

I/78238/2020

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

No. Labr/. 36.. / (LC-IR) /22015(16)/4/2020

Date 20/11/2020

ORDER

WHEREAS an industrial dispute existed between M/s Sahara India (Parabanking Division), Sahara Sadan, 2-A, Shakespeare Sarani, Kolkata – 700 071 and Sri Deb Narayan Sil, S/o T. P. Sil, 344/Q, East Kodalia, P.O. New Barrackpore, Kolkata – 700 131 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, Second Labour Court, 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,



Deputy Secretary
to the Government of West Bengal

I/78238/2020

: 2 :

No. Labr/36/1(5)/(LC-IR)

Date: 20/01/2020

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

1. M/s Sahara India (Parabanking Division), Sahara Sadan, 2-A, Shakespeare Sarani, Kolkata - 700 071.
2. Sri Deb Narayan Sil, S/o T. P. Sil, 344/Q, East Kodalia, P.O. New Barrackpore, Kolkata - 700 131.
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/36/2(2)/(LC-IR)

Date: 20/01/2020

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal, Kolkata, with respect to his Memo No. 20 - LT dated 06.01.2020.
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. 01 of 2019

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

Shri Deb Narayan Sil ...Applicant
S/o. T.P. Sil,
344/Q, East Kodalia, P.O. New Barrackpore,
Calcutta – 700131.

-Versus-

M/s. Sahara India (Parabanking Division) ...OP/Company
Sahara Sadan, 2-A, Shakespeare Sarani,
Kolkata-700071.

A W A R D

Dated: 30-12-2019.

Applicant/workman is present through his Ld. Advocate.

Today is fixed for passing ex-parte order / Award.

Case record is taken up for passing ex-parte order / Award.

This case has been initiated on receiving of an application dated 19.02.2019 under Section 10(1B)(d) of the Industrial Disputes Act, 1947, as amended, from the applicant Shri Deb Narayan Sil against his employer M/s. Sahara India (Parabanking Division) in connection with termination of his service by his Employer w.e.f. 11.05.2017 seeking declaration that such termination is illegal and *void ab initio*, with a further prayer for passing an Award directing his employer to reinstate him in his service with full back wages and compensation of Rs.50 lakhs for severe mental harassment caused upon him and his family members by the management of the OP/Company and such other order/orders as this Tribunal may deem fit and proper for the interest of justice.

Fact of the case, as made out in the statement of claim filed by the applicant/workman Deb Narayan Sil, in brief, is that he was a permanent employee under OP/Company since his joining on 16.10.1998 till his illegal and unjustified termination of service by way of dismissal of service w.e.f. 11.05.2017. He joined as a trainee for the post of Assistant Junior Worker at Corporate Office, Mumbai w.e.f. 16.10.1998 for a period of twelve months and thereafter, the OP/Company was pleased to confirm his service w.e.f. 15.07.1999. It is also stated that his daughter namely, Debasmita Sil, who took birth on

