

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

No. L. Lab. 1567 (LE-IR)

Date: 18-6-19  
19

**ORDER**

WHEREAS an industrial dispute existed between M/S Brand Value Communications Ltd., Godrej Waterside, Tower- D1, 2<sup>nd</sup> Floor, Office No. 201 & 202, Plot No. 5, Block-DP, Sector-V, Salt Lake, Kol-700091, WB. And Smt. Anamika Mukhopadhyay, 28-B, G.T. Road, Shibatala, Shanti Abas, Flat No. 6 P.O. Bhadrakali, Hooghly, Pin 712232, WB, regarding the issues, being a matter specified in the 2<sup>nd</sup> 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 (14 of 1947) to the Judge, First Industrial Tribunal, specified for this purpose under this Deptt.'s Notification No. 101-IR dated 02.02.2012.

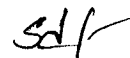
AND WHEREAS the said Judge, First Industrial Tribunal has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute.

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

375/2019

No. Labr/567/1(5)/(LC-IR)

Date 18-6-19  
19

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

1. M/ Brand Value Communicatins Ltd., Godrej Waterside, Tower- D1, 2<sup>nd</sup> Floor, Office No. 201 & 202, Plot No. 5, Block-DP, Sector-V, Salt Lake, Kol-700091, WB.
2. Smt. Anamika Mukhopadhyay, 28-B, G.T. Road, Shibtala, Shanti Abas, Flat No. 6 P.O. Bhadrakali, Hooghly, Pin 712232, WB
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Buildings, (11<sup>th</sup> 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/567/2(2)/(LC-IR)

Date 18-6-19  
19

Copy forwarded for information to :-

1. The Judge, First Industrial Tribunal, West Bengal, with respect to his Memo No. 667-L.T. dated 30.05.19.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the matter of an industrial dispute between M/s. Brand Value Communications Ltd., Godrej Waterside, Tower-D1, 2<sup>nd</sup> Floor, Office No. 201 & 202, Plot No. 5, Block-DP, Sector-V, Salt Lake, Kolkata-700 091 and it's workman Smt. Anamika Mukhopadhyay, 28-B, G.T. Road, Shibtala, Shanti Abas, Flat No. 6, P.O. Bhadrakali, Hooghly, Pin- 712 232.

(Case No. 01/2018 u/s 10(1B) (d) of Industrial Dispute Act, 1947.

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

SHRI TANMOY GUPTA, JUDGE,  
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

The instant proceeding arose out of an application u/s. 10(1B) (d) of the Industrial Dispute Act, 1947 as amended on an application filed by the workman Smt. Anamika Mukhopadhyay against her employer M/s. Brand Value Communications Ltd. praying for passing an award holding the termination of her service by the said employer namely, the opposite party/company with effect of 1<sup>st</sup> April 2017 as arbitrary, unjust and illegal and also for her reinstatement of service with full back wages along with other consequential relief.

The case as put forward by the applicant/workman in the claim petition in brief is that she was appointed as Reporter by the management of the opposite party/ company vide appointment letter dated 01.09.2009. The opposite party/company used to operate News Times channel in electronic media and earned popularity amongst the viewers. Initially the applicant/workman was placed on probation for 6 months and subsequently on 15.04.2010 her service was confirmed and she became member of PF and her gross salary was enhanced to Rs. 12,500/- per month w.e.f. 01.05.2010 and in the year 2011, 10% salary was also increased like 2012 and as a result of which at the end of 2013 next salary of the applicant went up to Rs. 15,591/- per month. The management of the company used to disburse the salary more or less in time till March 2013. Thereafter there has been inordinate delay in payment of salary and as a result gradually it became very difficult not only for the applicant/workman but also for other employees to meet up monthly expenses due to poor economic condition. The applicant duly intimated the management through e-mail her monetary problem due to withheld of salary. The management assured her to over come the problems regarding payment of salary in time but it was found that such assurances was nothing but false from the side of the management. The



