

I/123003/2021

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

No. Labr/508/(LC-IR)/22015(16)/257/2018

Date: 26-02-2021

ORDER

WHEREAS an industrial dispute existed between Kanaipur Gram Panchayat, Konnagar, Dist. - Hooghly, Pin - 712234 and Sri Bikash Chandra Malakar, Kanaipur Government Colony, House No. 260, P.O. Kanaipur, Dist. - Hooghly, Pin - 712234 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, First 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 First Labour Court, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947).

AND WHEREAS the said Judge First Labour Court, 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/123003/2021

: 2 :

No. Labr/503/1(5)/(LC-IR)

Date: 26-02-2021

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

1. Kanaipur Gram Panchayat, Konnagar, Dist. - Hooghly, Pin - 712234.
2. Sri Bikash Chandra Malakar, Kanaipur Government Colony, House No. 260, P.O. Kanaipur, Dist. - Hooghly, Pin - 712234.
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 Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

No. Labr/503/2(2)/(LC-IR)

Date: 26-02-2021

Copy forwarded for information to :-

1. The Judge, First Labour Court, West Bengal, with respect to his Memo No. 146 - L.T. dated 04.02.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the matter of an application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 filed by Shri Bikash Chandra Malakar, Kanaipur Government Colony, House No.260, P.O-Kanaipur, P.S. Uttarpara, District-Hooghly, Pin-712234 against Kanaipur Gram Panchayat, Konnagar, District-Hooghly, Pin-712234.

Case No. Comp. 10 of 2008 under Section 10(1B)(d) of Industrial Disputes Act, 1947

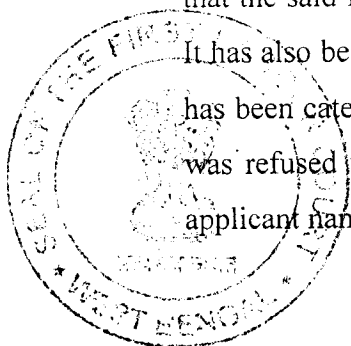
Present: Mr. Tito Rob, Judge
First Labour Court
Kolkata.

Date: 23rd Day of December, 2019

AWARD

The sequences of event leading to this Action are set out in a short compass below: -

It has been narrated by the applicant in his application u/s. 10(1B) (d) of the Industrial Disputes Act 1947 that he was employed by the Kanaipur Gram Panchayat as a driver on 02-06-2010 for driving an ambulance owned by the said panchayat. It has been stated further that there was a committee under Panchayat known as Ambulance Committee and the said committee used to control the service commission of the workmen including the concerned workman in all matters. It has been contended further that there was no service condition and the applicant used to work 24 hours without any extra remuneration or any other benefits. There was no leave and / or holidays in connection with his service. The applicant has further stated that he being a schedule caste applied for the said job and by way of formal interview taken by the Secretary of the Panchayat he was selected for the said job. Applicant has, moreover, stated that he was a refugee and initially he was sheltered at Ranaghat camp and subsequently, he was brought to Kanaipur by the Secretary of the Kanaipur Gram Panchayat. The applicant has categorically stated that at the time of giving the employment he had to assure the management that he would devote his life for the public and in reciprocal he was assured by the management that his employment would be secured with proper remuneration but in fact, he was paid Rs. 2000/- per month towards wages. The applicant has also stated that in last part of 2004 he approached the management for enhancing his wages and to afford some allowances since he has to perform 24 hours duty and, in many occasions, he has to spent the entire night outside the district in performing his duty. It has been stated in the application that the said Panchayat never paid any medical benefit or any other benefits to the applicant. It has also been stated that the said panchayat was not covered under the scheme of E.S.I. It has been categorically stated by the applicant that all on a sudden on 14-02-2005 his service was refused without assigning any reason and the other two drivers who are junior to the applicant namely Ganesh Mal and Subrata Das were entrusted by the said panchayat to do the



job of the applicant. It has been further stated by the applicant that he approached the management to convince and satisfy the management but all his attempts went in vain. Subsequently, by his letter dated 20-02-2008 he raised an Industrial Dispute with the Labour Commissioner and in response to that Labour Department made several attempts for settling the disputes but it was a futile attempt due to rigid and unfair attitude of the management. The applicant has further stated that the refusal of employment without any reason on and from 14-02-2005 is arbitrary, whimsical and illegal. He has also submitted that he has a family consisting of his wife, sons and daughters and he has no other source of income. The applicant has also stated that the applicant finally obtained a certificate under Form-S issued by the conciliation officer. The applicant has also stated that the act of the said Panchayat tantamounts to unfair labour practise. The applicant has prayed for direction upon the management of the aforesaid Panchayat to take him back in the same post without any interruption of service and to pay his due wages and bonus for the entire period of forceful unemployment together with interest.

