

I/78239/2020

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

No. Labr/. 357/(LC-IR) /22015 (16) /5/2020

Date : 27/01/2020

ORDER

WHEREAS an industrial dispute existed between M/s Olypub Pvt. Ltd., 21, Park Street, Kolkata – 700 016 and Sri Md. Shahnawaz, C/o Kaji Sabir Ahmed, Advocate, 16, Bankshi Dutta Road, Kolkata – 700 014 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 filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14of 1947) to the Judge, Seventh 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 Seventh Industrial Tribunal, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947).

AND WHEREAS the said Judge Seventh 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,

SDLK

Deputy Secretary
to the Government of West Bengal

I/78239/2020

: 2 :

No. Labr/35/1(5)/LE-IRDate: 20/01/2020

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

1. M/s Olypub Pvt. Ltd., 21, Park Street, Kolkata – 700 016.
2. Sri Md. Shahnawaz, C/o Kaji Sabir Ahmed, Advocate, 16, Bankshi Dutta Road, Kolkata – 700 014.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. 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/35/2(2)/LE-IRDate 21/01/2020

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal, Kolkata, with respect to his Memo No. 02 - LT dated 02.01.2020.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

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. 07/2019

Under Section 10(1B)(d) of the Industrial Disputes Act, 1947

Md. Shahnawaz
C/o. Kaji Sabir Ahmed, Advocate,
16, Bankshi Dutta Road, Kolkata-700 014.

...Applicant

-Versus-

M/s. Olypub Pvt. Ltd.
21, Park Street, Kolkata-700 016.

...OP/Company

Order No.07, dated 27.12.2019

Both the parties are present with their Ld. Advocates.

Today is fixed for passing order regarding maintainability of the case on the basis of the preliminary issue, so framed on 11.09.2019, considering the application dated 06.09.2019, filed by the OP/Company.

No W.O. has been filed by the applicant/workman against the application dated 06.09.2019.

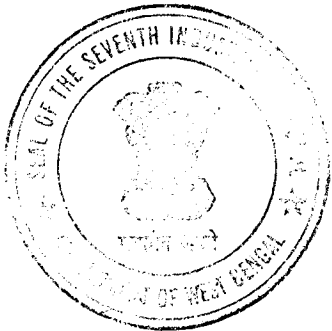
Case record is taken up for passing order.

This is a case under Section 10(1B)(d) of the Industrial Disputes Act, 1947, as amended, filed by the applicant Md. Shahnawaz against his employer M/s. Olypub Pvt. Ltd. in connection with termination of his service by his employer seeking declaration that the action taken on the part of the management of the OP/Company is highly illegal and unjustified, with a prayer for reinstatement in his service with full back wages and consequential benefits.

After hearing of both sides, the following preliminary issue was framed by this Tribunal, on the basis of application dated 06.09.2019, so filed by the OP/Company, challenging the maintainability of the instant case.

Preliminary Issue :

Whether the instant case is maintainable, both in law and facts or not ?

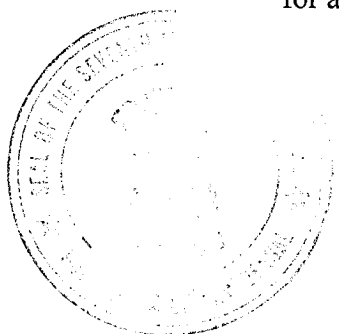


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FINDINGS

The arguments as advanced by the Ld. Advocate for the OP/Company, in this regard, are as follows :-

