

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

No. Labr./ 760/(LC-IR)/22015(16)/656/2019

Date : 16.08-2019

ORDER

WHEREAS an industrial dispute existed between M/S. J.P.M. Exports (P) Ltd., 1, British India Street, Room No. 612, Kolkata – 700 069 and Sri Tej Narayan Nirala, C/o. Sri A.K. Singh, 91, N.S. Road, Kolkata – 700 001 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 filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Seventh Industrial Tribunal 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 Seventh Industrial Tribunal heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

ISSUE

- 1) Whether the case is maintainable in law ?
- 2) Whether the applicant had abandoned his job and as a consequence if his claim for entitlement for reinstatement is justified ?

AND WHEREAS the said Judge Seventh 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

157635/2019

No. Laba/760/1(5)/(LC-IR)

Date : 16.08.2019

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

1. M/s J.P.M. Exports (P) Ltd., 1, British India Street, Room No. 612, Kolkata - 700 069.
2. Sri Tej Narayan Nirala, C/o. Sri A.K. Singh, 91, N.S. Road, Kolkata - 700 001.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Buildings, (11th 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.

RS 21.8.19
Deputy Secretary

No. Laba/760/2(2)/(LC-IR)

Date : 16.08.2019

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal, West Bengal, with respect to his Memo No. 1003 - L.T. dated 26.07.2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

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

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

CASE NO. 24/2014

Under Section 10(1B)(d) of the Industrial Disputes Act, 1947

Shri Tej Narayan Nirala,
C/o. Shri A.K. Singh,
91, N.S. Road, Kolkata-700001.

...Applicant

-Versus-

M/s. J.P.M. Exports (P) Ltd.,
1, British India Street, Room No.612, Kolkata – 700 069.

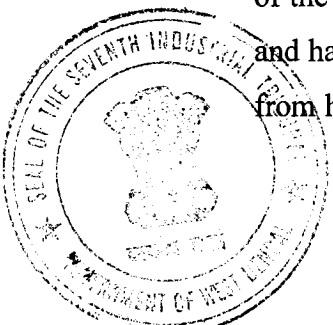
...OP/Company

A W A R D

Dated : 24-07-2019

The applicant after obtaining a certificate in prescribed Form "S" under Rule 12A(3) of the West Bengal Industrial dispute Rules, 1958 on 07.05.2014 filed the present petition before this Tribunal under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (West Bengal Amendment) challenging the termination of his service with a prayer for reinstatement with full back wages and consequential benefits.

The applicant's case, in short, is that - he is a professional driver and was engaged by the OP/Company as driver in the year 1999 and accordingly, he worked till the date of his termination of service i.e. 05.02.2013; that the OP/Company is a well reputed and well profit earning concern, but has little regards to observe the provisions of Industrial Laws, especially those are enacted for the welfare of the workman; that the applicant is also a victim of aforesaid unfair labour practice so followed by the OP/Company; that no appointment letter was issued in his favour and he was paid meager wages and deprived of so many legitimate entitlements by the OP/Company during his employment; that at the initial stage he was appointed under M/s. Amrit Exports (P) Ltd. and subsequently he was absorbed in the OP/Company under name and style as J.P.M. Exports (P) Ltd., with the verbal assurance to maintain his continuity of service, by the employer, who was the owner of the previous company and also of the later one; that though he was very much sincere and hardworking during his tenure of employment, yet all on a sudden he was terminated from his service w.e.f. 05.02.2013 by verbal order, without assigning any reason or prior



Contd.....