The Opposite Party contested the case and resisted the application u/s. 10(1B)(d) of the Industrial Disputes Act 1947 by filing a comprehensive written statement denying and disputing the material allegations made in the application u/s. 10(1B)(d) of the Industrial Disputes Act 1947. The Opposite Party in his written statement has categorically stated that the Opposite Party is a Gram Panchayat doing Sovereign function of the State as envisaged in Part-IV of the Constitution of India and has been constituted as Gram Panchayat under section 4 of the West Bengal Panchayat Act, 1973. It has been stated that the said Gram Panchayat is not an industry as per Section 2 (j) of the Industrial Dispute Act, 1947. It has also been stated that the applicant is not a workman under section 2 (s) of the Industrial Disputes Act, 1947. The Opposite Party has unequivocally stated in its written statement that the alleged dispute could not be an industrial dispute within the mentioning of Section 2(k) read with Section 2A of the Industrial Dispute Act as Conciliation Officer has failed to record his satisfaction while initiating the purported conciliation about the existence and / or apprehension of any Industrial Dispute in the matter that is a statutory pre-condition. The alleged dispute raised on 4.5.2008 and the said conciliation proceeding in any event cannot continue beyond 60 days i.e. beyond 4.6.2008 as per the provisions of Section 12(6) of the Industrial Dispute Act, 1947. The Conciliation Officer was duty bound to submit a failure report under section 12(4) of the Industrial Dispute Act, 1947. On 20th October, 2008 the office of the Conciliation Officer has become functus officio and was not competent to issue any certificate of pendency in the matter. It has been further stated in the written statement that the applicant had work casually and intermittently with the Opposite Party and had never worked for 240 days in any year at a stretch. Therefore, he has no right to claim employment permanently as per settled principles or law. It has been narrated in the written statement that a casual employee has no right to service and the said applicant was never appointed following, observing the rules and regulation with regard to appointment in a Panchayat. The applicant volunteered to work during his leisure time. It has also been contended that the patient party had to bear expenditure

of the fuel of the ambulance and the Opposite Party did not get any money or profit for operation of such ambulance. It has also been stated that the instant claim is a stale claim as the applicant file the case after more than three years from the date of alleged refusal of employment. This Ld. Court lacks jurisdiction to adjudicate the matter because retrenchment being a matter specified under Schedule-III of the Industrial Dispute Act over which an Industrial Tribunal has the jurisdiction as per provision Section 7A of the Industrial Disputes Act. The case of the applicant deserves dismissal.

From the case record it transpires that three issues have been framed by my predecessor in office vide order No.17 dt. 13-09-2010.

Upon the pleadings of the parties to this case my predecessor in office was pleased to frame the following three issues: -

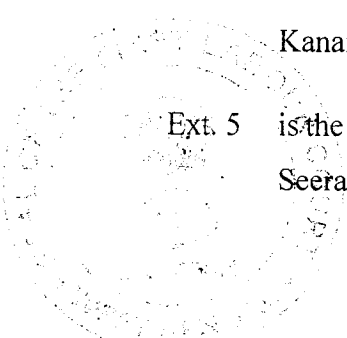
ISSUES:-

- 1) Is the instant proceeding maintainable?
- 2) Is the refusal of employment to the applicant, Bikash Chandra Malakar, driver w.e.f. 15.02.2005 by the Opposite Party company justified and legal?
- 3) To what relief he is entitled to?

Evidence has been led on on either side. Evidence was recorded by my predecessor in office.

During hearing the applicant has examined himself as P.W.1. He has not examined any other witness on his side. Besides oral testimony the applicant has proved several documents marked Exts. 1 to 7 that are as follows: -

- Ext. 1 is the letter dated 05-02-2008 issued by the applicant upon the Panchayat Pradhan regarding refusal of employment w.e.f 15-02-2005.
- Ext. 2 is a certificate dated 17-06-2003 issued by the then Upa Pradhan of Kanaipur Gram Panchayat stating inter-alia that Bikash Malakar is a resident within Kanaipur Gram Panchayat and the income of his family is approximately Rs. 1200/- and recommended for his free treatment in a Govt. hospital.
- Ext. 3 is a letter dated 20-02-2008 issued by the applicant addressing the office of the Labour Commissioner, raising a dispute regarding his refusal of employment.
- Ext. 4 is the application dated 09-09-2004 of the applicant addressing the Pradhan of the Kanaipur Gram Panchayat with a prayer for leave.
- Ext. 5 is the letter dated 29-09-2008 issued by the Assistant Labour Commissioner, Hooghly, Seerampore in favour of the applicant for attending the conciliation proceeding.



Ext. 6 is the copy of the letter dated 02-04-2009 issued by the applicant addressing the Officer-in-charge, Kanaipur Phari, Kanaipur.

