

I/110362/2020

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

No. Labr/ 1873 . . . /(LC-IR)/22015(13)/2/2018

Date : 17/12/ 2020

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 17/IR/8L-04/04 dated 04.01.11 the Industrial Dispute between M/s Kesoram Rayon, Post - Nayaxarai, Dist. - Hooghly and their workman Sri Bidyut Kumar Bose, Kundugali, P.O. - Bansberia, Dist. - Hooghly regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, First Industrial Tribunal, West Bengal.

AND WHEREAS the Judge of the said First 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,

SA/—

Deputy Secretary
to the Government of WestBengal
No. Labr/ 1873/1(5) /(LC-IR)

Date 17/12/...2020

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

1. M/s Kesoram Rayon, Post - Nayaxarai, Dist. - Hooghly.
2. Sri Bidyut Kumar Bose, Kundugali, P.O. - Bansberia, Dist. - Hooghly.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

SA/—

Deputy Secretary

Date 17/12/...2020

No. Labr/ 1873/2(2) /(LC-IR)

Copy forwarded for information to :

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 296 - L.T. dated 05.03.2020.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Deputy Secretary

In the matter of an industrial dispute between M/s Kesoram Rayon Post- Nayaxarai, District – Hooghly and their workman Sri Bidyut Kumar Bose of Kundugali, P.O. – Bansberia, District- Hooghly.

(CASE NO. VIII-02/2011)

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

SHRI UTTAM KUMAR NANDY, JUDGE,
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

AWARD

The instant case arose on receipt of copy of government order of reference 17.01.R/81-04/04, dated 04.01.2011 from the Labour Department, Govt. of West Bengal referring an industrial dispute between M/s Kesoram Rayon, Post – Nayaxarai, Dist. – Hooghly and their Workman named Sri Bidyut Kumar Bose of Kundugali, P.O.- Bansberia, District – Hooghly for adjudication of the matter and submitting its award to the State Government.

From the record it is revealed that the Workman Sri Bidyut Kumar Bose was dismissed from service by the management of the Company with effect from 11.11.2009. Such termination was followed by Domestic Enquiry.

Naturally the workman has challenged the validity of the Domestic Enquiry in his claim / Written Statement, date 03.11.2012 filed before this Tribunal contending inter-alia that he was working in the Company for the last 19 (nineteen) years honestly, faithfully and with full satisfaction of the management. But the management served a charge-sheet, dated 02.08.2008, wherein it was alleged that on 31.07.2008, while the workman was on duty in his B shift, he was caught in red handed by Sri S. Pramanik, Supervisor, when he was throwing 08 (eight) Nos. Butt Cakes of 120 Bright Denier in a cartoon near CCR Door and according to the company, the said act was misconduct on the ground that it was totally against the working norms and system of the Department and he had more deceptive motive to conceal his identity by throwing Butt Cakes caused financial loss to the Company.

Thus 3 (three) charges brought against the Workman on the basis of certified standing orders of the Company as follows:

CL 16 B(II) – Dishonesty)

CL 16B(IV) – Wilful damage to or loss to company goods.

CL 16B(X) any act subversive of discipline.

This Tribunal (Predecessor in interest) after careful consideration, the matter being placed before this Tribunal by the parties to the case, held that the Domestic Enquiry was conducted fairly and properly. In other words the requisite formalities and / or principles as laid down in the landmark judgement of Sun Enamels case even validity of the Enquiry according to this Tribunal (predecessor in interest) save and except the charge i.e. Charge No. 1 i.e. dishonesty under Clause 16B(II), rest 2 (two) charges are established and the management of



the Company was given liberty to prove the charge of dishonesty before this tribunal if the Company so desires.

Thereafter in view of the above facts and circumstances the following issues have been framed for my adjudication:

ISSUE(S)

- 1) Whether the termination of the Workman is legal and justified ?
- 2) Whether the Workman is entitled to get the reliefs as prayed for ?

Thereafter the case was proceeded for further course of action. During the period from 23.09.2015 to 31.03.2017 the Company did not care to continue the case in or many words and so predecessor in interest has been pleased to fix the case for exparte hearing on 28.04.2017.

Thereafter, the Company appears. Exparte hearing was vacated.

On 31.07.2017 the CW1 was cross-examined by filing his evidence in chief supported by an affidavit and thereafter, since the Company did not produce CW1 further, the evidence of CW1 from the side of the Company has been expunged and the evidence of the Company has been closed and fix 04.12.2017 for evidence by the Workman.

Thereafter, on 04.12.2017 PW1 was examined in part. Thereafter again Company appeared on 16.02.2018 and my predecessor in interest is pleased to allow the Company to place their evidence before this tribunal and accordingly CW1 is examined in full and documents has been marked as exhibit C, C/1 and D respectively. Thereafter on 19.03.2018 the evidence of PW1 was recorded. He was crossed in full and discharged and documents have been marked as exhibit 01-10 respectively.

Thereafter Argument was heard from the side of the Workman as well as from the side of Company and the case was fixed for award on 05.10.2018.

