.

DECISION WITH REASON

ISSUE NO. – 2 : Whether the Tribunal has got jurisdiction to try this case?

The employer M/s. SBL Pvt. Ltd. has argued that this Tribunal has no jurisdiction to adjudicate the present dispute between the employee and the employer. It is highlighted by the employer that the employer has got no office in Kolkata or in Murshidabad District in West Bengal. The service of the employer has been controlled from New Delhi Head quarter. The employee used to send all day to day progress reports of the sell and all other relevant data directly to New Delhi Office. The service of the employee always controlled from New Delhi Office of the employer. Appointment letter, order of transfer, letter of appraisal and all other communication always were issued from New Delhi Office. Reimbursement bills of the employee was passed and sanctioned from New Delhi Office and even attendance of the employee has been maintained from New Delhi Office. Entire cause of action arose from New Delhi Office and so this Tribunal in West Bengal has got no territorial jurisdiction to adjudicate the dispute and it is NCT of Delhi Govt. holds the jurisdiction and thus the case is not maintainable for want of territorial jurisdiction.

In the instant case, it is not disputed that the employee was working at Berhampore under Dist. Murshidabad in W.B. It is admitted position that he was transferred therefrom by the employer to Ernakulam vide letter dated 30.06.2014 (Ext. – 4) with effect from 7th July, 2014 and the employee did not join at Ernakulam in compilation with the order of transfer. It is further admitted position that the employer had issued order of termination of service of the employee on 9th August 2014 (Ext. – 6). No doubt the order of transfer and order of termination were issued from Delhi Office but that does not itself brings the Tribunal jurisdiction exclusively of NCT of Delhi Government and exclude the territorial jurisdiction of this Tribunal under Govt. of West Bengal because of the fact that working place of the employee was at Berhampore, Murshidabad at the relevant time of issuance of transfer order and issuance of order of termination. The Hon'ble Apex Court in the decision Bikash Bhushan Ghosh & Others Vs. Novartis India Ltd. & Others reported in 2007-II-LLJ



in Page 837 has observed – “It is, however, not disputed that the order termination was served upon the appellant at Calcutta.

The order of termination as against them, were passed for not obeying the orders of transfer. The transfer of appellants, therefore, had some nexus with the order of their termination from service. It is, therefore, not correct to contend that the state of West Bengal was not the appropriate Government.”

In the above referred decision, Hon’ble Supreme Court has laid down the guideline for determination of jurisdiction point on the basis of three important basic legal principles namely –

- (1) Where does the order of termination of service operate ?
- (2) Is there some nexus between the industrial dispute arising from termination of service of the workman and the territory of the state?
- (3) The well-known test of jurisdiction of a civil court including the residence of the parties and the subject matter of the dispute substantially arising therein would be applicable.

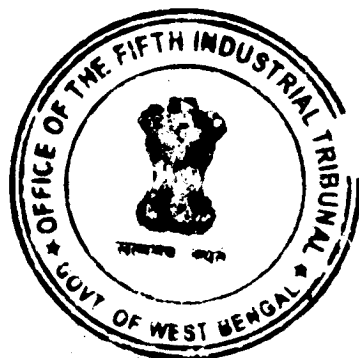
Considering the factual aspects discussed above and having regard to the legal principles laid down in the referred decision, it can safely be said that the two state (Govt. of West Bengal and Govt. of Delhi) have the requisite jurisdiction in terms of Clause (c) of sub-section (1) of Section 10 of the Industrial Dispute Act. There is no confusion to hold that NCT of Delhi Govt. though have jurisdiction to adjudicate the dispute but it was not exclusive one rather this Tribunal under Govt. of West Bengal also holds same and simultaneous jurisdiction to adjudicate the dispute as the order of transfer of the employee and his termination order were operated in the territory of State of West Bengal.

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

ISSUE NO. 3 :-

Whether the applicant is a workman under section 2(s) of the Industrial Disputes Act, 1947?