Ext. 7 relates to documents in connection with Gram Sabha Adhivesan of Kanaipur Gram Panchayat.

The Opposite Party has examined three witnesses on its side. O.P.W-1 is Somnath Chatterjee . He was a member of the Kanaipur Gram Panchayat. O.P.W-2 is Sandhya Bunduri. She was the Pradhan of the Kanaipur Gram Panchayat in the year 2013. P.W.3 is Umesh Singh. He was one of the members of the Kanaipur Gram panchayat. Besides oral testimony the O.P has proved several documents marked Ext.A to Ext.J.

Ext. A is the copy of the driving license of the applicant valid up to 05-05-2008.

Ext. A/1 is the receipt for computer data entry.

Ext. A/2 is the Indian Union Driving License of the applicant valid till 05-05-2011.

Ext. B is the copy of the letter dated 09-09-2004 issued by the applicant upon the then Pradhan of Gram Panchayat.

Ext. C relates to three vouchers regarding collection of fuel by the applicant dated 03-01-2002, 01-02-2002 & 13-02-2002.

Ext. D are the receipts signed by other drivers namely Subrata De and Dulal (Series) Bhowmik.

Ext. E is the notification dated 08-04-1997

Ext. F is a certification issued by Pradhan, Kanaipur Gram Panchayat, dated 12-02-2013.

Ext. H to H/2 relate to documents in connection with Gram Sabha Adhivesan of Kanaipur Gram Panchayat.

Ext. I is a letter issued by Joint Secretary, Ministry of Rural Development Department of Rural Development, Govt. of India

Ext. J is the memo No. 15051/19/RD dated 5th September, 2008 issued by Secretary, Hooghly Zila Parishad to 1) The P.O cum D.W.O, Backward Classes Welfare, Hooghly 2) Executive Officer, Serampore-Uttarpara Panchayat Samity.

Now let me turn to the evidence on record and scrutinize the same with a view to answering the issues as framed above.

Decision with Reasons

All the three issues are taken up together for consideration for the sake of brevity and convenience.

I have carefully gone through the decisions of Hon'ble High Court, Calcutta passed in Re: Sandhya Baul vs Director of Panchayat And Anr. on 22 August, 2005 Equivalent citations: 2005 (4) CHN 368, (2006) ILLJ 637 Cal.

Hon'ble High Court, Calcutta in Re: Sandhya Baul vs Director of Panchayat And Anr. on 22 August, 2005 held that "In view of the decision passed in Director of Panchayat vs. Pankaj Banik & Ors. reported in ILR 2004 (8)A & N series Pg.5 the Gram Panchayat should be held to be an industry within the meaning of Section 2(J) of the Industrial Disputes Act".

At the very outset it is pertinent to state at this stage that even though the Panchayat is an industry and Pradhan is the employer if it appears that an appointment has been given in the panchayat not in compliance with the formalities required under law, such appointment cannot be said to be legal and in that event, the applicant cannot be said to be a workman so as to get the benefit of the reinstatement. If the Panchayat Pradhan without the authority of law permitted the applicant to work, such appointment cannot confer any right upon the applicant to get even back wages or other benefits under the Act. The question of grant of benefit of back wages depends upon the answer whether the appointment was proper and legal.

Ld. Advocate for the applicant has relied upon a decision of the Hon'ble Apex Court passed in Re: Bangalore Water Supply & Sewerage Board vs. A. Rajappa & Ors. reported in 1978(1) LLJ 349.

Ld. Advocate for the Opposite Party has relied upon the following decisions: -

- 1) 2002 LAB. I.C. 987;
- 2) (2002) 8 SCC-400;
- 3) 2008(1) CLR 1081 SC;
- 4) (2004) 8 SCC-246;
- 5) 2005(8) SCC-481 &
- 6) 2006 AIR SCW 1991.

Hon'ble Apex Court in Union of India vs Amrit Lal Manchanda reported in (2004) 3 SCC 74 has further observed as follows:-

"The following words of Lord Denning in the matter of applying precedents have become locus classicks.

Each case depends on its own facts and close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching

the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not all decisive."

To me, pleadings cannot take place of evidence. Pleadings are mere contentions raised by the party before the court. Pleadings made by the party before the court are required to be proved and substantiated by the party producing and proving necessary evidence in support of such pleadings. Party is required to prove the same by leading proper evidence before the court.

P.W.1 in course of his examination-in-chief has stated that the Opposite Party establishment assured him for life long employment in their concern and payment of his remuneration. He has also categorically stated in course of his cross-examination that the then Pradhan of Kanaipur Gram Panchayat namely Ramprasad Basu assured him permanent service under the Opposite Party but Ramprasad Basu is not the Pradhan at the said Panchayat at present. Therefore, this evidence of the applicant speaks a volume against the applicant.