Thereafter, P.O. was changed. The case was fixed for further argument and date has been fixed for passing award on 28.05.2019. Since then Company did not appear in spite of change of P.O. and lastly this Tribunal (present P.O.) heard the case on exparte on the basis of evidence placed before this Tribunal.

After argument, the Workman has filed written notes of argument on 24.01.2020, which is as follows:

“The management had conduct enquiry for the reason as they had suffered a loss due to the conduct of the workman, but unfortunately the quantum of loss has not been specified in the written statement nor in their evidence which they had adduced before the Tribunal. But on the contrary they had found guilty the workman and had terminated his service by conducting domestic enquiry. Thus the management has failed to justify the punishment which they had inflicted to the workman. On the contrary if the workman had been in service then he could have earned approximately Rs. 25,00,000/-

(Rupees twenty five Lakhs). So now it is to be looked into as no quantum of loss is mentioned then the quantum of punishment is not at all commensurate to punishment. It is to be kept in mind that termination from service can be termed as civil death as the worker is denied of his service thus he is deprived of his livelihood not only he suffers his family members also suffers with him as they are deprived of nutritious food, clothing and his children are deprived of education. The worker cannot afford the luxury of litigation which the management can afford with huge resources. In the present case workman had specifically stated that he is unemployed since his illegal termination and the management had failed to produce any contra evidence to prove the contrary that he is employed and is earning adequate remuneration to deny back wages. It is pointed out that workman had specifically pleaded in his written statement that he is unemployed since his illegal termination as well as in evidence also he had stated that same. **Thus it is prayed that your Honour would be graciously be pleased to pass an Award directing the management to pay full back wages from the date of illegal termination i.e. 11.11.2009 till reinstatement along with the consequential relief as prayed for by the workman in his written statement as well as evidence.** As any deviation from the same would be a premium to the wrong doer i.e. the management. As the principles which has been laid down in Deepali Gundu Surwase which the workman is relying with regard to granting of relief. As from the face of the records it is clear that punishment is shockingly misappropriate. This it is prayed as per Section 11A of the Industrial Disputes Act, 1947.”

From the evidence on record it is established that the Workman was dismissed with effect from 11.11.2009 and the dismissal was followed by a Domestic Enquiry. Before this Tribunal it is also established that 02 (two) charges have been proved and the charge of dishonesty has not been proved according to the decision of this Tribunal and the Domestic Enquiry was declared as valid and justified and date fixed for further order.

It is revealed that the main allegation against the Workman that he was throwing Butt Cakes of 120 Bright Denier in a cartoon near CCR Door for which the charge-sheet, Domestic Enquiry and the findings of this Tribunal were followed. It is further noticed that the concerned Workman was issued show-cause and charge-sheet for doing similar acts or deeds on 16.01.1992 for first time when he was not a permanent worker. On 17.07.1996 for the 3rd time he had done or had mistaken similar incident / accident whichever may be said and in all cases he was exonerated even he was permanent by the Company, in 1994 during those process.

Then similar incidents happened on 17.07.1996, 06.11.1998, 09.01.2002, 09.11.2004, 16.04.2007, 29.04.2008 and 31.07.2008. Except last 02 (two) incidents never the similar incident happened or occurred within a year. Always it occurred 01-03 years gap. So it cannot be said that the Workman was a habitually offender specially when dishonesty has not been proved and the total loss of the Company has not been specifically mentioned. It cannot be safe to reach the conclusion that the Workman deliberately had done the act for causing losses to the Company arbitrarily for which it can be called a regular misconduct rather considering the scenario, I am of the opinion that it may be considered as an accidental case of instances.

However, since my predecessor in interest has opined that the Domestic Enquiry was valid and during these periods the Workman has attended the age of majority so reinstatement of the Workman is now insignificant. Now the question rests – “whether termination was justified and legal?” In my considered opinion I cannot say that the termination of the Workman was justified and legal rather it was pre-mature and absolutely arbitrary and unjustified. Since the reinstatement is now impossible, so it would be, justified by directing the management to pay full back wages from the date of illegal termination w.e.f. 11.11.2009 till the date of the superannuation of the Workman in due course of time alongwith consequential relief as prayed for by the Workman. So the management of the Company / Opposite party is directed to pay all the dues to the Workman within 60 (sixty)days from the date of order or award alongwith other consequential benefits.

Thus the issues are considered, decided and disposed of accordingly.

Hence it is,

ORDERED

that the Industrial Dispute under order of reference 17.01.R/81-04/04, dated 04.01.2011 from the Labour Department, Govt. of West Bengal in maintainable.

The termination of the Workman was illegal, pre-mature, absolutely arbitrary and unjustified. Since the reinstatement is now impossible, so it would be, justified by directing the management to pay full back wages from the date of illegal termination w.e.f. 11.11.2009 till the date of the superannuation of the Workman in due course of time alongwith consequential relief as prayed for by the Workman.

This is my **AWARD**.

Directed & Corrected by me

Sd/ Uttam Kumar Mond.

Judge

Sd/ Uttam Kumar Mond.

Judge
First Industrial Tribunal
Kolkata
19.02.2020