notice or charge-sheet or domestic enquiry or compensation or monetary benefit. It is also stated that at that point of time his monthly salary was of Rs.10,800/-; that he protested against the order of his wrongful termination sending a written representation dated 07.02.2013 addressed to the OP/Company simultaneously demanding his immediate reinstatement in service with full back wages along with consequential benefits accrued thereto and delivered the said letter by hand to the OP/Company; that in spite of receiving said letter, the OP/Company did not response to the same and under such circumstances, he referred the matter before the Ld. Labour Commissioner, Government of West Bengal, vide his letter dated 13.03.2013 seeking intervention into the instant dispute and accordingly, Mr. M. Sinha, Assistant Labour Commissioner took up the said dispute for conciliation and tried to settle the dispute but nothing could be achieved due to non-compromising and adamant attitude of the OP/Company and so finding no other alternative, he submitted an application in Form P-4 dated 14.01.2014 before the Conciliation Authority praying for issuance of a certificate regarding pendency of the conciliation proceedings and said Conciliation Officer accordingly issued a certificate in prescribed Form-S u/S. 10(1B)(d) of the Industrial Disputes Act, 1947. According to the applicant, the OP/Company has acted illegal, unjustified, arbitrary and mala fide manner to terminate his service, violating the provisions of Industrial Law as well as principles of natural and social justice; that he is fully unemployed since his termination of service and failed to obtain any job and / or any other source of earning as yet and has been passing hard days. It is also stated that he could not file this case within the stipulated period for some extreme personal difficulties and prayed for condonation of such delay. Hence, his case with a prayer to reinstate him in his service maintaining previous continuity without any break with full back wages along with consequential benefits accrued thereto together with cost of the litigation, holding the termination of his service by the OP/Company *void ab initio*.

OP/Company after service of notice, entered appearance and filed written statement on 22.07.2014 wherein they have denied each and every allegation brought against them. According to the OP/Company, the applicant was engaged by them as a driver on good faith, but he committed breach of trust during his tenure of employment and when they tried to look into that matter, the applicant stopped his duty and also stopped coming to the office and thereafter, he sent a letter demanding his service with full benefits; that they had not terminated the applicant, though he did not attend his duties till date; that they tried to settle the matter, but the applicant and his representative misbehaved with their Managing Director. It is true that the Assistant Labour Commissioner started conciliation

proceedings, but due to non-compromising attitude of the applicant, nothing could be achieved. In the circumstances, the OP/Company has prayed for an order to drop this case.

Considering the pleadings of both the parties, the following issues are framed for proper adjudication of this case :-

I S S U E S

1. Whether the case is maintainable in law?
2. Whether the applicant had abandoned his job and as a consequence if his claim for entitlement for reinstatement is justified?

DECISION WITH REASONS

Before going to discuss the evidence, I would like to mention here that on 13.02.2018 this case was fixed for evidence for OP/Company, but OP/Company did not take any step on that day and on subsequent dates also and accordingly, evidence on the side of the OP/Company was closed on 16.05.2018 fixing 25.06.2018 for hearing arguments. It further appears from the record that the OP/Company stopped taking steps on and from 13.02.2018 and ultimately, finding no other alternative this Tribunal heard argument on the side of the applicant in full on 09.07.2019, in absence of the OP/Company.

In order to establish his case, the applicant has examined himself as PW-1 and proved some documents, marked as Exhibits-1 to 1/5.

Issue No. 1 :

In course of argument, Ld. Representative of the applicant makes no submission with regard to the maintainability of this case. Moreover, it has not been agitated in the four-corners of the written statement, filed on behalf of the OP/Company, that this case is not maintainable in law. Apart from that, on a close scrutiny of the materials on record, I do not find anything against this issue.

Accordingly, this issue is disposed of in favour of the applicant.

