

48472/2019

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

No. Labr./ 522/(LC-IR)/22015(16)/651/2019

Date 03-08-19

ORDER

WHEREAS an industrial dispute existed between (1) M/s Prapti Group, 20-B, Jodhpur Garden, Kolkata - 700045 , (2) Mr. Radha Shyam Sharma, 20-B, Jodhpur Garden, Kolkata - 700045 and their workman Md. Aftab, G-60, Battikal 1st Lane, P.O. & P.S. Garden Reach, Kolkata - 700024 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14of 1947) to the Judge, Seventh Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the said Judge, Seventh Industrial Tribunal has submitted to the State Government its Award on the said Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes 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

472/2019

(2)

No. Lab. / 5.2.2 / 1(2) (LC-IR)

Dated 03-06-19

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 246 - L.T. dated 22.02.2019.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. Lab. / 5.2.2 / 12(5) (LC-IR)

Dated 03-06-19

Copy with a copy of the Award is forwarded for information & necessary action to:

1. M/s Prapti Group, 20-B, Jodhpur Garden, Kolkata - 700045
2. Mr. Radha Shyam Sharma, 20-B, Jodhpur Garden, Kolkata - 700045.
3. Md. Aftab, G-60, Battikal 1st Lane, P.O. & P.S. Garden Reach, Kolkata - 700024.
4. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
5. The Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 6. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Deputy Secretary

In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata

Present: Shri Ashis Kumar Das, Judge,
Seventh Industrial Tribunal.

CASE NO. 34/2A (2)/2015

Md. Aftab. G-60, Battikal 1st Lane,
P.O. & P.S. Garden Reach, Kolkata-700024.

.....Applicant

-Versus-

1. M/s. Prapti Group, 20B, Jodhpur Garden, Kolkata – 700045.
2. Mr. Radha Shyam Sharma, 20B, Jodhpur Garden, Kolkata – 700045.

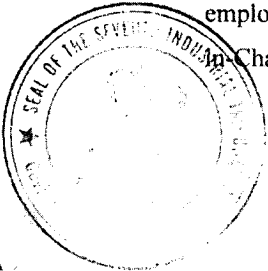
.....Opposite Party(s)

A W A R D

Dated : 20-02-2019

Received an application dt. 17.06.2015 u/s. 2A(2) of the Industrial Disputes Act, 1947, as amended along with list of documents from the applicant/employee Md. Aftab, G-60, Battikal 1st Lane, P.O. & P.S. Garden Reach, Kolkata-700024 against his employer M/s. Prapti Group and its owner Mr. Radha Shyam Sharma in connection with termination of service by way of refusal of employment of the applicant/employee by his employer is unjustified, uncalled for illegal as well as in violation of principle of labour laws seeking order that the same is illegal, reinstatement in service with full back wages and consequential benefits.

The specific case of the applicant is that the applicant was an employee of the O.P. Company and came in the employment roll of said company without issuance of any appointment letter as Back Office Assistance on a monthly consolidated amount of Rs.7,000/- per month; that from the date of appointment he had been discharging his duties with full satisfaction and without an iota of blemish and / or any adverse report against him; that it is highly shocking that the employer / OP/Company refused him to resume his duty w.e.f. May, 2014 without assigning any satisfactory reason thereof nor he was answerable of any of his conduct at any point of time; that without finding any alternative avenue left open to him but to raise his voice by placing a 'Demand of Justice' under registered post with A.D., in spite of which the employer / OP/Company was in deaf ear and from that time the OP/Company created a forced idleness by way of non-employment causing extreme financial privation to him; that he informed to the Officer-Charge of local Police Station as an abundant caution and necessary protection; that



