

/58767/2019

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/790/(LC-IR)/22015(16)/595/2019

Date: 26-08-2019

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. 362 - IR/11L-270/08 dated 28.03.2011 the Industrial Dispute between M/s M. L. Day & Co. (P) Ltd., 10, Dr. R. N. Tagore Road, Kolkata - 700 076 and its workman Sri Tapan Adhikary, 1020, Purba Sinthi Road, Madhugarh, Dum Dum, Kolkata - 700 030 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, Fourth Industrial Tribunal, Kolkata.

AND WHEREAS the Judge of the said Fourth Industrial Tribunal, Kolkata, 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,

*slf*  
Deputy Secretary

No. *Labr/790/1(5)/(LC-IR)* to the Government of West Bengal  
Date: *26-08-2019*

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

1. M/s M. L. Day & Co. (P) Ltd., 10, Dr. R. N. Tagore Road, Kolkata - 700 076.
2. Sri Tapan Adhikary, 1020, Purba Sinthi Road, Madhugarh, DumDum, Kolkata - 700030.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

No. *Labr/790/2(2)/(LC-IR)* Deputy Secretary  
Date: *26-08-2019*

Copy forwarded for information to :

1. The Judge, Fourth Industrial Tribunal, Kolkata with reference to his Memo No. 1013 - L.T. dated 29.07.2019.
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. M. L. Day & Co. (P) Ltd. 10, Dr. R.N. Tagore Road, Kolkata-700 076 and Shri Tapan Adhikary, 1020, Purba Sinthi Road, Madhugarh, Dum Dum, Kolkata-700 030.

(Case No. VIII-22/11)

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BEFORE THE FOURTH INDUSTRIAL TRIBUNAL: WEST BENGAL

P R E S E N T

SHRI GOPAL KUMAR DALMIA, JUDGE  
FOURTH INDUSTRIAL TRIBUNAL  
KOLKATA

A W A R D

In the matter of an Industrial Dispute between M/s. M. L. Day & Co. (P) Ltd. 10, Dr. R.N. Tagore Road, Kolkata-700 076 and Shri Tapan Adhikary, 1020, Purba Sinthi Road, Madhugarh, Dum Dum, Kolkata-700 030, Vide G.O. No. 362-I.R./IR/11L-270/08, dated 28.03.2011 referred to this Industrial Tribunal for adjudication of the issues. Subsequently, the name of the Company mentioned in the order of reference and issue No. 1 have been amended by a corrigendum vide G.O. No. 144-I.R./IR/11L-270/08, dated, Kolkata the 14<sup>th</sup> February, 2012.



I S S U E (S)

1. Whether termination of service by way of refusal of employment of Sri Tapan Adhikary by the management of M/s. M. L. Day & Co. (P) Ltd. with effect from 11.03.2008 is justified.
2. What relief, if any, is the workman entitled to?

1. The case of Shri Tapan Adhikary (hereinafter referred to as the workman) in short, is that M. L. Day Co. (P) Ltd. (hereinafter referred to as the Company) is a renowned establishment engaged in manufacturing of drums and barrels since 1899 and that he joined the said Company in the month of June, 1991 as a permanent worker. It is alleged by the workman that in spite of his unblemished service, the Company adopted unfair labour practice by creating pressure upon him for tendering resignation from the service. As he did not submit his resignation Sri Mohit Kumar Day, a Director of the Company got infuriated. Thereafter the Company declared suspension of work on 11.03.2008 and thereby stopped his entry into the factory. Thereafter on 12.03.2018 he sent a letter to the Labour Commissioner seeking his intervention. He also lodged a G.D. Entry bearing no. 785, dated 10.04.2008 with the Belghoria Police Station. It is also claimed by him that the Company by its letter dated 28.04.2008 submitted its comments to Sri Saibal Biswas, the Deputy Labour Commissioner. Thereafter he again gave a letter dated 10.06.2008 to the Labour Commissioner seeking his intervention and thereafter the Company by its letter dated 17.09.2008 submitted its comments with regard to his said letter to the Deputy Labour Commissioner. It is further claimed by him that conciliation meetings were arranged on various dates but the management of the Company did not attend said meetings and thereafter the conciliation officer sent a failure report and ultimately the matter has been referred to this tribunal. He has also alleged that the Company did not pay his salary from the month of February, 2008 and did not allow him to sign the attendance register. Even the Company did not pay dearness allowance or give any increment since January, 2000. He has further claimed that the Company did not make payment of E.P.F contribution since 2004-05 and that his last drawn monthly salary was Rs. 2,300/- and termination of his service is illegal, arbitrary and in violation of Section 25F of the Industrial Disputes Act. It is also claimed by the workman that he is not gainfully employed and is passing his days on the charity of his relatives and friends. He has prayed for an award declaring the termination of his service by way of refusal of employment as illegal and unjustified.