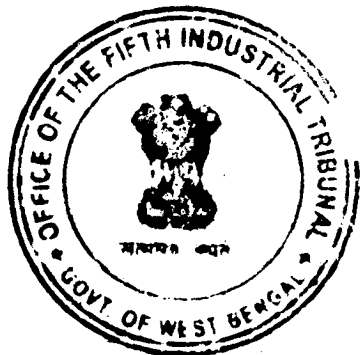
Now next point is taken up for consideration as to whether the applicant/employee comes under the purview of definition of ‘workman’ or not. In Para 1(b) of the Written statement of Opposite Party company, it has been stated that the claimant was not workman under the Industrial Disputes Act, 1947. No other details have been stated in the Written statement of O.P. showing the details factual aspect for which the employee concerned cannot be treated as workman. The witness



of the Management, Indrajit Bose (M.W. 1) in Para 2, 3, 5, 6, 15 has simply stated that the employee was working as a senior Medical Representative and he was in charge of his territory and his nature of duties were managerial and administrative. His decision binds the company. During cross-examination, he has stated that he did not file any document to show that nature of duties of the employee were managerial and administrative. Further he has stated that the nature of work of the employee was monitoring his area of work as well as field work. No employee ever worked under him. He has categorically further stated that the employee was functioning as managerial grade which has mentioned in his promotion order.

The offer of appointment letter to the employee, Mr. Arun Bera is dated 22.11.2003. It consists total 4 pages and terms of offer of appointment has been specifically mentioned therein. On the selfsame day, when the employee accepted the offer of appointment by making endorsement "accepted the appointment with thanks", then the office order of appointment has been issued to him and the employee was posted/placed at Guwahati (state of Assam) as Medical Representative. This document does not show or indicate that the post of medical representative of the employee is executive or managerial cadre. Ext. – G another letter dated 07.10.2008 speaks that Mr. Bera was transferred from Guwahati and posted in Kolkata by the management. This transfer order was issued by the management on the basis of request/representation of the employee. This document shows that Mr. Bera was asked to report to Area Manager, Kolkata. It was the Area Manager who had been authorized to allocate the territory of work for Mr. Bera. This document does not show that Mr. Bera was upgraded from his previous status. He was again transferred from Kolkata to Berhampore under district Murshidabad in the month of April 2013 and he was working there as Medical Representative till the date of his next transfer to Ernakulam.

Generally, the work of Medical Representative is to promote any product of the company to his customers in the field and to canvas about the best merit of the product in comparison with the other same categories of product of other companies in the market. They have to attend/visit the Doctors in the area and to convince and request them to prescribe the product. It is also come under the duty of Medical Representative to visit door to door Medicine Shops with request for keeping and selling such product of his company and to convince them to improve the sell in the market and to canvas the facilities offered by the company and to give other



information like name of the stockist/agents, demand/availability of the produce etc. At the end of the day, he has to submit/ send report of his daily work done in course of field work.

In this instant case, Mr. Bera has performed his such nature of field work and manual work by preparing daily report ad sending the same to Delhi Head Quarter. There is nothing to show that he has been authorized to take any independent administrative decision regarding any policy matter or any other administrative matter on behalf of the company under his work area and which is binding upon the company. No second employee was working under him in his work area to whom he had any supervisorial authority. Therefore, considering all these aspect as a whole, it is beyond imagination to hold that Mr. Bera was working in managerial capacity or grade and as such it is crystal clear that Mr. Bera was working in the company as a Medical Representative and his such nature of work comes under the purview of definition of workman U/s. 2(s) of the Industrial Disputes Act, 1947. Thus, this issue is disposed in favour of the applicant.

ISSUE NO. 4 :-

Whether the termination of service of the workman Sri Arun Bera w.e.f. 07.07.2014 is justified, legal or not?

In this case, it is not disputed that Shri Arun Bera was appointed in O.P. Company as Medical Representative on 22.11.2003.

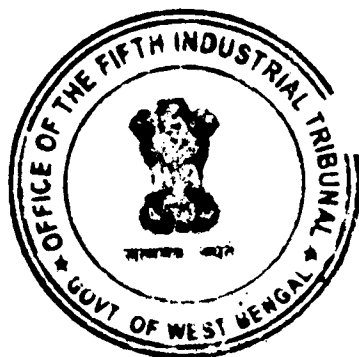
On scrutiny of Ext. – 1, it appears that this document is an offer letter to Mr. Bera for appointment in the company on certain terms and conditions mentioned in the letter itself. Applicant agreed with the terms and conditions of service and then accepted the same with the endorsement “Accepted the appointment, with thanks” and signed the endorsement. Since after acceptance of the offer of appointment, the company issued office order on the same day and appointed him in Marketing Department and posted him at “Guwahati” (State of Assam) as Medical Representative. From this document Ext. – 1 in Clause 2.4, it is clear terms and condition of his service that his service is transferable to any other assignment/location/associated enterprise anywhere in India at the discretion of the management. The employee Mr. Bera is well aware of such terms and condition since the time of his entry in the service. From Ext. – G, (transfer order dated 07.10.2008), it appears that Mr. Bera was transferred from Guwahati to Kolkata i.e. from one state to other state and his such transfer was made on the basis of his



