

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

No. Labr/ 403/(LC-IR)/22015(14)/41/2019

Date : 22-4-19

ORDER

WHEREAS an industrial dispute existed between M/s Tasati Tea Estate, a property of Tasati Tea Ltd., P.O. Birpara, Dist. Jalpaiguri and the applicant Sri Anupam Das Sharma, S/o. Sri Jitendu Bikash Das Sharma, Tasati Tea Estate, P.O. Birpara, Dist. Jalpaiguri being a matter to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application to the Judge, Sixth Industrial Tribunal, Jalpaiguri;

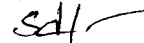
AND WHEREAS the Judge of the said Sixth Industrial Tribunal, Jalpaiguri, has submitted to the State Government its award on the said Industrial Dispute.

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,



Deputy Secretary

to the Government of West Bengal

No. Labr/403/1(5)/(LC-IR)

Date : 22-4-19

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

1. M/s. Tasati Tea Estate, a property of Tasati Tea Ltd., P.O. Birpara, Dist. Jalpaiguri.
2. Sri Anupam Das Sharma, S/o. Sri Jitendu Bikash Das Sharma, Tasati Tea Estate, P.O. Birpara, Dist. Jalpaiguri.
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 O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Deputy Secretary

Date : 22-4-19

No. Labr/403/2(2)/(LC-IR)

Copy forwarded for information to :

1. The Judge, Sixth Industrial Tribunal, Jalpaiguri, West Bengal with reference to his Memo No. 23/I.T. (J) dated 18.02.2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

Jalpaiguri.

Case No. VIII-09/2007 (VI)

Present: Sri B. N. Bhaduri, Judge,
Sixth Industrial Tribunal, North Bengal Region at Jalpaiguri
Nawab Bari Judicial Complex, Jalpaiguri.

Sri Anupam Das Sharma
S/o Sri Jitendu Bikash Das Sharma
Resident of Tasati Tea Estate, P.O. Falakata,
P.O. Birpara, Dist. Jalpaiguri.

-VS-

.....The Applicant

M/s. Tasati Tea Estate, a property of
Tasati Tea Ltd. ,P.O. Birpara, Dist. Jalpaiguri,
represented by the Manager, Tasati Tea Estate.

.....Opposite Party/Employer.

Order No.49 dt.13/02/2019

The workman files hazira through lawyer. This case was heard ex parte on 24/01/2019 and today is fixed for passing order. The dismissed workman, Sri Anupam Das Sharma, filed this case under Clause-C of Sub-Section1(B) of Section-10 of the Industrial Disputes Act, 1947 along with a certificate about the pendency of a conciliation proceeding issued by the Conciliation Officer and Assistant Labour Commissioner, Jalpaiguri, and accordingly the case was registered as a reference U/s. 10 Read with Section-2A of the Industrial Disputes Act, 1947. Notice was issued upon the opposite party and the opposite party appeared and filed written statement and documents. Thereafter, the issues were framed on 17/07/2008 and the hearing was taken up on the point of validity of enquiry. The employer/opposite party examined one witness as MW-1 in part and since after 12/07/2010 the employer failed to complete the examination of MW-1. Several chances were given to the opposite party/employer for completing the evidence but the opposite party/employer did not take any step for several years and ultimately on 24/01/2019 for not taking any step by the employer/opposite party, the evidence of MW-1 which was partly recorded has been expunged and the case was taken up for ex parte hearing. →The workman filed examination-in-chief on affidavit and he was further examined and discharged as PW-1. The workman closed its evidence and the documents on behalf of the workman have been marked as exhibits 1 to 21. Argument was heard on behalf of the workman on 24/01/2019 and today is fixed for passing order.

It is the case of the workman, Sri Anupam Das Sharma, that the Tasati Tea Estate is a profit making Tea Estate run and managed by Tasati Tea Ltd. i.e. the O. P./ employer of this case. According to the workman, he was appointed on 31st May 1993 as a Junior Clerk in Clerical Grade III in Tasati Tea Estate. According to the workman, he is socially conscious young man

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and used to take steps for improvement of the plight of the staff members of the Tea Estate and in the process he became unit secretary of Tea Employees' Association of West Bengal - a Registered Trade Union of the staff members of the Tea Gardens of West Bengal. According to the workman, on 11th December, 2005 one Sri Prem Chand Jain joined as General Manager of the Tasati Tea Estate and due to mismanagement and self seeking activities indulged by Sri Jain serious labour unrest started in the concerned Tea Garden. According to the workman, the workers were not getting their legal entitlements like wage, ration and fire wood etc. According to the workman, as a secretary of responsible trade union he requested the General Manager Sri Jain to run the garden properly and to protect the legitimate interest of the workers and staff members. According to the workman, General Manager, Sri Jain, did not pay any heed to his request and amidst the grim situation suddenly without consultation with the local leaders of different union issued a notice on 03/05/2006 asking the labourers to take special annual leave from 4th May to 16th May, 2006. But this proposal of the Management was not acceptable to the labourers. According to the workman, on 04/05/2006 he was as usual busy in the office with 'Kamjari' report and suddenly he noticed that some workers of the Tea Estate assembled in front of Chamber of General Manager and accordingly this workman along with other staff members came out of the office and tried to persuade the agitated workers not to indulge in any overt act. According to the workman, the workers pushed him and others and in such situation they left the spot. According to the workman, the management by notice dated 5th May, 2006 declared suspension of work in the Tea Garden due to the incident dt. 04/05/2006 alleging inter alia that a frenzy mob of hundred workmen came to the office manager and manhandled him. According to the workman, the matter was informed to Joint Labour Commissioner of North Bengal Zone and a tripartite meeting was held on 18/05/2006 to remove the impasse and in the said meeting the representative of the management, representative of all operating unions of the Tea Garden were present along with this workman. According to the workman, dispute was amicably settled in the said meeting on the following conditions:-