- (1) that as per Section 2(k) of the Industrial Disputes Act, 1947, “**industrial dispute**” means any dispute or difference between employers and employees or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Therefore, said Section does not say about any such dispute in between **employers** and **individual workman** ;
- (2) that Section 2A of the said Act speaks for industrial dispute in between employee and an **individual workman** and it also speaks that the action taken in the matter of discharge, dismissal, retrenchment, refusal of employment or termination must be from the side of employer ;
- (3) that in the instant case, the present workman / applicant namely, Md. Shahnowaz and others by joint letter dated 01.08.2018, addressed to the management of the OP/Company, informed that they do not want to work anymore and prayed for giving them full and final settlement ;
- (4) that by letter dated 09.08.2018 the Director of the OP/Company, with reference to above joint resignation letter dated 01.08.2018, informed the applicant that his resignation has been accepted with immediate effect and he may collect his legal dues consequent upon resignation on 16.08.2018;
- (5) that an amount of Rs.88,682/- has been transferred to the SBI Account No. 20135075496 of the applicant on 14.09.2019 through cheque No.484123 dated 10.08.2018, issued by the OP/Company in favour of the applicant and by letter dated 07.09.2019 Branch Manager, SBI, Middleton Row Branch confirmed the said transaction ;
- (6) that after such acceptance of resignation of applicant by the OP/Company in view of joint letter of resignation dated 01.08.2018, the applicant/workman submitted a letter before the Director of the OP/Company on 10.08.2018 praying for an order to revoke the order of acceptance of his resignation ;



- (7) that the applicant has not filed any document to establish that he withdrew his resignation letter before 09.08.2018 ;
- (8) that it has been observed by the Hon'ble Supreme Court in a case, reported in JT 1990 3 300, that once the resignation is accepted, the contract comes to an end and the relationship of master and servant stands snapped. In the instant case, the applicant/workman by his letter dated 10.08.2018 requested the OP/Management to revoke the order of acceptance of his resignation. It is admitted position that his resignation was accepted by the OP/Management on **09.08.2018** in view of joint resignation letter dated **01.08.2018**. So, in view of aforesaid observation of the Apex Court, question of revocation of the order of acceptance of his resignation does not arise at all as the contract in between the applicant and the OP/Management already came to an end on **09.08.2018**. He has cited the aforesaid decision in support of his above contention ;
- (9) that as per provision of Section 2A of the Industrial Disputes Act, 1947, the employer's role in the matter of discharge, dismissal, retrenchment, refusal of employment or termination must be active, which is not in the instant case and so, being an individual workman, the applicant / employee cannot take the shelter of the provision of Section 10(1B)(d) of the said Act. Therefore, this Tribunal has got no jurisdiction to adjudicate the alleged dispute and the case is also not maintainable both in facts and law. In support of his above contention, he has again cited the aforesaid decision of the Apex Court ;
- (10) that as per proviso of Rule 20H (2) of the West Bengal Industrial Dispute Rules, 1958, this Tribunal has ample jurisdiction to adjudicate the preliminary issue on the point of maintainability, so framed.

In reply, Ld. Advocate for the applicant / workman argued that the prayer for withdrawal of resignation letter in respect of applicant, so submitted by the applicant, was not considered by the OP/Management, though such prayer for withdrawal of resignation submitted by other employees were considered and so, he prayed for passing necessary order in this regard.

Now, let us first see as to whether this Tribunal can decide any preliminary issue raised by any party to the proceedings or not ?

As per proviso of **Rule 20H (2)** of the West Bengal Industrial Dispute Rules, 1958, the Tribunal may decide any preliminary issue raised by any party to the proceedings and



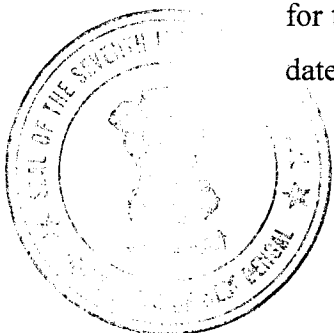
admit such documents as may be deemed fit and proper for the purpose and pass its order on the issue upon consideration of all the relevant materials as placed before it and submissions on the contesting petition.

Therefore, this Tribunal has ample jurisdiction to adjudicate the preliminary issue on the point of maintainability, so framed.

Perused the verified application dated 06.09.2019 filed on behalf of the OP/Company praying for take up the maintainability point before going into the other aspects of the matter along with its annexures. Also perused the written statement / statement of claim dated 20.06.2019 filed by the applicant / workman and materials available on record.

