

I/124217/2021

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. Labr/579/(LC-IR)/22015(16)/115/2020 Date: 04-03-2021

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr./1202/(LC-IR) dated 02.11.16 and Labr./305/(LC-IR) dated 03.07.16 the Industrial Dispute between M/s Dihibatpur Cold Storage (P) Ltd., P.O. Alati, P.S. Pursurah, Hooghly - 712414 and their four workmen represented by Hooghly District Cold Storage Employees Union, 85/3, G.T. Road (West), Serampur, Hooghly regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Third Industrial Tribunal, West Bengal.

AND WHEREAS the Judge of the said Third Industrial Tribunal, West Bengal, 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

Date: 04-03-2021

No. Labr/579/1(5)/(LC-IR)

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

1. M/s Dihibatpur Cold Storage (P) Ltd., P.O. Alati, P.S. Pursurah, Hooghly - 712414.
2. The Secretary, Hooghly District Cold Storage Employees Union, 85/3, G.T. Road (West), Serampur, Hooghly.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

No. Labr/579/2(2)/(LC-IR)

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, West Bengal with reference to his Memo No. 248 - L.T. dated 24.02.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary  
Date: 04-03-2021

Deputy Secretary

## BEFORE THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL.

Present - Sanjeev Kumar Sharma,  
Judge, 3<sup>rd</sup> Industrial Tribunal,  
Kolkata.

**Case No. VIII-32/2016.**

**Award**

**Date-23.02.2021**

In the matter of an Industrial Dispute between Messers Dihibatpur Cold Storage (P) Ltd., P.O.- Alati, PS- Pursurah, Hoogly-712414 and four workmen namely (i) Manishankar Majhi, (ii) Samiran Mitra, (iii) Arjun Kumar Bhowmick and (iv) Anil Malik represented by Hoogly District Cold Storage Employees Union, 85/3, G. T. Road (West) Serampore, Hoogly referred to this Tribunal vide Reference order No. Labr./1202/(LC-IR) dated 02.11.2016 corrected under order No. Labr./305/(LC-IR)/IR/11L-01/16 dated 03.07.2016 of the Labour Department, Govt. of W.B.

**ISSUES**

1. Whether the refusal of employment of the four workmen by the management w.e.f. 03.03.2015 justified?
2. If not, what relief are the workmen entitled to ?

The case of the union as depicted in their written statement is that the four workmen were the permanent workers of the cold storage. In the year 2009 the Company/cold storage management published a closure notice and made application before the State Govt. seeking permission of closure under the Industrial Disputes Act 1947 along with list of permanent employees which included the names of these four workmen. On 01.03.2015 when the cold storage reopened for loading purpose, most of the permanent employees were taken back by the management and were allowed to resume their duties but the management refused to allow the four workmen to resume their duties. On and from 01.06.2015 to 01.07.2015 the four workmen entered the cold storage premises and worked there but they were not allowed to sign the attendance register. Refusing the four

workmen to enter into their workplace by the management without any show cause notice, information and opportunity of hearing amounted to illegal termination and retrenchment in violation of the principles of natural justice. The union prayed for a direction upon the cold storage management to allow the four workmen to resume their duties as permanent workmen and to pay back wages from 01.04.2009.

The Company/cold storage in their written statement in three parts denied the material allegations made by the union. According to the Company the written statement of the union being hopelessly belated is not maintainable and the no dispute proper having been raised it cannot make it an industrial dispute. It also questioned the validity of the conciliation proceeding being I. D. case No. 03 of 2016/DLC/Serampore conducted by Sri R. Mukherjee, Asst. Labour Commissioner, Serampore. The Company challenged the membership of the union of the four workmen. The Company claimed that the four workmen never raised any dispute with the management and the allegations leveled in their advocates letter dated 08.10.2015 addressed to the Labour Department directly are strongly denied. It further claimed that due to acute financial crisis for lack of resources, shortage of working capital as well as fund for maintenance of the cold storage, old machineries and equipments and increase in the running cost the Company shut down the cold storage on and from 01.04.2009 with approval of the Govt. in accordance with law. It further claimed that on 01.03.2015 when the cold storage opened for loading purpose 14 workmen came back to join their usual duties but the 4 workmen under reference did not turn up despite information to them by the management through the other workmen. The four workmen willfully absented themselves from their duties for long time without any information which amounted to abandonment of service by them as such the Company had no other option but to remove their names from its roll. It further claimed that it is not a case of refusal of employment rather the four workmen themselves abandoned their service. The Company stated that a few workmen tendered their resignation after acceptance of which by the management they prayed for re-employment whereupon they were given fresh appointment on contractual basis and one of the four workmen namely Manishankar Majhi was also working with the Company. It pleaded that due to floods in the Hoogly District in July 2017 all the books of accounts and relevant