Issue No.2 :

During argument Ld. Representative for the applicant submitted that the applicant joined under M/s. Amrit Exports (P) Ltd. in the year 1999 as driver, without any letter of

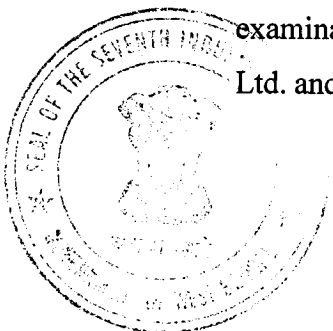


appointment and he started working there and thereafter subsequently, he was absorbed in the OP/Company under name and style as M/s. J.P.M. Exports (P) Ltd., with the verbal assurance to maintain his continuity of service by the employer, who was the owner of the previous company i.e. M/s. Amrit Exports (P) Ltd.; that he worked under the previous company as driver till 2008 and thereafter under the present OP/Company till the date of his termination i.e. 05.02.2013. He further submits that he was terminated verbally and no order of termination was issued against him by the OP/Company; that he drew a sum of Rs.10,800/- per month as salary; that before his termination, OP/Company did not issue any notice or charge-sheet and also they did not conduct any domestic enquiry against him, which is clear violation of the mandatory provision of Section 25F of the Industrial Disputes Act, 1947. He also submits that he never abandoned / left his service; that the applicant being PW-1 has deposed corroborating his case. In the circumstances, he has prayed for an Award declaring the alleged termination of the service of the applicant is illegal, *void ab initio* with the order directing the OP/Company to reinstate the applicant in service with full back wages and consequential reliefs accrued thereto.

Now, let us see as to how far the applicant has been able to prove his case by adducing evidence. The applicant has been examined himself as PW-1.

Applicant (PW-1) has deposed in support of his case. According to his evidence, he was engaged in the OP/Company as a driver in the year 1999 and worked continuously till his termination of service i.e. till 05.02.2013. He has also deposed that at the starting point of his employment, he was appointed under M/s. Amrit Exports (P) Ltd. and after couple of years, he was absorbed in the instant OP/Company under name and style as, M/s. J.P.M. Exports (P) Ltd., with the oral assurance to maintain his continuity of service, by the employer, who was the owner of the previous company and also of the later one.

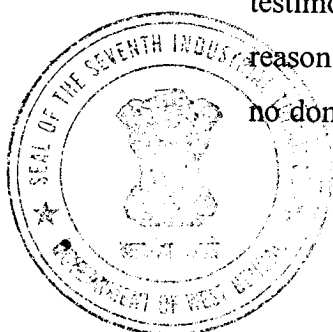
In cross-examination, he has clearly stated that he worked as a driver in M/s. Amrit Exports (P) Ltd. for about nine years i.e. from 1999 to 2008. He has not submitted any document with regard to his employment in M/s. Amrit Exports (P) Ltd. He has further stated that he was employed in M/s. J.P.M. Exports (P) Ltd. since 2009. In the year 2009, he used to get salary of Rs.9,000/- from M/s. J.P.M. Exports (P) Ltd. In the year 2012, he used to get salary of Rs.10,800/-. There is no suggestion put to him by the OP/Company during his cross-examination that he was not appointed at first in the M/s. Amrit Exports (P) Ltd. in the year 1999 or he worked there as driver till 2008. There is also no cross-examination or suggestion on his oral testimony that the owner of M/s. Amrit Exports (P) Ltd. and M/s. J.P.M. Exports (P) Ltd. is the same person. So, his above oral testimony with



regard to the fact that at the starting point of employment, he was appointed under M/s. Amrit Exports (P) Ltd. and after couple of years he was absorbed in the instant OP/Company under name and style as M/s. J.P.M. Exports (P) Ltd., with the oral assurance to maintain his continuity of service by the employer, who was the owner of the previous company and also of the later one remained unchallenged. Moreover, in para. 4 of the written statement, so filed on behalf of the OP/Company, it is clearly admitted that the applicant was engaged as driver on good faith. Apart from that, Exhibits-1/4 and 1/5, which are letters of authorization dated 05.12.2008, issued by Mr. Dilip Madhogaria, Director of M/s. Amrit Exports (P) Ltd. and dated 18.08.2012 issued by said Mr. Dilip Madhogaria, Director of M/s. J.P.M. Exports (P) Ltd., respectively, in favour of the applicant, regarding authorization to drive the cars of the above two companies, also corroborate the oral testimony of the applicant that he was driver of the aforesaid two companies under same Director. Therefore, in view of above admission as well as above referred unchallenged oral testimony of PW-1, it can safely be held that the applicant (PW-1) was engaged in the company under name and style as, M/s. Amrit Exports (P) Ltd. in the year of 1999 as driver, without any letter of appointment and he used to draw salary from said company and worked there till the year 2008 and thereafter, he was absorbed in the OP/Company under name and style as, M/s. J.P.M. Exports (P) Ltd. in the year 2009, with the oral assurance to maintain his continuity of service by the employer, who was the owner of previous company i.e. M/s. Amrit Exports (P) Ltd. and also of the present OP/Company under name and style as, M/s. J.P.M. Exports (P) Ltd. and he used to draw salary in both the companies during his service tenure and he drew monthly salary of Rs.10,800/- only before alleged termination by the OP/Company.