representation. This document indicates that the terms and condition mentioned in Clause 2.4 was acted upon. The discretionary right of the management to transfer his employee from one location to another location in India had been exercised by the management as and when required. This document also indicates the fact that management not only thinks and considers about its benefit of business in the market but also looks after the welfare, convenience and inconvenience of its employee. The applicant did not raise his finger about such transfer as it was favourable and convenient for him. It appears from copy of letter dated 18.04.2013 Ext. – 3 that Mr. Bera was transferred from Kolkata H.Q. to Berhampore H.Q. under district of Murshidabad, West Bengal as management needed re-organization of field operation. During this transfer, management was very much aware that Berhampore was not a city and the employee would suffer monetary loss due to such transfer and considering this aspect, management specially provided him Kolkata city allowance at his Berhampore posting. This attitude and approach of the management towards its employee clearly indicates that management was very much sympathetic to its employee. Ext. – H is the copy of transfer letter dated 30.06.2014 by which applicant was transferred from Berhampore Head Quarter to Ernakulam H.Q. with effect from 7th July, 2014. In this order of transfer liberty was given to the applicant to claim working allowance as applicable to Ernakulam. Here is also management did not overlook the monetary entitlement of its employee.

Three letters dated 03.07.2014, 07.07.2014 and 27.07.2014 are marked Ext. – 5 series wherefrom it appears that by letter dated 03.07.2014 he disclosed his inconvenience to join his new assignment and by letter dated 07.07.2014 he informed the management that he was continuing his work at Berhampore and by letter dated 27.07.2014 he had sought for permission to work in present Head Quarter.

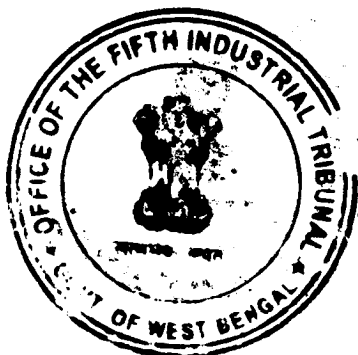
Ext. – 6 is the order of termination dated 09.08.2014 whereby Management disclosed that Mr. Bera disobeyed the order of transfer by not joining at new location and absented from duty since 07.07.2014 and refusal to accept order of transfer from one location to another is an act of disobedience and serious misconduct and as such his service was terminated. From Ext. – 7, letter dated 11.08.2014, written by Mr. Bera, it appears that he requested to the management to withdraw the order of termination failing which he would drag the management to litigation.



The order of termination Ext. – 6 has been challenged by applicant on the ground that no charge sheet was issued to him, no show-cause also was issued nor any domestic enquiry was initiated against him and as such, termination order was illegal and violative of principle of natural justice. The applicant in Para 17 & 18 of his evidence-in-chief has stated the fact and that has been denied by the management during cross-examination.

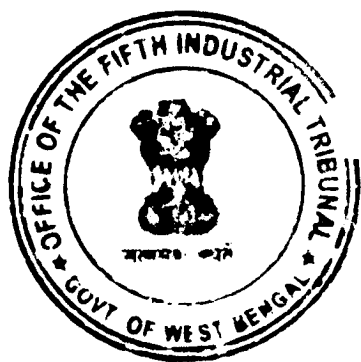
In this instant case, it is not disputed that formal charge-sheet was not issued to the applicant in respect of the allegation of misconduct levelled against him by the management and it is also not disputed that domestic enquiry was also not initiated against him.