documents of the cold storage were lost. It also pleaded that the four workmen had filed a writ petition being WP No. 964 (W) of 2016 before the Hon'ble Calcutta High Court which was dismissed as not pressed on 07.03.2016. According to the Company there arises no question of payment of wages for the closure period and reinstatement of the four workmen in permanent status as their services have been abandoned due to long unauthorised absence. The case has no merit and it deserves to be dismissed with compensatory cost.

In order to establish its case, the union examined its general secretary Mr. Achintya Das as PW1. It brought on record the following documents.

1. Copies of subscription receipts (10 sheets) issued by the union to the four workmen as Exhibit-1 collectively.
2. Copy of service card of workman Manishankar Majhi as Exhibit-2.
3. Copy of closure application (14 sheets) of the Company to the Secy. Govt. of W.B. as Exhibit-3 collectively.
4. Copy of list of the names of permanent workmen (Annexure P3) as Exhibit-4.
5. Copy of memo issued by the Company for clearing the payment of VDA+ as Exhibit-5.
6. Copies of Provident Fund receipts of workmen (six sheets) as exhibit-6 collectively.
7. Copy of pay register for the month of November 2008 (two sheets) as Exhibit-7.
8. Copy of Id. Advocates letter (6 sheets) as Exhibit-8.
9. From- H as exhibit-9.
10. Copy of certificate of the union as Exhibit-10.
11. Copy of rules and regulations of the union as Exhibit-11.
12. Copy of joint petition before ALC, Arambagh, Hoogly as Exhibit-12.
13. Copy of the joint petition before the Director of the Company as Exhibit-13.
14. Copy of the president of the union addressed to the managing director of the Company as Exhibit-14.
15. Copy of letter of the general secretary of the union addressed to DLC, Serampore and Arambagh as Exhibit-15.
16. Copy of letter of ALC, Arambagh addressed to the managing director of the Company as Exhibit-16.
17. Copy of complaint letter of general secretary of the union addressed to OC

Pursurah PS as Exhibit-17.

18. Copy of letter of union addressed to Addl. Labour Commissioner as Exhibit-18.

19. Copy of letter of the general secretary of the union addressed to W.B Cold Storage Association as Exhibit-19.

20. Copy of letter of ALC addressed to the Company as Exhibit-20.

21. Copy of letter of the union addressed to DLC, Serampore as Exhibit-21.

22. Copy of letter of the four workmen addressed to the Director of the Company as Exhibit-22 and

23. Copy of letter of the four workmen addressed to DLC, Arambagh, Serampore as Exhibit-23.

The Company examined it's Director Mr. Suchand Das as OPW1 and brought the following documents on record.

1. Resignation letter of Manishankar Majhi as Exhibit-A.

2. Company's letter addressed to Manishankar Majhi as Exhibit-B.

3. Letter to Manishankar Majhi (2 sheets) as Exhibit-C.

4. Copy of application of the Company addressed to the Secretary, Labour Dept. Govt. of W.B. for approval of closure (16 pages) as Exhibit-D and

5. Copies of the resignation letters of the employees (18 pages) as Exhibit-E collectively.

### **DECISION WITH REASONS**

Learned advocate for the Company challenges the maintainability of the case on various grounds. At the very onset he submits that the reference has been made in respect of four workmen but one of the workmen has already submitted resignation and is presently working in the Company after obtaining fresh appointment. Thus, the very basis of the reference is shaken. Since the reference relates to four workmen, this Tribunal cannot bifurcate the same as it has no jurisdiction to go beyond the terms of reference. In support of his contention he refers to the decision of the Hon'ble Supreme Court in ***Delhi Cloth and General Mills Co. Ltd. Vs Their workmen reported in 1967 1 LLJ 423***. In this decision the Hon'ble Supreme Court held that the tribunal must confine it's adjudication to the points referred to and the matters incidental thereto. In other words the tribunal is not free to enlarge the scope of the dispute referred to it but must confine it

attention to the points specifically mentioned and anything which is incidental thereto. Learned advocate for the union on the contrary submits that the joining of service of the Company by one of the workmen cannot make the tribunal to travel beyond the reference.