applicant by mail dated 06.03.2017 apprised the management as to her financial position due to non-receipt of salary but no positive response came from the side of the company. Thereafter the company straightway dismissed the applicant/workman from service through e-mail dated 31.03.2017 w.e.f. 01.04.2017. Neither any chargesheet nor any show cause containing allegation was served upon the applicant/workman. No domestic enquiry was held in consonance with the principles of natural justice. Being aggrieved against such decision of the management terminating her service the applicant/workman recorded her protest in writing on 11.04.2017 and requested the management to withdraw/rescind such unlawful termination order dated 31.03.2017 and to reinstate her in service with full back wages along with the consequential relief. But in spite of receipt of such letter management of the company did not care to response and then finding no other alternative the workman/applicant sought for intervention of the Labour Commissioner, Govt. of West Bengal for redress by letter dated 04.05.2017. On the basis of such letter conciliation proceeding was drawn up by the Assistant Labour Commissioner, Govt. of West Bengal. But due to adamant attitude of the management of the company no fruitful result came out. The management having adopted a dilatory tactics the workman/applicant submitted one Form-P4 on 05.12.2017 for obtaining conciliation pendency certificate in accordance with law and accordingly such certificate has been issued by the conciliation officer on 12.12.2017 in Form-S and thereafter the instant proceeding has been filed. It is contended that the applicant could not file the instant proceeding within 60 days due to some unavoidable difficulties as a result of forced unemployment by the management of the opposite party. Such delay was not deliberate and intentional and it is contended that such delay may be condoned. It is further contended that the applicant was all along rendered her service which was skilled as well as clerical nature and at no point of time she rendered her service either in managerial/administrative or any supervisory capacity. After forceful dismissal of service w.e.f. 01.04.2017 the applicant/workman could not get any alternative employment elsewhere in spite of rendering sincere efforts to that effect and as a result of which she is not gainfully employed elsewhere and is passing her days with financial hardship. On that score, the applicant/workman has filed the instant proceeding for an award holding that her termination of her service by the opposite party w.e.f. 1<sup>st</sup> April 2017 arbitrary, unjust and illegal and also for her reinstatement in service with full back wages and consequential relief.



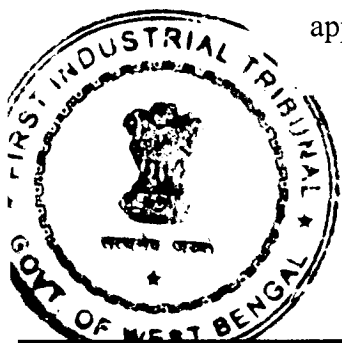
After registering the instant proceeding on the basis of such claim petition filed by the applicant notice was issued to the opposite party/company to appear and to file a written statement. The opposite party/company appeared by filing Vakalatnama and prayed time through recorded Advocate to file written statement. In spite of getting several opportunities no written statement has been filed by the opposite party. Thereafter notice to show cause was issued to the opposite party as to why the case shall not be heard ex-parte. In spite of service of such notice on it, the opposite party did not turn up. Accordingly, date was fixed for hearing of the case ex-parte. Even on the date so fixed, the opposite party did not turn up. Accordingly, the case was heard ex-parte.

Now the point stands for determination is whether the termination of service of the applicant w.e.f. 01.04.2017 by the opposite party/company is justified or not and whether the applicant is entitled to any relief.

The applicant/workman examined herself as WW1 by tendering her evidence-in-chief supported by affidavit. She has also produced some documents in support of her case which have been marked as exhibit-1 to exhibit-11.

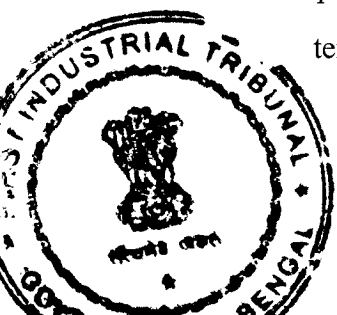
The applicant while examining herself as WW1 has stated that she was employed by the management of the opposite party/company as 'Reporter' by an appointment letter dated 01.09.2009. The said appointment letter has been marked as exhibit-4. She has also produced the offer letter (exhibit-3) issued by the company to her prior to issuance of such appointment letter (exhibit-4). The said offer letter (exhibit-3) is dated 25.08.2009. The witness has also stated that her service was confirmed by the management of the company. The said letter of confirmation has been marked as exhibit-5. The witness has also produced a letter dated 26.05.2010 issued by the management of the company enhancing her salary. Exhibit-7 is the statement of salary of the applicant received through Bank.

