

I/127015/2021

Government of West Bengal
Labour Department, I.R. Branch

N.S.Buildings, 12th Floor, 1, K.S. Roy Road, Kolkata - 700001

No. Labr./ 736/(LC-IR)/22015(16)/13/2021 Date: 19.03.2021

ORDER

WHEREAS an industrial dispute existed between M/s L. S. Davar & Co., Globsyn Crystals, Tower - 1, 2nd Floor, Block - EP, Plot - #11 & 12, Sector - V, Salt Lake, Kolkata - 700091, and its workman Sri Krishnadas Bhattacharjee, Vill. - Baruli, P.O. - Dakshin Gobindapur, P.S. - Sonarpur, Dist. - South 24 Parganas, Pin - 700145 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, First Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;


AND WHEREAS the said Judge, First 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

Date: 19.03.2021

No. Labr/736
...../1(2) - IR (LC)

Copy forwarded for information to :

1. The Judge, First Industrial Tribunal with reference to his Memo No. 411 - L.T. dated 15.03.2021.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

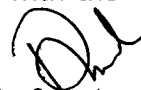
No. Labr/736
...../2(5) - IR (LC)

Deputy Secretary

Date: 19.03.2021

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

1. M/s L. S. Davar & Co., Globsyn Crystals, Tower - 1, 2nd Floor, Block - EP, Plot - #11 & 12, Sector - V, Salt Lake, Kolkata - 700091.
2. Sri Krishnadas Bhattacharjee, Vill. - Baruli, P.O. - Dakshin Gobindapur, P.S. - Sonarpur, Dist. - South 24 Parganas, Pin - 700145.
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (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

In the matter of an industrial dispute between Shri Krishnadas Bhattacharjee.
– Baruli, P.O. – Dakshin Gobindapur, P.S. – Sanarpur, District – South
Parganas, Pin – 700 145 against his employer M/s. L. S. Dey & Co., Glass
Crystals, Tower – 1, 2nd Floor, Block – EP, Plot - #11 & 12, Sector – V, Salt Lake,
Kolkata – 700 091.

Case No. 02/2017 U/S 2A (2) of the Industrial Dispute Act 1947

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order : 23.02.2021

Case No. 02/17 U/s 2A(2)

This is an application for passing appropriate order out of Repealing and Amending Act, 2016 and the Industrial Dispute (amended) Act, 2010.

It is mentioned by the application to the effect that the Workman Krishnadas Bhattacharjee filed an application U/s 2A(2) of the Industrial Dispute Act, 1947 challenging his alleged termination of service by way of refusal of employment on 03.07.2017.

Thereafter, the opposite party filed its written statement and the parties to the case filed their documents and issues were framed and both the parties laid their evidences.

During this procedure being continued the Repealing and Amendment Act, 2016, the whole of the Industrial (amended) Act, 2010 has been replaced and after the ascent of the President being received on 06.05.2016. It is further stated that Section 2A(2) had been inserted in the Industrial Dispute Acts, 1947 w.e.f.15.09.2010.

Now the Government of India under Ministry of Law & Justice (Legislative Department) published a Gazette Notification on 19.05.2016 called as the Repealing and Amendment Act, 2016.

And in view of the said Repealing of the Industrial Dispute Act, 2010, there is no existence of Section 2A(2) any more with effect from 06.05.2016 and since the instant dispute has been filed by the Workman on 22.09.2017 i.e. after the Repealing and Amending Act, 2016, the instant application filed U/s 2A(2) is not maintainable in law and therefore, the instant case No. 2/2A(2) of 2017 being filed on 22.09.2017 cannot survive in law as it has become in-fractious as well as inapplicable of adjudication since the whole of Industrial Dispute (Amended) Act, 2010 has been repealed.



In view of the aforesaid submission, it is prayed that the instant application dated 22.09.2017 is not maintainable in law and should be dismissed.

On the other hand written objection has been filed on behalf of the Workman in respect of the application filed by the opposite party dated 07.01.2020.

It is stated that the application is not maintainable in law and in facts and is be laid ploy to delay the disposal of the case on merit and it is filed with ultrarary motive which is unjust as well as abuse of the process of law because of the fact the purported notification dated 09.05.2016 annexed by the petitioner / Company, has not yet been given effect to by the Government of India and therefore, it is ineffective and are only dead letters within the force of law.

It is further submitted that similar enactments like Act for 46 of

- a) The act 46 of 1982 amending Section 2(j) of the Industrial Dispute Act, 1947.
- b) The Code on Wages, 2019 introducing a single enactment in place of 4 enactments,

which have received the assent of President of India but yet to be given effect to by the Government of India and as such the said enactments are not yet effective and only the dead letters are in force of law.

Lastly it is submitted that the instant submission filed by the Company / employer has not been properly verified, which is a incurable regularity from the end of opposite party and as such the said application is not maintainable in law and be dismissed with exemplary cost for abusing the due process of law and also for harassing the applicant.

In support of his case Ld. Counsel for the Workman has filed the following citations:

- 1) 1982 LAB.I.C. 275, in a case between Raghunath vs. State of Madhya Pradesh and Others, wherein it is held that the repeal shall not affect the continuance of any such amendment made by enactments so repealed and no operation on the commencement of this act.

- 2) AIR 1973, Kerala, 136, in a case between Raman Sahadevan vs. R. Kesovannair, wherein it is held that the repeal of amending act does not affect the amendments, which have already been brought into the main act.