when he did not get any response from the OP/Company, he brought the entire matter to the notice of Labour Commissioner, Government of West Bengal through a letter, which was received by the conciliatory machinery on 12.03.2015; that he waited for forty-five days and thereafter filed the present case before this Tribunal with copy of the letter addressed to the Labour Commissioner, Government of West Bengal, Kolkata; that the OP/Company unauthorizedly withhold his salary from the month of May, 2014 till date i.e. date of filing of this case; that he personally requested the management to reinstate him with full back wages along with consequential statutory benefits, but the OP/Company remained silent; that prior to the termination from his service by way of refusal of employment, OP/Company neither followed any disciplinary proceedings against him nor issued any charge-sheet or show-cause notice or conducted any domestic enquiry; that he was not also offered any opportunity for his self-defence. According to him, the purported termination of his service is, therefore, void ab-initio, irregular, illegal and inoperative and for which he is entitled to reinstatement of his service with full back wages and other consequential benefits / reliefs as admissible under the law. So, the applicant filed the instant application under Section 2A(2) of the Industrial Disputes Act, 1947 and prays for reinstatement along with back wages.

On the other hand, the O.P. No. 2 Mr. Radha Shyam Sharma appeared on 29.07.2018 after service of notice and contested the case of the applicant /employee by filing a written statement on 02.03.2016 on behalf of himself and OP No.1/Company, wherein he has denied all the material averments of the applicant stating inter alia that the present application is not maintainable in facts and law and this Tribunal does not have jurisdiction to entertain the instant case. It is also stated that the allegation made by the applicant in his application is false, frivolous and baseless. It is specifically stated that the OP No.1 is a Firm and OP No.2 is a proprietor of OP No.1; that the opposite party carries on the activity of collection agent of various telephone companies and the applicant was only associated with the opposite party on commission basis only but not as a back-office staff as claimed by the applicant, that too purely on case to case basis. The applicant could not tender a piece of paper to justify his appointment nor any salary slip. The applicant invoked this forum only to harass the opposite party and to extorts some money for illegal gain and also to save himself from the illegalities done by him by retaining the receipt books, collected money from the account holders and three mobile phones of the opposite party; that the salary claimed by the applicant also does not fall within the jurisdiction of this Tribunal. In the circumstances, OP have prayed for dismissal of the instant case with costs.

It appears from the record that none appeared for the OP No. 1 or 2 on 17.02.2017 and no step was also taken on behalf of them and so the OP/Company was directed to



show-cause by 27.03.2017 as to why the case shall not be heard and determined ex-parte in accordance with law and subsequently when no show-cause petition was filed either by OP No.1 or by OP No.2, this Tribunal fixed 11.09.2017 for ex-parte hearing of the instant case.

It also appears from the case record that on 17.08.2018 the case was taken up for ex-parte hearing. On that day, applicant / employee namely Md. Aftab filed affidavit-in-chief and tendered the same and examined himself as PW-1 and also filed and proved some documents marked as **Exhibits-1 to 4/1** (collectively).

On careful perusal of the evidence of PW-1 / applicant, I find that he has deposed about his case corroborating his application under Section 2A(2) of the Industrial Disputes Act, 1947. His such evidence has duly been corroborated by the exhibited documents viz. **Exhibit-1 to 4/1** (collectively). So, I do not find any reason to disbelieve his such unchallenged oral testimony with regard to his alleged termination of service by the O.P. Company, which is, in my opinion, unjustified, illegal as well as violation of principles of natural justice. Therefore, the applicant has been able to prove his case and so, he is entitled to get the relief, as prayed for.

Hence, it is,

O r d e r e d

That the application under Section 2A(2) of the Industrial Disputes Act, 1947 is allowed ex-parte without cost. The O.P. Company is hereby directed to reinstate the applicant namely Md. Aftab immediately and is also directed to pay 25 per cent back wages along with all consequential benefits from the date of termination of service i.e. w.e.f. May, 2014 till today.

The O.P. Company is further directed to comply with the award within a period of 90 days from the date of the award; failing which the O.P. Company has to pay interest @ 12% till the realization of the entire amount, in default, the applicant is at liberty to put the award in execution as per law.

This is my **Award**.

Dictated & corrected by me

Self

Judge

Judge
Seventh Industrial Tribunal
Kolkata, W.B.

Self

(ASHIS KUMAR DAS)
Judge,
Seventh Industrial Tribunal,
Kolkata
20/02/2019

Judge
Seventh Industrial Tribunal