From such unchallenged testimony of WW1 coupled with the aforesaid documentary evidences it is well established that the applicant was appointed by the management of the company as Reporter. It is also well proved that her such service was confirmed subsequently w.e.f. 15.04.2010. Exhibit-6 clearly suggest that the salary of the applicant was enhanced w.e.f. 01.05.2010. From exhibit-7 as well as from the testimony of WW1 it is clear that the monthly salary of the applicant was Rs. 15,591/- in the month of June 2014.



The witness (WW1) has stated in her evidence-in-chief that before March 2013 the management used to disburse salary more or less in time but subsequently the management became habituated not to pay salary in time and sometimes there was inordinate delay in payment of salary and as a result of which gradually it became very difficult not only for the witness but also for other employees to meet up monthly expenses due to poor economic condition. The witness has stated further that she had appraised the management with regard to her financial position due to non-receipt of salary and also expressed her willingness and eagerness to work with the company but no positive response came from the side of the company. She then stated that the management of the company straightway dismissed her from service through E-mail on 31.03.2017 by casting a stigma in her service carrier mentioning therein some allegations against her. She has stated further that neither any chargesheet nor any notice to show cause containing allegation was served upon her by affording minimum opportunity to self-defence to her. Exhibit-9 is a copy of E-mail issued by the management of the company to the present workman by which it was informed to the workman that her service is no longer required w.e.f. 1<sup>st</sup> April 2017 and thereby terminated the service of the workman. In the instant proceeding the workman has challenged the validity and legality of the such order of termination.

From the materials as produced it is very much clear that the management of the company by issuing a letter dated 25.08.2009 offered the workman for appointment in the post of 'Reporter' vide exhibit-3 mentioning therein certain terms and conditions. It appears further that the workman was appointed as reporter by issuing an appointment letter (exhibit-4) by the management dated 01.09.2009 mentioning therein certain terms and conditions. On receipt of such appointment the workman/applicant started performing her duties and her service was confirmed w.e.f. 15.10. 2004 by the management of the company by issuing a letter of confirmation (exhibit-5). Exhibit-6 goes to show that the salary of the workman/applicant was enhanced w.e.f. 1<sup>st</sup> May 2010 and ultimately the service of the workman/applicant was terminated w.e.f. 1<sup>st</sup> April 2017. So, it is crystal clear from the statement of the WW1 as well as from the document produced by her which have remained unchallenged that from the date of her joining in service on 01.09.2009 in the company, the applicant/workman remain in continuous service of the company till the date i.e. 1<sup>st</sup> April 2017 when her service was terminated. It is alleged in the said letter of termination (exhibit-9) that the workman did not maintain her regular roster



which is considered by the management to be violation of the company's rules and regulations. It is also alleged that the negative attitude of the workman has created an adverse effect on both the performance of the workman as well as on office discipline. Nothing has stated in the said letter of termination (exhibit-9) the relevant provision of the rules and regulations of the company. In absence of any such rules and regulations it is not possible to determine as to what rules the workman has/had actually violated. The witness has produced some copy of e-mails on different dates issued by the company to her and vice-versa which have been marked as exhibit-8 series. From those documents it is seen that the workman/applicant has given reply to the management of the company on the point which was mentioned in those mails sent to her by the management. The management of the company might have some allegations against concerned workman/applicant but without affording her an opportunity of being heard can her service be terminated straightway in such a fashion which has been done in the instant case by the management of the company by issuing a mail (exhibit-9). No notice to show cause was issued to the applicant. No chargesheet was also issued against her. It is a settled principle of law that if an employer wants to punish an employee on the ground of any misconducts, the employer can do so only in conformity with the principles of natural justice. Where the rules do not provide any procedure for dealing with an employee accused of committing misconducts the concerned authority would have to furnish to the employee charges labelled against him and would have to afford him/her an opportunity to be heard. The principles of natural justice are those fundamental rules the breach of which will prevent justice from being seen to be done. The natural justice is another name of common-sense justice. Rules of natural justice are not codified canons but they are principles in grain into conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantial or natural ideas and human values. The aim of natural justice is to secure justice or to prevent miscarriage of justice.