It is found from the evidence of PW1 as well as OPW1 that one of the workmen namely Manishankar Majhi resigned and has been re-employed by the Company. PW1 stated that the said Manishankar Majhi was forced to resign by the Company but there appears no material on record to substantiate the allegation made by PW1. There is nothing on record to indicate that the said workman ever made any complain before any authority to the effect that he was forced to resign. The acceptance of re-employment by him rather shows that he accepted the terms of the Company voluntarily. It is found from the record that during cross-examination of PW1 on 27.11.2018 the said Manishankar Majhi was present in the tribunal room but he did not make any complain. Thus, it can reasonably be inferred that the said Manishankar Majhi voluntarily resigned and accepted re-employment in the Company and thereby abandoned his claim in this case. Evidently the other three workmen did not give up their claim. One of the plaintiffs cannot abandon the entire suit, similarly the act of one of the workman cannot throw the cause of the other workmen and block the remedy and relief available to others. In that view of the matter, I hold that the act of the workman who abandoned his claim will not bar the remedy/relief, if any, available in law to the other workmen. Even if one of the workmen has surrendered the cause of action remains the same and unaltered so far as the other workmen are concerned. Thus, there is no question of traveling beyond the reference.

Learned advocate for the Company contends that the union has no *locus standi* to espouse the cause of the workmen. He submits that the workmen did not raise the dispute with the management and no resolution of the union is produced to show that the union resolved to espouse the cause of the workmen. He also submits that the written statement of the union does not speak of any conciliation proceeding which signifies that no conciliation took place. Referring to Exhibit-8, learned advocate submits that the workmen raised dispute through their learned advocate in their personal capacity and not through the union therefore the dispute alleged is individual. Learned advocate cites the decisions of the Hon'ble Calcutta

High Court in *Capital Ltd. Vs Eight Industrial Tribunal, W.B. reported in 2006 (111) FLR 597* and in *Deepak Industries Ltd. Vs State of W.B. reported in 1975 (30) FLR 106*. He further submits that the written statement of the union is not verified as required by law as such the same is unacceptable. He also submits that if the alleged refusal amounted to termination, section 25F of the I. D. Act would apply where continuous service as defined in section 25B is the condition precedent. When the cold storage was closed since 2009 how the workmen can be said to be in continuous service. He also submits that the dispute alleged does not fall under schedule II or III as such the reference itself is bad in law.

Learned advocate for the union, on the other hand submits that the workmen are the members of the union and the union has all along been fighting for their cause. He submits that the union is registered one and the copy of certificate of registration has been produced before this tribunal. He cites the decision of the Hon'ble Supreme Court in *Chairman, State Bank of India Vs All Orissa State Bank Officers Association reported in AIR 2003 SC 4201*. He concedes that the written statement of the union is not duly verified but he contends that the same has been accepted by the tribunal and the Company filed it's WS. He also submits that the workmen are permanent workmen is evident from the list of workmen annexed to the application for closure submitted by the Company to the Govt. He further adds that the refusal by the management to join duties by the workmen very much amounts to termination of their service.

Exhibit-1 are the copies of the membership subscription receipts issued by the union in the names of the four workmen and Exhibit-10 is the copy of the certificate of registration of the union issued by the Registrar of Trade Unions under the Trade Unions Act 1926. Exhibit-9 shows that PW1 is the General Secretary of the Union. Evidence of PW1 is that the workmen are the bonafide members of the union and the t union has up to date registration. Exhibit-13 is the copy of the representation submitted by certain workmen to the management of the cold storage on 12.12.2014 on their coming to know that the closed cold storage was going to reopen. The representation bears the signature and seal of the General Secretary of the union. Exhibit-22 is the letter submitted by the four workmen to the Director of the cold storage on 31.05.2015 with request to allow them to join their duties. Exhibit-23 is the copy of letter dated 10.06.2015 written by the four

workmen to Deputy Labour Commissioner, Serampore, Hoogly ventilating their grievance that on reopening the management of the cold storage has permitted the workmen who surrendered to the management to join on contract basis but did not allow the four workmen to join in their permanent status. This letter also bears the seal and signature of the General Secretary of the union. The written statement of the Company itself speaks that conciliation proceeding being I. D. case No. 03 of 2016/DLC/Serampore was conducted by Sri R. Mukherjee, Asst. Labour Commissioner, Serampore. Company could have caused production of the conciliation file but it did not do so. In the facts and circumstances raising of dispute by the workmen through their learned advocate through Exhibit-8 does not debar them from being represented by the union of which they are the members. Considering the evidence and materials on record and in light of the decisions cited by both the sides, I find no force in the claim of the Company that no dispute was raised by the workmen with the management and the union has no *locus standi* to espouse the cause of the workmen. The obtaining of resignation of the employees by the Company as condition precedent for re-employing them also signifies that the employer-employee relationship subsisted all along. Since the employer-employee relation continued even after stopping of the operation of the cold storage the workmen shall be treated to be in continuous service. The absence of verification in the WS filed by the union was not raised by the Company even in their WS. The WS of the union was accepted by the tribunal on the basis of which this case proceeded. Raising this technical issue at this stage is of no significance. Moreover the substance and not the form is material.