Now, the vital question which comes for consideration is - as to whether the applicant had abandoned his job or not?

In this regard, the applicant (PW-1) has deposed that he was terminated from his service w.e.f. 05.02.2013 without assigning any reason and prior notice, only by verbal order; that he was issued no charge-sheet, no domestic enquiry was proceeded against him. He was offered no compensation and / or no monetary benefit prior to the termination by the employer; that his monthly salary was of Rs.10,800/- at that point of time. In cross-examination, he has also stated clearly that in the year 2012 he used to get salary of Rs.10,800/-. There is no cross-examination or even suggestion put on his such oral testimony that he was terminated from his service w.e.f. 05.02.2013 without assigning any reason and prior notice, only by verbal order or that he was issued no charge-sheet or that no domestic enquiry was conducted against him or that he was offered no compensation



and / or no monetary benefit prior to the termination by the employer. So, his above oral testimony also remained unchallenged. Further, I find from his evidence that having been highly aggrieved by the aforesaid wrongful termination order, he vehemently protested against the same inter alia sending a written representation dated 07.02.2013, addressed to the OP/Company simultaneously demanding his immediate reinstatement in service with full back wages along with all consequential benefits accrued thereto and delivered the said letter by hand to the OP/Company. He has also deposed that the OP/Company in spite of receiving the said letter did not make any response to the same and under the said circumstances, he referred the matter before the Labour Commissioner, Government of West Bengal vide his letter dated 13.03.2013, addressed to the said authority seeking intervention into the instant dispute and the said Labour Commissioner's office took up the said dispute for conciliation. Mr. M. Sinha, Assistant Labour Commissioner started conciliation proceedings and exerted his best efforts to settle the dispute in tripartite level, but nothing could be achieved due to non-compromising and adamant attitude of the opposite party, and under the said circumstances, finding no ray of hope of any solution before the conciliation authority, he made an application in Form 'P-4' dated 14.01.2014 praying for issuance of a certificate regarding pendency of the conciliation proceedings and the said Conciliation Officer was pleased to issue the said certificate in prescribed Form-S under Section 10(1B)(d) of the Industrial Disputes Act, 1947. **Firstly**, there is no cross-examination or even suggestion put to him on his above oral testimony. **Secondly**, Exhibit-1, which is the said representation dated 07.02.2013, submitted by the applicant (PW-1) before the OP/Company demanding his reinstatement in service with full back wages along with all consequential reliefs accrued thereto and Exhibit-1/1, which is the said letter dated 13.03.2013, submitted by the applicant (PW-1) before the Chief Labour Commissioner, N.S. Buildings, Kolkata-1 with regard to his illegal, unjustified and mala fide termination from service w.e.f. 05.02.2013, corroborate the above oral testimony of applicant (PW-1). **Thirdly**, according to the case of the OP/Company, the applicant committed breach of trust and when they tried to look into the matter, he willfully refrained from attending his duty, which the applicant (PW-1) has categorically denied during his evidence. It is further case of the OP/Company as it appears from the cross-examination of PW-1 that the applicant stopped attending his duties willfully with a view to avoid payment of loan taken by him, which the applicant (PW-1) has also denied. Moreover, in cross-examination PW-1 has clearly stated that he took advance from the company once of Rs.50,000/- and another time of Rs.20,000/- and all were liquidated with his salary. No evidence, either oral or documentary, has been adduced by the OP/Company, in support of their above case. **Fourthly**, from Exhibit-1/2, which is a letter dated 22.08.2013, issued by the OP/Company