No doubt the order of termination of the applicant from service is interlinked with order of transfer. Let me consider first the point as to whether the order of transfer issued by the O.P. Company to the applicant suffers from any sort of invalidity, illegality in spite of the fact that applicant in his claim petition did never challenge the order of transfer. When he did not challenge the order of transfer from any angle, in such a case it can safely be said that the applicant impliedly accepted the position that it was a proper and valid order binding upon him. On careful examination of the document Ext. – 4 together with Ext. – 1, it is clear that the management acted under its jurisdiction in issuing the order of transfer to the applicant. It exercised its discretionary right mentioned in Clause 2.4 (terms and condition of service) in Ext. – 1. In early two occasions it was exercised by the management i.e. (transfer from Guwahati to Kolkata and transfer from Kolkata to Berhampore). The transfer order dt. 30.06.2014 (Ext. – 4) was issued on the same mode and manner and there is no violation of any rules and regulations of the service of the applicant. If that be so, the order of transfer has got its legs to stand and it is proper, valid and binding upon the applicant. When it is binding upon the applicant, then it was his duty, responsibility and liability to follow the direction and to act accordingly in carrying out the order or direction in spite of the fact that he suffers from some personal inconvenience and sufferings for such order. He had scope and opportunity to present his such personal inconvenience and sufferings after complying with the direction of the management issued in the order of transfer. It is not a fact that management did never consider his representation in the past. On the contrary, his favourable place of posting on transfer from Guwahati to Kolkata was considered by the management and issued favourable transfer order to him. Non-



compliance of direction of transfer order is itself one type of insubordination and it is not permissible under the rules and regulations of service and terms and conditions of service. Such non-compliance, is clear violation of terms and conditions mentioned in Clause 2.4 in Ext. – 1. An employee, he who sort for equitable relief of reinstatement of his service must do and show equity first which rest upon his shoulder. But the applicant did not do so. Ext. – 5 series are three letters of the applicant out of which, in third letter dt. 27.07.2014 the applicant sought for permission to continue his work in Berhampore Head Quarter. No such permission was ever allowed to the applicant by the management. In second letter dated 07.07.2014, the applicant simply gave an information to the management that he is continuing his work at Berhampore after receiving the order of transfer w.e.f. 07.07.2014 (Ext. – 4). If he did any such work, that must be illegal and unauthorized. This flouting attitude and conduct of the applicant draws inference that he wanted to create a pressure upon the management to withdraw the order of transfer. All these are not a fair attempt of the applicant to remain in the same place of posting. Order of termination Ext. – 6 was issued following the non-compliance of the order of transfer by the applicant. Transfer order is the foundation of termination order. When foundation is valid and binding upon the applicant, in such circumstances, it is not proper to hold that the order of termination is invalid and not-binding upon the applicant only on the ground that domestic enquiry was not initiated and opportunity of being heard was not given to the applicant to establish his defence.

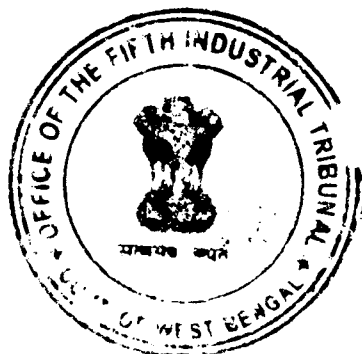
In this context, it is very much relevant and important in this instant case to deal and to explain the purpose of holding domestic enquiry. Holding of domestic enquiry against any worker by the employer is nothing but to acquire prima facie knowledge about the truthfulness of the charges from or by an independent agency where both sides are at liberty to establish their respective stand. This type of proceeding follows summary procedure. The employer is at liberty to take action or not to take action on the basis of report of enquiry. It is open to the workman to challenge its validity and finally the Tribunal has been empowered to declare about its validity or invalidity. When fate of enquiry report is adjudicated by the Tribunal concluding the decision invalid, in such circumstances, the employer is at liberty to establish the charges against the workman before the Tribunal itself. So Tribunal is the actual forum to finally adjudicate whether the charges/allegations against the



employee is true or false. Both sides have ample opportunity to establish their own stand before the Tribunal.

In this instant case, the O.P. Company did not fulfil such procedural formalities by holding domestic enquiry. It is an omission on the part of the employer but it is important to know as to whether by this act of omission by the employer caused any serious prejudice to the employee concern in respect of his taking proper defence against allegations of misconduct before this Tribunal. In this case, question of violation of principle of natural justice has got no importance as the applicant got full opportunity, scope to disprove the allegation of misconduct. When misconduct is established by the employer adducing cogent evidence on record and when applicant has failed to disprove such allegation, in such circumstances, it is not proper to hold that the order of termination is bad in law and suffers from illegality. At best it can be said that not adopting the process of domestic enquiry by the employer prior to the order of termination is a mere irregularity which in no way prejudicial to the applicant in the instant case.