Learned advocate for the Company relied upon the decision of the Hon'ble Rajasthan High Court in ***Maharaja Shree Umaid Mills Ltd. Vs Judge, Labour Court reported in 2006 I CLR 269*** in support of his contention that there was no refusal to work on the part of the Company and burden is upon the union to prove that the Company refused work to the workmen. He submits that it is a case of abandonment of service by the workmen and not of refusal by the Company. Now, Exhibit-12 to 23 are the documents which go to show that the workmen always expressed their willingness to join themselves as well as through the union. Evidence of OPW1, director of the Company, to the effect that the four workmen were not allowed to join as they did not want to resign speaks a volume. It clearly



shows the intention of the Company that it did not allow the workmen to join in their original status rather it wanted the workmen to resign first and then to join at its terms. Exhibits-A, B, C and E, the resignation letters and contractual employment to the resigning workmen also fortify the design of the Company. The employment on contractual basis was not acceptable to the four workmen and therefore they were not allowed to join. In the facts and circumstances the decision in ***Maharaja Shree Umaid Mills Ltd.*** is of no avail to the Company. Refusal by the Company to allow the workmen to join in their original status of permanent workmen certainly amounts to retrenchment.

Learned advocate for the Company contends that the closure was not challenged by the workmen as such the tribunal cannot inquire into the motive of closure and it cannot decide if the closure was justified or not. He cites the decision of the Hon'ble Supreme Court in ***Indian Hume Pipe Co. Vs Their workmen reported in FLR 1968 (17) SC 145.*** Learned advocate for the union on the other hand submits that the closure means permanent close down of the business but in this case the Company reopened after some years. Exhibits-3 and D are the copies of application for approval of closure made by the Company before the Secretary to the Govt. of W. B. Labour Deptt. There is no material on record to show that the proposed closure was approved by the Govt. and the workmen were compensated under section 25FFF of the Industrial Disputes Act.

The distinction between a lockout and a closure has been explained by the decision of the Hon'ble Supreme Court in the ***Management of Express Newspapers Ltd. v. Workers and Staff employed under it reported in AIR 1963 SC 569*** where it was observed by the Hon'ble Supreme Court that in the case of a closure the employer does not merely close down the place of business but he closes the business itself finally and irrevocably. A lockout on the other hand indicates the closure of the place of business and not closure of the business itself. In ***M/s Maruti Udyog Ltd. Vs Ram Lal and others reported in 2005 AIR SCW 654*** the Hon'ble Supreme Court held, "The Parliament amended the provisions of the 1947 Act by inserting Section 25FF and Section 25FFF therein by reason of the Industrial Disputes (Amendment) Act, 1957 with effect from 28-11-1956, as it was found that having regard to the helpless condition to which workman would be thrown if his services are terminated without payment of compensation and

presumably on the ground that if a reasonable compensation is awarded, he may be able to find out an alternative employment within a reasonable time. In the case of closure of an industrial undertaking the Act contemplates payment of compensation alone". In this case we find no evidence of approval of the closure by the Govt. and payment of compensation by the Company to the workmen. Evidence of OPW1 says that the Company had withdrawn the closure. It is therefore found that the operation of the cold storage was closed for a certain period but there was no legal closure within the meaning of section 2(cc) of the Industrial Act 1947. Since there was no lawful closure the workmen are entitled to their continuous employment.

The Company's claim that the workmen abandoned their service does not find support from the facts and circumstances of the case as the evidence on record clearly shows that the Company wanted them to join on contractual basis though they were the permanent workmen. Refusing to tender resignation and accept re-employment thereafter on contractual basis acceding to demand of the Company by the workmen cannot not lead to infer that the workmen had intention to abandon and relinquish their service in view of the legal proposition laid down in ***G. T. Lad Vs Chemical and Fibres Ltd. reported in AIR 1970 SC 582***, referred to by learned advocate for the union.