P.W.1 has unequivocally admitted in course of his cross-examination that he has no document to show that he was working under the Opposite Party since 02-07-2001.

There is no document on record to show that the applicant was in employment in the above- mentioned Panchayat from the date of his alleged employment.

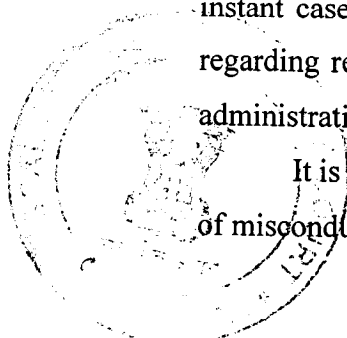
Nothing cogent, convincing and reasonable is forthcoming from the side of the applicant to show that his service was refused on 14.02.2005.

P.W.1 in course of his examination-in-chief has stated that the Opposite Party concern was not covered under the scheme of ESI. He has further stated in his examination-in-chief that he was not paid by the Opposite Party during his absence due to illness. P.W.1 has stated in course of his cross-examination that he has not filed the call letter regarding the interview as it was not returned to him by the Opposite Party.

O.P.W.1 in course of his cross-examination has stated that there is no such fixed driver of the ambulance of the said Panchayat. He has also stated that there is no such permanent driver engaged for driving the ambulance of the Panchayat. He has, moreover, stated that the Panchayat is not earning anything by giving service of the said ambulance and the fuel charge is also paid by the local people. He has also stated that there is no question of refusal of service of the applicant as he was never given any such appointment by the Opposite Party. He has also stated that the ambulance was purchased from the donation given by the local people as well as the amount given by the local M.L.A from his fund. O.P.W.2 has stated in her evidence that their accounts are being audited regularly. She has also stated that she has no personal experience regarding the works of the applicant under the Opposite Party.

O.P.W.3 has stated in his evidence that he is not acquainted as to the alleged fact of the instant case. He did not see the applicant in their office. He has no personal knowledge regarding render of service of the applicant. He has no personal knowledge with regard to administration of Kanaipur Gram Panchayat prior to 2013.

It is nobody's case that the applicant was refused employment or terminated on ground of misconduct. Therefore, it is not a case of stigmatic termination or refusal of employment.



Even if it is assumed that the applicant was not given job and / or employment was refused by the employer in that event such refusal may amounts to termination of service but it has to be tested in the light of the provisions of Section 25F of the Industrial Dispute Act, 1947.

In the instant case to arrive at a conclusion regarding a termination simpliciter it is to be looked into the scope of the applicability of the provisions of Section 25F of the Industrial Dispute Act, 1947

Section 25-F of the Industrial Disputes Act in plainly intended to give relief to retrenched workmen. The qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer.

In view of the provisions of Section 25F of the Industrial Dispute Act, 1947 in case of termination simpliciter retrenchment compensation has to be paid subject to completion of 240 days work on the part of the applicant preceding Twelve (12) months.

From the evidence of P.W.1, as stated above, it appears that the applicant was not a permanent employee. There is no document on record to show that the applicant had worked for more than 240 days in the year preceding his alleged termination. It was claimant to lead evidence to show that he had in fact work 240 days in the year preceding his termination. No prove of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

In the case at hand the applicant miserably failed to adduce any cogent, reliable and convincing evidence to establish that he worked 240 days preceding Twelve (12) months from the date of his alleged termination. There is no substance to hold that the applicant's alleged termination is within the scope of the provisions of Section 25F of the Industrial Dispute Act, 1947.

Accordingly, the issues stand answered against the applicant.

Applicant's case is bereft of merit and devoid of substance.

The instant case u/s. 10(1B) (d) of the Industrial Disputes Act, 1947 deserves to be dismissed. Be it dismissed accordingly.



Hence, it is

ORDERED

that the instant case u/s. 10(1B) (d) of the Industrial Disputes Act, 1947 be and the same stands dismissed on contest. Parties do bear their own costs.

Let a copy of this order be sent to the concerned department of Government of West Bengal.

Dictated & corrected by me

Sd/-

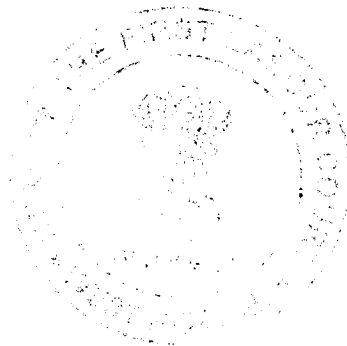
Judge

Sd/-

(Tito Rob)

Judge

First Labour Court, Kolkata.



23.12.2019

Judge
First Labour Court
Kolkata, W.B