It is relevant to mention here that the O.P. Company did never intended to terminate the applicant from service when I consider the fact of Para 2 and 3 of the Written statement of the company. It is clear offer of the company to the applicant to come and join the service at Ernaculam if he interested to do work with the company. O.P. Company also filed separate application to that effect with a prayer to pass an order of direction to the applicant to join his new assignment. This approach on the part of the O.P. Company clearly indicates and establishes that there was no malafide and vindictive intention of the company to issue order of termination to the applicant. But it is the applicant, who did not join at his new place of posting and remain absent from duty unauthorizedly. On the contrary, it appears from the cross-examination of the applicant that he is employed in another company named "Lords Homeopathy Laboratory Pvt. Ltd.". It was the allegation of the management that the applicant is gainfully employed and as such he did not join his new place of posting on transfer and suppressing this material fact he has filed this case. Suppression of material fact by the applicant clearly indicates the ill motive and unfair *mala fide* intension of the applicant. There is no confusion to come to a conclusion that the story of the claimant seeking a relief of reinstatement is purely false and fabricated story having no genuine ground to get the relief as prayed for. The aim and object of Industrial Disputes Act, 1947 may be to impart social justice to the workman but by



itself does not mean that irrespective of his conduct, workman would automatically be entitled to relief. The principle of estoppel, waiver and acquiescence are equally applicable to him.

So having regard to facts and circumstances of the case and in the light of my above observation and considering the cited decisions by both the parties I have no hesitation to hold that the order of termination of the applicant issued by the O.P. Company is just and valid and binding upon the applicant and he is not entitled to get any relief in this instant case. Thus, this issue is decided against the applicant.

ISSUE NO. 1 & 5 :-

Both the issues are taken up together for convenience of discussion. In this instant case, I have already decided Issue No. 2 & 3 in favour of the applicant holding the fact that this Tribunal has got territorial jurisdiction and the applicant is a workman in view of the definition U/s. 2(s) of the Industrial Disputes Act, 1947. So far as the case as framed, it is maintainable but so far as the total merit of the case is concerned, the application is not maintainable in view of the decision on Issue No. 4. Therefore, having regard to the facts and circumstances, the applicant is not entitled to get any relief. Thus, both the issues are disposed of.

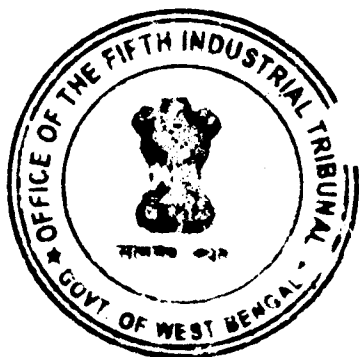
Following case laws are cited by the parties :

Case laws relied upon by the Opposite Party :-

1. 2004 II CLR SC at page 1022
2. (2005) 5 SCC 91
3. 2004 FLR Vol. at page 797 SC
4. 1999 Vol. III SC at page 1489
5. 1988 LAB I.C. 384 Equivalent to AIR 1988 SC 329
6. 2006(4) CHN at page 146
7. (2007) 7 SCC 17
8. 2003(4) L.L.N. SC 18.

Case laws relied upon by the applicant

1. 2009 LLR SC 113
2. 2007 (5) SCC 591
3. 2013 Vol. 139 FLR SC at page 541



4. 1987 FLR VOL. 36 at page 217

In the light of my above observation and having regard to the facts and circumstances of the case I find and hold that the application U/s. 10(1B)(d) of Industrial Disputes Act, 1947 filed by the applicant Shri Arun Bera has got no merit at all and is liable to be dismissed.

Hence, it is

Awarded

That the application U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 filed by the applicant Shri Arun Bera as against O.P. Company M/s. SBL Pvt. Ltd. is dismissed on contest but considering the fact without cost.

That the order of termination of service of the applicant dated 30.06.2014 w.e.f. 07.07.2014 is valid and binding upon the applicant and as such he is not entitled to get any relief of reinstatement in service and other consequential reliefs. Thus, the case is disposed of on contest. This is my award.

This is my AWARD.

Dictated & corrected by me.

Sd/ —
Judge.
25-02-2020

Sd/ —
(Tapan Kumar Das)
Judge
Fifth Industrial Tribunal
Kolkata
25-02-2020