- i) The management will withdraw the suspension of work of the Garden w.e.f. 20/05/2006 and the garden shall start functioning from the same day.
- ii) The incident occurred on 04/05/2006 as stated by the management was not desirable and regretted. The parties shall maintain industrial peace and harmony in the garden. If there is any dispute the matter shall be taken up at bipartite level and if necessary shall be taken up by the Labour Department to resolve the same but normal functioning of the garden shall not be hampered by the parties.
- iii) The issue raised by the management and the grievances of the unions shall be discussed within one month to resolve the same.

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iv) The management shall not take any unilateral decision and the union assured that there shall be no undesirable incident in future.

v) During the period of suspension of work the workman shall get no wages but their continuity of service shall remain unaffected and there shall be no victimization".

According to the workman unfortunately on 23/05/2006 the management issued a charge sheet to him without following the conditions of the said meeting dt. 18/05/2006 alleging his involvement in the incident dt. 04/05/2006 and suspended him from the service pending enquiry. According to the workman, the aforesaid act of management is a clear breach of agreement dt. 18/05/2006 and it amounts to unfair labour practice and arrogant attitude of the management. According to the workman, by a letter dt. 25/05/2006, he denied all the allegations contained in the charge sheet but the management did not accept the said true version and explanation of this workman and decided to hold enquiry with a preoccupied mind to dismiss the workman. According to the workman, one Sri Somnath Paul, was appointed as Enquiry Officer and the said Enquiry Officer conducted the enquiry in violating the principal of natural justice and the workman was not allowed to defend his case properly. According to the workman, the Enquiry Officer recorded the statements of the witnesses in a manner which suits the purpose of the management. According to the workman, the enquiry proceeding was not even read over and explained to him and inspite of verbal request copy of enquiry proceeding and exhibited documents were not supplied to him. According to the workman on the basis of the findings of the Enquiry Officer he was dismissed by letter dt. 09/08/2006 with immediate effect. So according to the workman the order of dismissal is illegal, unjust, motivated and liable to be set aside. According to the workman, he is entitled to be reinstated with full back wages.

Considered the evidence adduced by PW-1 and the documents exhibited on behalf of the dismissed workman. It is found that one domestic enquiry was held by the management and on the basis of the report of Enquiry Officer, Sri Somnath Paul, the workman was dismissed from his service. In such situation, the hearing was necessary regarding the validity of the said enquiry proceeding. I have already observed that the management examined one witness as MW-1 in part and failed to complete the examination of the said witness for several years and ultimately the opposite party/employer stopped to take any steps. In such situation, the evidence of MW-1 which was partly recorded has been expunged and the case has been heard ex parte. In view of the oral and documentary evidence on record it is clear that this case has been properly filed and the workman was an employee of the opposite party Tasati Tea Estate. It is also clear that the opposite party dismissed the service of the workman on the basis of enquiry report.

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But the employer failed to prove by evidence that the enquiry proceeding was properly held maintaining the principles of natural justice. According to the workman, the opposite party also did not supply copy of the enquiry proceeding to him and as such he could not produce the copy of enquiry proceeding before this Tribunal. In such situation as the enquiry proceeding has not been proved to be valid, it can be safely held that the dismissal of the workman on the basis of enquiry proceeding can not be legal and valid. In such situation the dismissal of the workman is to be held as illegal and without any basis. In such situation, the workman has been able to prove its case ex parte and the order of dismissal of the workman is liable to be set aside and the workman should be reinstated with full back wages as if he was in service throughout the period. Hence, it is

ORDERED

That this case be and the same is allowed ex parte. The order of dismissal of the workman dated 09/08/2006 is hereby set aside. The opposite party/employer, Tasati Tea Estate, is directed to reinstate the workman, Sri Anupam Das Sharma, within one month from this date of order and to pay him full back wages w.e.f. 09/08/2006 till the date of reinstatement. This award shall be enforceable after 30 days from the date of publication of this award in Gazette notification.

Dictated & corrected by me

sdl

(B. N. Bhaduri)
Judge
Sixth Industrial Tribunal
Jalpaiguri

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(B.N. Bhaduri)
Judge
Sixth Industrial Tribunal
Jalpaiguri

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As per order
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