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28.06.2005, while he was posted in Mumbai, suffers from mental retardation and autism and is 88.3 per cent disable. He by his letter dated 10.09.2015 requested Mr. Seemanto Roy, Deputy Managing Worker, Sahara India Pariwar, Mumbai to transfer him to the Credit Department, Sahara Housingfina Corporation Ltd., Kolkata and his such request for transfer was accepted as special case and an office order dated 28.10.2015 vide reference No. 03/563883 was accordingly issued. Another office order dated 21.01.2016 was also issued mischievously and he was transferred to Z.O., Kolkata (Sahara India) under Parabanking Division. After being arbitrarily transferred to Parabanking Division, he continued with the job with utmost sincerity. Thereafter, another office order dated 24.01.2017 vide Reference No. SI/ZO KOL/HR/2017/2591, by which he has been transferred to BO BARAKAR as Sr. Executive Worker with immediate effect, was served upon him. Thereafter, he wrote a letter dated 02.02.2017 to Sri Ajit Sharma, Zonal Chief of the company requesting him to take back the said transfer order, but without giving any importance to his said letter of request, Mr. Alope Srivastaba, Sr. Manager, HR Parabanking most illegally issued another letter dated 27.03.2017 to him, which he received on 31.03.2017. He replied to said letter by his letter dated 05.04.2017. On 15.04.2017 he received another letter 07.04.2017 from Mr. Nidhi Pandey, Deputy General Manager, HR Parabanking, but to avoid repetition of facts, he did not reply to said letter and thereafter, he received the letter of termination dated 11.05.2017 vide No. P.B. (I.R.)/64/25Q327 on 17.05.2017. He denied and disputed that he had remained unauthorizedly absent as alleged by the employers and according to him, the notice of termination was purposive and without any merit and violating the natural justice, his service was terminated unilaterally and arbitrarily. Protesting against such illegal and arbitrary termination of his service, he replied to the same by a letter dated 27.05.2017, which was duly received by Sri O.P. Srivastava and Ajit Sharma and the office in response to his said letter dated 27.05.2017 sent a response by letter dated 13.06.2017 informing that it is now not feasible to reconsider his termination order for recalling. Thereafter, he sent a letter dated 07.07.2017 to Mr. Nidhi Pandey, HR Parabanking, Sahara India asking him to provide with a copy of Sahara India Standard Service Rules, which was received by him on 11.07.2017, but in spite of receipt of said letter, Mr. Pandey chose to keep quite for the reasons best known to him. Upon receipt of said letter, he sent a reply dated 31.07.2017 to his letter dated 27.05.2017. Thereafter, he wrote a letter dated 13.10.2017 to the Appellate Authority as required under letter dated 31.07.2017. Thereafter, he submitted a letter dated 28.11.2017 before Labour Commissioner praying for issuing show-cause to the employers as to why the termination vide letter dated 11.05.2017 would not be set aside as illegal, arbitrary and bad and also as to why his letter dated 02.02.2017 and 05.04.2017 would not be looked into and call off his illegal transfer to BO BARAKAR and to give him a posting at Kolkata taking his child's welfare into consideration. The employer filed an objection/reply before the Assistant Labour Commissioner on 16.05.2018. He had also

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replied to the same on 23.05.2018 denying all allegations as brought against him. It is further stated that after hearing before the Labour Commissioner, the employer had cleared some of his dues through three cheques amounting to Rs.2,95,000/- in 2018 of all the outstanding dues. His last withdrawn salary/wages was about Rs.47,500/- per month. Hence, this case for an award holding that his termination of service w.e.f. 11.05.2017 by the OP/Employer as illegal, void ab initio and to direct the employer to revoke the same and also to reinstate him with full back wages and to compensate to the tune of Rs.50 lakhs for the severe mental harassment, caused upon him and his family members by the management of the OP/Company and such other order/orders, as this Tribunal may deem fit and proper.

It appears from the record (vide Order No. 6 dated 28.06.2019) as well as process server's report dated 27.06.2019 that the OP/Company has refused to take the notice sent by this Tribunal through process server and considering that fact of refusal, this Tribunal fixed 30.07.2019 for ex-parte hearing of this case and accordingly, on 30.07.2019, the case was taken up for ex-parte hearing.