In the instant case, it is **admitted position** :- (1) that the present workman / applicant namely, Md. Shahnowaz and others by a joint letter dated 01.08.2018, addressed to the management of the OP/Company, informed that they do not want to work anymore and prayed for giving them full and final settlement ; (2) that by letter dated 09.08.2018 the Director of the OP/Company, with reference to above joint resignation letter dated 01.08.2018, informed the applicant that his resignation has been accepted with immediate effect i.e. with effect from 09.08.2018 and he may collect the dues consequent upon resignation on 16.08.2018 ; (3) that an amount of Rs.88,682/- has been credited to the Account of the applicant being SBI A/C No. 20135075496 on 14.09.2018 through cheque No.484123 dated 10.08.2018, issued by the OP/Company in favour of the applicant Md. Shahnowaz ; (4) that after acceptance of such resignation, applicant/workman submitted a letter before the Director of the OP/Company on 10.08.2018 praying for an order to revoke the order of acceptance of his resignation.

Moreover, from Annexures-B to E of above referred application dated 06.09.2019, I find that by a joint letter dated 01.08.2018 (**Annexure-B**), the applicant and others informed to the management of the OP/Company that they do not want to work any more and prayed for giving them full and final settlement like gratuity, P.F. and other benefits as well as VRS, minimum Rs.2 lakh extra with gratuity. **Annexure-C** is a letter dated 09.08.2018, issued by the Director of the OP/Company to the applicant Md. Shahnowaz, wherefrom it is seen that on the basis of joint resignation letter dated 01.08.2018, the Director of the OP/Company accepted the resignation of the applicant with immediate effect i.e. w.e.f. 09.08.2018 and directed him to collect his legal dues, as mentioned therein. From **Annexure-D**, I find that the same is an Account Statement in respect of SBI Account No. 00000011044339451 stands in the name of Olypub Pvt. Ltd., 21, Park Street, Kolkata-700016, for the period from 14.09.2018 to 15.09.2018 and said statement of account also goes to show that a cheque being **No.484123 of Rs.88,682/-** was deposited on **14.09.2018** for transferring the said amount to the Account No.**20135075496**. **Annexure-E** is a letter dated 07.09.2019, issued by Branch Manager, SBI, Middleton Row Branch to the Olypub



Pvt. Ltd., 21, Park Street, Kolkata, PIN-700016, wherefrom it is seen by that letter the Branch Manager confirmed that cheque No. 484123 dated 10.08.2018 for Rs.88,682/-, issued by them from their A/C No. 11044339451 in favour of Md. Shahnawaz (herein applicant) was debited from their account on 14.09.2018 and credited to Md. Shahnawaz's SBI A/C No. 20135075496 on 14.09.2018.

Therefore, the above referred facts are established.

I also find from **Annexure-A**, of application dated 16.12.2019, filed on behalf of the OP/Company, which is a letter dated 10.08.2018 that the applicant Md. Shahnawaz wrote said letter to the Director of the OP/Company requesting her to revoke her decision of acceptance of his resignation.

Now, question which comes for consideration is that as to whether the applicant can withdraw his resignation, submitted jointly by letter dated 01.08.2018, after its acceptance by the OP/Management ?

From the decision of the Hon'ble Supreme Court, reported in JT 1990 (3) 300, as cited by the Ld. Advocate for the OP/Company, I find that the Hon'ble Court has been pleased to observe that one of the ways of terminating the contract of employment is resignation. If an employee makes his intention to resign his job known to the employer and the later accepts the resignation, the contract of employment comes to an end and with it stands severed the employer-employee relationship. Under the common law, the resignation is not complete until it is accepted by the proper authority and before such acceptance an employee can change his mind and withdraw the resignation, but once the resignation is accepted, the contract comes to an end and the relationship of master and servant stands snapped.

In the instant case, it is already established that the applicant/workman and others by their joint letter dated 01.08.2018, **which is a letter of resignation**, informed the OP/Management that they do not want to work anymore in so much pressor and the Director of the **OP/Company accepted the resignation of the applicant w.e.f. 09.08.2018** and informed him about such acceptance **by issuing a letter dated 09.08.2018** and all legal dues of the applicant amounting to Rs.88,682/- consequent upon resignation was credited to the SBI Account of the applicant on 14.09.2018 from the account of the OP/Company. No document / order of revocation of resignation in respect of other employees, who also submitted resignation letter jointly with the present applicant, has been filed by the Ld. Advocate for the applicant in support of his above referred contention. In absence of any such document, his such contention cannot be considered and so, the same is not acceptable.