- 3) AIR. 1980, Allahabad 119, in a case between Municipal Board, Lucknow vs. Ram Autar, wherein it is held that it is a well-known rule of interpretation that if a particular meaning lead to consequences which are manifestly inconvenient and unjust, this meaning should be avoided if it is possible to do so without doing violence to the spirit of the language used in the statute.



It is only where the language used unambiguous and imperative that the court can accept such a meaning. No doubt if the words are not capable of any other meaning, they must be interpreted in that manner even if they lead to a manifest absurdity. But as observed in *Salmon by Duncombe* (1886) 11 AC 627 at p. 634 where the main object and intention of a statute are clear from the title, preamble, or otherwise it should not be reduced to a nullity by a literal following of language, which may be due to want of skill or knowledge, or the part of a draftsman, unless such language is intractable. To the same effect are the observations of Lord Esher in *Re-Brockelbank*(1889) 23 QBD 461 at p. 462. Lord Esher observed.

- 4) AIR 1960, Supreme Court 89, in a case between *Jethanand Betab vs. State of Delhi* (Now Delhi Administration).
- 5) Air 1954, Calcutta 484, *Khuda Bux vs. Manager Caledonis Press*.

I have perused the petition and written objection of the respective parties alongwith the rulings alleged by the opposite party to that effect carefully and considered.

This is a case under section 2A(2) of the Industrial Disputes Act, 1947 as amended filed by the applicant Workman namely *Krishnadas Bhattacharjee* challenging his alleged termination of service by way of refusal of employment on 03.07.2017 with a prayer to reinstate him in service with full back wages / salary and other consequential benefits.

Now the point which comes for consideration is that as to whether the applicant can be permitted to continue the instant case even after the fact that the section 2A(2) of the Industrial Disputes Act, 1947 has been repealed by Repealing and Amending Act, 2016 (No. 23 of 2016) with effect from 09.05.2016 or not.

Let us consider the relevant provision of the Industrial Disputes Act, 1947 in that respect.

Before the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), Section 2A of the said Act was as follows:

2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. – Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.



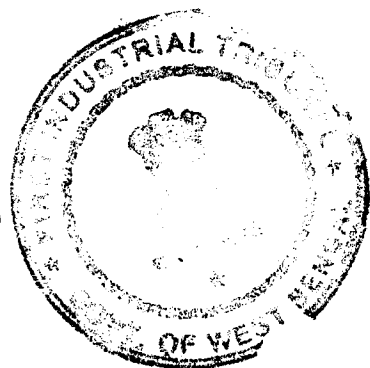
By the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), Section 2A was renumbered as sub-section (1) and by the same Act i.e. Act 24 of 2010 sub-section (2) and sub-section (3) came to be inserted after section 2A (1) of the I. D. Act. The said amendment came into effect on and from 15th September, 2010 and after such amendment section 2A runs as follows:

[2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute. – (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]

Thereafter, by the Repealing and Amending Act, 2016 (No. 23 of 2016), the whole Industrial Disputes (Amendment) Act, 2010 (24 of 2010) has been repealed. The said Repealing and Amending Act, 2016 (No. 23 of 2016) came into effect on and from 09.05.2016, as it appears in the Gazette of India (Extraordinary, Part-II, Section 1). In absence of any specific provision to the contrary, the Repealing and Amending Act, 2016 (No. 23 of 2016) is to be held operative prospectively. So, original Section 2A of the Industrial Disputes Act 1947 came into force again on and from 09.05.2016.



Admittedly, the instant case has been filed under Section 2A(2) of the Industrial Disputes Act, 1947, as amended on 25.09.2017 which is long after repealing of the Industrial Disputes (Amendment) Act, 2010 (24 of 2010) repealed by the Repealing and Amending Act, 2016 (23 of 2016). So, it is clear that on the date of filing of the instant case i.e. on 25.09.2017, there is no existence of Section 2A(2) of the Industrial Disputes Act, 1947 and / or Section 2A(2) of the said Act had no application on 25.09.2017.

Therefore, I find no such reason to pass any order so that the present applicant Krishnadas Bhattacharjee can be permitted to continue the case even after passing of the Repealing and Amending Act, 2016 with effect from 09.05.2016. It is clear that the Repealing and Amendment Act, 2016 with effect from 09.05.2016 has wiped out the provision being laid down under Section 2A(2) of the Industrial Disputes Act but facts remains the right of the workman to file the case has not been wiped out on the ground of illegal termination and refusal of employment as because there is certain provision being existed in the Act.

Therefore, the Workman may file the case once again through conciliation proceeding but in no way he can be allowed this case to continue the same or to run the same under Section 2A(2) of the Industrial Disputes Act, 1947 after enforcement of Repealing and Amendment Act, 2016 (23 of 2016) with effect on and from 09.05.2016.

In my considered opinion for ends of justice the Workman can be given liberty to withdraw the case and to file the same a fresh according to the existing provision of the Industrial Disputes Act on the other had Section 2A(2) of the Act itself.

Hence it is,

ORDERED

The petition filed by the opposite party Company in regard to the maintainability of the instant case under Section 2A(2) of the Industrial Disputes Act is being disposed of in accordance with my view as discussed above

The present applicant of the instant case named Krishnadas Bhattacharjee is permitted to withdraw the instant case being filed under Section 2A(2) of the Industrial Disputes Act with a liberty to file a fresh / or to Sue a fresh in accordance with the existing provision being laid down in the Industrial Disputes Act, 1947 and accordingly the instant petition is disposed of.

This is my **AWARD**.

The Award be sent to the Government.

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)
Judge

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