FINDINGS

In order to prove his case, the applicant Shri Deb Narayan Sil has examined himself as PW-1 and proved photocopies of some documents, which are marked as Exhibits - 1 to 18. PW-1 has adduced evidence corroborating his case. Considering the unchallenged oral testimony of PW-1, duly corroborated by the exhibited documents, the following facts are established :- (1) that the applicant was appointed in the OP/Company as a Trainee for the post of Assistant Junior Worker at Corporate Office at Mumbai w.e.f. 06.07.1998 (Exhibit-2); (2) that the service of the applicant as Assistant Junior Worker was confirmed w.e.f. 01.07.1999 (Exbt.-3) ; (3) that the daughter of the applicant namely, Debasmita Sil took birth on 28.06.2005, when the applicant was posted in Mumbai and she was 88.3 per cent mentally retarded as on 18.07.2017 (Exbt.-4) ; (4) that the applicant was transferred to the Credit Department, Sahara Housingfina Corporation Limited, Kolkata w.e.f. 28.10.2015 from Mumbai, as per his request (Exbts.-5 & 6), where he joined and thereafter, he was again transferred to Z.O., Kolkata (Sahara India) under Parabanking Division in the same capacity w.e.f. 21.01.2016 from Credit Department, Sahara Housingfina Corporation Limited, Kolkata (Ext.-7), where he joined and started working and thereafter, he was again transferred to BO BARAKAR as Senior Executive Worker w.e.f. 24.01.2017 (Exbt.-8), but he did not join there and submitted a representation dated 02.02.2017 (Exbt.-9) against the said order of transfer dated 24.01.2017 before Sri Ajeet Sharma, Zonal Chief, Sahara India, Kolkata with a prayer to transfer him to Corporate Accounts, Sahara India ; (5) that the OP/Company issued a show-cause notice dated 27.03.2017 (Exbt.-10) to the applicant asking him to submit reply within three days of receipt of the same failing which it would

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be presumed that he had nothing to say and he was not willing to work in the company. Said notice was served upon the applicant on 31.03.2017 and the applicant replied to said notice by his letter dated 05.04.2017 (Exbt.-11) ; (6) that OP/Company issued another show-cause notice dated 07.04.2017 (Exbt.-12) to the applicant asking him to submit reply within three days of receipt of the same failing which it would be presumed that he had nothing to say and he was not willing to work in the company and said notice was served upon the applicant on 15.04.2017, but applicant did not think it necessary to reply to said notice ; and (7) that on 11.05.2017 OP/Company by sending a letter being No. P.B. (IR.)/64/250327 dated 11.05.2017 (Exhibit-13) under registered post with A.D. terminated the service of the applicant with immediate effect i.e. with effect from 11.05.2017 on the ground that he did not join duties at his transferred place of posting complying with the order of transfer dated 24.01.2017 (Exbt.-8).

Now, let us see as to whether before issuance of letter of termination (Exhibit-13), the OP/Company has complied with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 or not ?

Section 25F of the said Act runs as follows :-

25F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

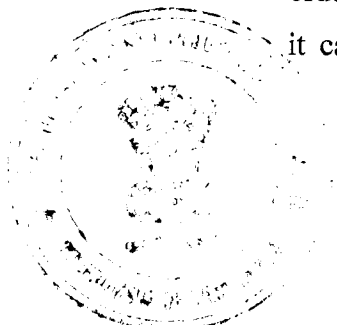
(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

In the instant case, it is established from the unchallenged oral testimony of PW-1 (applicant) as well as by Exhibits-2 & 3 that he joined in the OP/Company on 06.07.1998 as a Trainee for the post of Assistant Junior Worker at the Corporate Office, Mumbai and subsequently, his service was confirmed as A.J.W. w.e.f. 01.07.1999 and he worked till his order of transfer dated 24.01.2017 to BO BARAKAR under the OP/Company. Therefore, it can safely be said that he had been in continuous service for more than 18 years.