to the Assistant Labour Commissioner, Government of West Bengal, 1, K. S. Roy Road, Kolkata stating that the company is not in favour of rejoining of applicant Mr. Tej Narayan Nirala and refused to attend the meeting in this context on the ground that – (1) the applicant misbehaved with the Director of the company and suo moto left the company; (2) his monthly salary was Rs.6,600/- per month and he took advance of Rs.70,000/- against the salary. At the time of leaving, his unadjusted advance was of Rs.42,000/-. Instead of admitting the mistake and to rejoin the organization, he came with the union called Calcutta Soudagar Karmachari Sabha; (3) the persons came as member of above mentioned union has rudely behaved with the Director of the company and threatened all the staff of the company; (4) the company gave him enough opportunity to settle the matter without involving of the union, but he did not show any interest; and (5) after above mentioned incidents, rejoining of Mr. Tej Narayan Nirala would give negative impact to their organization. Had there been any such incidents, the OP/Company would have certainly adduced evidence to prove such facts. But, OP/Company did not think it necessary to prove the above facts before this Tribunal by adducing cogent evidence and so, suspicion arises regarding the truthfulness of above referred allegations brought by the OP/Company against the applicant. **Fifthly**, there is no dispute on the point that applicant submitted an application before Conciliation Authority in Form P-4 dated 14.01.2014 praying for issuance of a certificate regarding pendency of conciliation proceedings and accordingly said Conciliation Officer issued said certificate in prescribed Form-S under Section 10(1B)(d) of the Industrial Disputes Act, 1947 in favour of the applicant and thereafter, this case was filed.

Therefore, in view of above referred oral testimony of the applicant (PW-1), duly corroborated by the exhibited documents, as well as my above made discussions and findings, I have no other alternative but to hold that the applicant had never abandoned/left his job of driver. Further, I have no hesitation to hold that he was terminated from his service by the OP/Company w.e.f. 05.02.2013, without complying with the mandatory provision of Section 25F of the Industrial Disputes Act, 1947, which is not only illegal, void ab initio, but also against the principles of natural justice. So, his claim for reinstatement in service under the OP/Company is quite justified.

So, considering all aspects, evidence as well as materials on record, armed with discussions, discussed above, I hold that the applicant has been able to prove his case successfully and therefore, he is entitled to get an order of reinstatement in service under the OP/Company with 10% back wages and consequential benefits, if any, accrued thereto.

Both the issues are, thus, disposed of in favour of the applicant.

In the result, the case succeeds.

Hence, it is,

Ordered

That the case being No. 24 of 2014 under Section 10(1B)(d) of the Industrial Disputes Act, 1947 be and the same is allowed on contest without any order as to costs.

The OP/Company is hereby directed to reinstate the applicant / workman namely, Sri Tej Narayan Nirala immediately and is also directed to pay 10 per cent back wages to him along with consequential benefits, if any, from the date of termination of service i.e. with effect from 05.02.2013 till today. The OP/Company is further directed to comply with the Award within a period of 90 days from the date of this Award, in default, the OP/Company has to pay interest at the rate of 10% till the realization of the entire due amount, failing which the applicant / workman will be at liberty to put the Award in execution in accordance with law.

This is my Award.

Dictated & corrected by me

sd-

Judge

Judge
Seventh Industrial Tribunal



sd/-

(ASHIS KUMAR DAS)
Judge,
Seventh Industrial Tribunal,
Kolkata
24/07/2019
Judge
Seventh Industrial Tribunal