So, in view of aforesaid observation of the Apex Court, the question of consideration of letter dated 10.08.2018, submitted by the applicant before the Director of the

OP/Company, to revoke the decision of the acceptance of his resignation and/or revocation of the order dated 09.08.2018 regarding acceptance of resignation of the applicant and/or withdrawal of letter of resignation dated 01.08.2018 submitted by the applicant jointly does not arise at all **as the resignation of the applicant had been accepted by the OP/Management on 09.08.2018** and automatically, the contract of employment in between the applicant and the OP/Management also came to an end on the said date i.e. on **09.08.2018**, and thereby, the relationship of master and servant stands snapped, **before submission of said letter of withdrawal of resignation / revocation of order of acceptance of resignation dated 10.08.2018 by the applicant.**

Therefore, I am inclined to hold that the applicant cannot withdraw his resignation, which was submitted by him through joint letter of resignation dated 01.08.2018, since his resignation had already been accepted by the OP/Management on 09.08.2018, which was before submission of his above referred letter dated 10.08.2018.

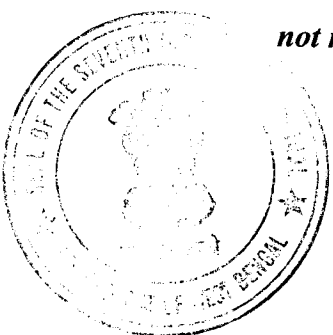
Now, the next question which comes for consideration is that as to whether the instant case is maintainable both in facts and law or not ?

It has also been observed by the Apex Court in the above referred case that a contract of service can be determined by either party to the contract. If an employee takes the initiative and exercises his right to put an end to the contract of service and the employer merely assents to it, it cannot be said that the employer has terminated the employment. In such cases, the employer is merely acceding to the employee's request, may be even reluctantly. The employer cannot force an unwilling employee to work for him.

In the instant case, I find that the applicant / employee took initiative and exercised his right to put an end to the contract of service and the employer/OP merely assented to it by accepting the joint resignation letter dated 01.08.2018 submitted by the employee/applicant and others voluntarily and so, it cannot be said that the employer/OP has terminated the employment and therefore, the applicant / employee's role was active while the OP/employer's role was passive and formal. As per provision of Section 2A of the Industrial Disputes Act, 1947, the **employer's role** in the matter of discharge, dismissal, retrenchment, refusal of employment or termination **must be active, which is not in the instant case** and so, **being an individual workman, the applicant / employee cannot take the shelter of the provision of Section 10(1B)(d) of the said Act.**

Therefore, considering the facts and circumstances of the case, documents as well as materials on record, accepting the argument as advanced by the Ld. Advocate for the OP/Company, relying on the aforesaid decision of the Apex Court and also in view of my discussion and findings, as made above, ***I am inclined to hold that this Tribunal has got no jurisdiction to adjudicate the alleged dispute of the instant case and the case is also not maintainable both in facts and law.***

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The preliminary issue, is thus, disposed of against the applicant.

Hence, it is,

ORDERED

that the instant case being No.07 of 2019 under Section 10(1B)(d) of the Industrial Disputes Act, 1947 be and the same is not maintainable both in facts and law and accordingly, dismissed without any order as to costs.

The application dated 06.09.2019, so filed by the OP/Company, is thus, disposed of.

This is my Award.

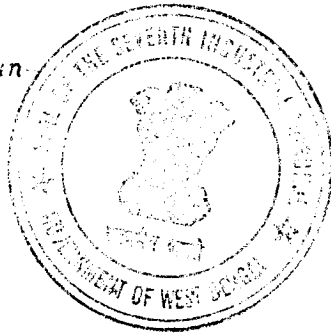
Let 6 (six) copies of this Order/Award be sent to the Appropriate Authority for information and taking necessary action.

Dictated & corrected by me

sd/-

Judge

Judge
Seventh Industrial Tribunal



sd/-

(Ashis Kumar Das)
Judge,
Seventh Industrial Tribunal,
Kolkata
27/12/2019
Judge
Seventh Industrial Tribunal