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According to Section 25F, **one month's notice** in writing indicating the reasons for retrenchment / termination has to be given to the workman by the employer. Here in this case, it is established that the applicant was terminated from his service w.e.f. 11.05.2017 by letter dated 11.05.2017 (Exhibit-13), issued by the management of the OP/Company. Last show-cause notice before termination was issued on 07.04.2017 (Exhibit-12) by the OP/Company to the applicant, which was served upon the applicant on 15.04.2017. In said show-cause notice, the applicant was asked to submit reply **within three days** of receipt of the same. Therefore, it is established that **one month's notice** as required under **Section 25F (a)** of the Industrial Disputes Act, 1947 **was not given** to the applicant, before issuance of the letter of termination (Exhibit-13). Now, let us see as to whether the OP/Company paid **retrenchment compensation** to the applicant complying with the provision of Section 25F (b) of the said Act or not ? Applicant has deposed that the OP/Company paid him Rs.2,95,000/- through three separate cheques as arrear of partial salary for the period from the month of July/August, 2013 to November, 2015 and he encashed the said amount. He has specifically stated that **no terminal benefit was given** to him by the OP/Company. Therefore, in view of such unchallenged oral testimony, it can safely be said that the **OP/Company did not comply Section 25F (b)** of the said Act before issuance of such order of termination of service. Now, let us see as to whether the OP/Company served **notice** in the prescribed manner **on the Appropriate Government or such authority** as may be specified by the Appropriate Government by Notification in the Official Gazette complying with the provisions of **Section 25F (c)** of the said Act or not. I find from Exhibit-16, which is objection / reply to the application filed by the applicant before the Assistant Labour Commissioner, Kolkata, West Bengal, submitted by the OP/Company before the said Assistant Labour Commissioner, Kolkata, West Bengal. Said reply is totally silent about service of notice in the prescribed manner upon the Appropriate Government or such other authority. Had any such notice been really served upon the Appropriate Government or such other authority, OP/Company would have certainly mentioned about service of such notice in Exhibit-16. Non-mentioning about service of any such notice in Exhibit-16 itself proves that **OP/Company did not serve any such notice** on the Appropriate Government or any such authority complying with the provisions of **Section 25F (c)** of the said Act. Therefore, in view of my above made discussion and findings, I have no hesitation to say that the OP/Company **terminated the service** of the applicant w.e.f. 11.05.2017 by issuing letter of termination (Exhibit-13) **without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947**. So, it can safely be held that such termination order is illegal, unjustified and against the principles of natural justice for the reason of non-compliance with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. Consequently, I hold that the applicant is entitled to get an order of **reinstatement in his service**.

With regard to entitlement of back wages, PW-1 has deposed that due to the illegal termination, the treatment of his daughter could not be done properly and he was **unemployed** and that he had financial difficulties in continuing the medication and therapies of the daughter and due to such lack of medication and therapies, it led to severe convulsions / seizure of the minor autistic daughter on 27.04.2018 and since his illegal termination, he and his family is in deep financial and mental turmoil. He has also deposed that his last withdrawn salary / wage was about **Rs.47,500/- per month** (paras. 42, 43 & 45 of his affidavit-in-chief). He prayed for reinstatement in service along with full back wages from January, 2017 till today with interest along with consequential benefits. Considering his above unchallenged oral testimony as well as in view of the facts and circumstances of the case, I am of the view that he is also entitled to get full back wages along with consequential benefits, if any, accrued thereto, from the date of termination of his service i.e. w.e.f. 11.05.2017.

In the result, the case succeeds ex-parte.

Hence, it is,

ORDERED

that the Case being No. 01 of 2019 under Section 10(1B)(d) of the Industrial Disputes Act, 1947 be and the same is allowed ex-parte against OP/Company namely, M/s. Sahara India (Parabanking Division) without cost.

The OP/Company namely, M/s. Sahara India (Parabanking Division) is hereby directed to reinstate the applicant / workman namely, Shri Deb Narayan Sil immediately and is also directed to pay him full back wages along with all consequential benefits, if any, accrued thereto, from the date of termination of his service i.e. with effect from 11.05.2017 till today.

The OP/Company is further directed to comply with the Award within a period of 90 days from the date of this Award, in default, the OP/Company has to pay interest at the rate of 12% till the realization of the entire due amount, failing which the applicant/workman will be at liberty to put the Award in execution as per law.

This is my Award.

Dictated & corrected by me

sd/-
Judge

Judge
Seventh Industrial Tribunal



sd/-
(Ashis Kumar Das)
Judge,
Seventh Industrial Tribunal,
Kolkata
30/12/2019

Judge
Seventh Industrial Tribunal