The Company's plea that the workmen abandoned their service by their long unauthorised absence and therefore their names were removed from the roll of the Company does not find support from the evidence of OPW1 which rather says that they were not allowed to join as they refused to resign. Thus, the Company's claim that the service of the workmen stood abandoned is not believable.

Now, one of the workmen namely Manishankar Majhi resigned from the Company on 26.05.2016 prior to the reference and accepted contractual service in the Company. Since the workman resigned, his service in the Company in his original status came to an end and therefore the industrial dispute between him and the Company stood evaporated. So far as the workmen namely Manishankar Majhi is concerned there cannot be said to exist any Industrial dispute. It is found from the evidence of PW1 as OPW1 that the said Manishankar Majhi is still working in the cold storage. Exhibit-A is the copy of resignation letter dated 26.05.2016 of Manishankar Majhi, Exhibit-B is the copy of letter of the Company to Manishankar

Majhi showing the acceptance of the resignation by the Company on 27.05.2016 and Exhibit-C is the copy of letter of employment dated 30.05.2016 issued the Company in favour of Manishankar Majhi. Therefore, the story introduced by PW1 that he was forced to resign, not supported by evidence, is not believable. Moreover, other three workmen who are similarly circumstanced did not resign.

The case of the workmen is that after the reopening of the cold storage they worked there from 01.06.2015 to 10.07.2015 but they were not allowed to sign the attendance register. Exhibit-23, copy of letter submitted by the workmen to ALC Arambagh on 10.06.2015, also allege that they were working in the cold storage from 01.06.2015 but they were not allowed to sign the attendance register. Exhibit-22 is the copy of letter by the four workmen submitted to the Company on 31.05.2015 expressing their willingness to join to their duties on and from 01.06.2015. Admittedly operation of the cold storage resumed from 01.03.2015. It appears from the materials on record that the union and the workmen started activities for resumption of duties of the permanent workmen sensing that the cold storage was going to resume operation. We find from the evidence on record that the workers who did not resign and accept contractual employment were not allowed to join.

Evidently, the operation of the cold storage was closed from 01.04.2009 to 01.03.2015 and no dispute was raised in that regard. The workmen did not demand any wages during that period. It is no case of the union either in the pleading or in the evidence of PW1 that the workmen were not employed anywhere in the meantime.

After taking into account all the facts and circumstances of this case and foregoing discussions this tribunal is of the view that the refusal of employment to the by the management w.e.f. 03.03.2015 was not justified and accordingly the workmen namely 1. Samiran Maitra, 2. Arjun Kumar Bhowmick and 3. Anil Malik are entitled to reinstatement in their original positions. In view of the fact that the operation of the cold storage was stopped from 01.04.2009 to 01.03.2015 and the said stoppage of work was not challenged, I am not inclined to award back wages from 01.04.2009. In absence of any evidence that the three workmen were not gainfully employed anywhere else and also keeping in mind that the Company had to stop operation of the cold storage due financial crisis, I hold that back wages

from 01.03.2015 till their date of reinstatement at the rate of 25% would be just and reasonable.

The issues are thus disposed of accordingly.

Hence it is,

**Ordered**

That the workman Manishankar Majhi is not entitled to any relief in this case while the workmen 1. Samiran Maitra, 2. Arjun Kumar Bhowmick and 3. Anil Malik are entitled to reinstatement in their original positions with 25% of back wages from 01.03.2015 till their reinstatement.

Messers Dihibatput Cold Storage (P) Ltd. is directed to reinstate the workmen 1. Samiran Maitra, 2. Arjun Kumar Bhowmick and 3. Anil Malik in service and pay 25 % of back wages to them from 01.03.2015 till their reinstatement within 90 days of such reinstatement.

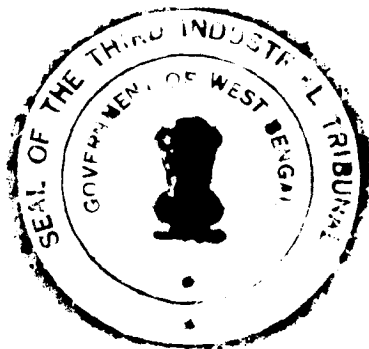
Let, the copies of the award be sent to the Labour Department, Government of West Bengal in accordance with the usual rules and norms.

This is my award.

Dictated and corrected by me

sd/-

Judge



sd/-

( Sanjeev Kumar Sharma )

Judge

3<sup>rd</sup> Industrial Tribunal

Kolkata

23.02.2021