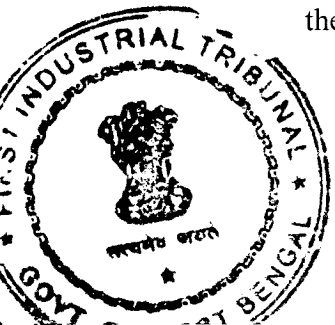
From the materials produced by the applicant/workman which have remained unchallenged it is clear that the management did not care to follow the fundamental principles of natural justice while terminating the service of the applicant/workman. As already discussed, had there been any positive allegation against the applicant, the company could very well issue notice to show cause to her seeking explanation and if the management did not satisfy with such reply of the workman then necessary charges could have been framed against her followed by departmental proceeding. Instead of observing all such basic



formalities, the management of the company by a stroke of pen terminated the service of the applicant/workman by issuing an e-mail dated 31.03.2017 w.e.f. 01.04.2017 in a very arbitrary manner. All such conduct of the management shows that the management do not care to follow the basic principles of natural justice. Considering all aspect of the matter the decision taken by the management of the company in terminating the service of the applicant/workman cannot be allowed to be sustained.

Now it would be appropriate to discuss another aspect of the matter. From exhibit-1 it appears that the applicant made an application on 05.12.2017 in Form P-4 before the conciliation officer for issuance of a pendency certificate relating to the conciliation proceeding. From exhibit-2 it appears that such certificate was issued by the conciliation officer on 12.12.2017. In terms of Section-10(1B) (c) the workman has to approach the Tribunal within 60 days from the date of receipt of such certificate. In the instant case the applicant/workman has come up before this tribunal by way of filing the claim petition on 06.03.2018 i.e. not within sixty days from the date of receipt of certificate (exhibit-2) issued by the Conciliation Officer. It is argued by the Ld. Advocate for the applicant/workman that in the claim statement in paragraph-10 the applicant has prayed for condonation of such delay for the reason mentioned therein. It is argued further that such time limit as provide in the statute is not mandatory and the same is a discretionary one as in the said Section 10(1B) (c) the word 'may' have been provided. In support of his contention Ld. Advocate has placed reliance on a case law as reported in 2011(130) FLR 719 (Ludlow Jute and specialities Ltd. and another Vs State of West Bengal and other).

Considered the submission as made by the Ld. Advocate for the applicant/workman. It has been observed by the Hon'ble Court in the said reported case that such time limit cannot be construed as a mandatory provision since the conceptual idea and the purpose of state amendment is totally beneficial action in favour of workman. On perusal of Section 10(1B) (b) of the said Act it is provided that the Conciliation Officer 'shall' issue certificate within seven days on receipt of the application under Clause-(a). But in Sec. 10(1B) (c) the word 'may' have been provided. So, considering such argument as advanced by Ld. Advocate for the applicant/workman and following the observation as made by the Hon'ble Court in the said reported case, I am of the view that a few days delay in filing the instant proceeding cannot stand in the way of entertaining the instant proceeding.





The WW1 has stated in her evidence-in-chief that after forceful dismissal from service she could not get any other alternative employment elsewhere inspite of rendering sincere efforts to that effect and as such she is not gainfully employed and passing her days in hardship. On due consideration, I do not find any reason to accept such unchallenged testimony of WW1. Accordingly, it is held that the applicant/workman is not gainfully employed since the date of termination of her service by the management of the company.

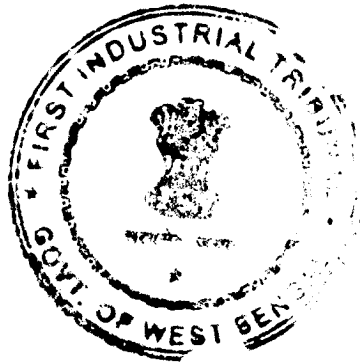
Therefore, on due consideration of all aspect of the evidence and materials on record and in view of earlier discussion and reasons stated therein I am constrained to hold that the opposite party/company has most illegally and arbitrarily terminated the service of the applicant/workman, namely, Smt. Anamika Mukhopadhyay with effect from 01.04.2017 by issuing e-mail dated 3103.2017. Consequently, it is held that such order of termination of service of the applicant/ workman is absolutely unjustified and illegal.

The opposite party/company is consequently directed to reinstate the applicant/workman, namely, Smt. Anamika Mukhopadhyay in her service forthwith with full back wages and continuity of service.

This is my A W A R D.

Dictated & corrected by me

Sd/ —  
Judge



Sd/- TANMOY GUPTA .

Judge  
First Industrial Tribunal  
Kolkata  
29.05.2019