2. On the other hand, the M. L. Day & Co. (P) Ltd. has denied the material allegations of the workman and claimed inter alia that it is a private limited company and has been registered under the Companies Act. It was engaged in the manufacturing of various kinds of the drums and that it became a loss incurring unit because of frequent stoppage of production by the workmen, constant undisciplined activities resorted to by a section of the workmen and tremendous market competition. It is also alleged by the Company that the present workman had worked intermittently as a casual employee and he never completed 240 days of work at a stretch. He was very negligent and he often remained absent without any intimation. It is further averred by the Company that there had been a serious labour unrest, undisciplined and illegal activities amongst the workmen and for that it had to incur a huge financial loss during the year, 2007 and as such it was forced to declare suspension of work by a notice dated 07.07.2007. Subsequently, after admission of guilt by the workmen and giving of an undertaking by them, said suspension of work was withdrawn w.e.f. 17.08. 2007 and this workman also admitted his guilt by a letter dated 06.11. 2007. The Company has also claimed that in spite of its best efforts, due to labour unrest and illegal activities of the workmen, it was again forced to declare suspension of work w.e.f. 10.03.2008 and the same is still continuing. It has further claimed that all its workers and staff excepting the present workman tendered their resignations and settled their all legal dues including gratuity and that the present workman is gainfully employed. It is also alleged by the Company that the workman misbehaved with and threatened to one of its Directors with dire consequences.



3. It is claimed by the Company that it never refused the services of the workman and that as works of it is under suspension w.e.f. 10.03.2008 the question of refusal of employment <sup>of</sup> the workman on and from 11.03.2008 does not arise. It is also claimed by it that the order of reference is defective and not maintainable. The Company has prayed for an award in its favour.

4. In order to prove the case, the workman Shri Tapan Adhikary has deposed as P.W.-1 and documents filed by him have been marked as

*Dictated & Corrected by me.*

*Contd. Page- 4*

Exhibits 1 to 7. On the other hand, one Shri Jai Krishna Poddar, a Director of the Company has deposed as C.W.-1 and documents filed on behalf of the Company have been marked as Exhibits A to J. I find it just to mention here that the evidence of the witnesses was recorded by my Predecessor in office.

5. Rulings of the Hon'ble Courts referred to by the Ld. Advocate of the Company :-

(1). (2005) 12 Supreme Court Cases, page 738, (2). (2009) 5 Supreme Court Cases, page 705, (3). 2006 1 CLR, page 39, (4). 1976 (33) FLR, page, 14 and (5). 1967 (1) LLJ Supreme Court, page 423 (Delhi Cloth and General Mills Company Ltd. Vs Their workmen and others).

6. Rulings of the Hon'ble Courts referred to by the Ld. Advocate of the workman:-

(1). 2007 (114) FLR, page 530 and (2). 1993 (II) LLJ, Supreme Court, page, 696 (D.K. Yadav Vs J. M. A. Industries Ltd.).

### DECISION WITH REASONS



7. It is claimed by the workman that in spite of his unblemished service the Company adopted unfair labour practice by creating pressure upon him for tendering resignation from the service. As he did not submit his resignation, Sri Mohit Kumar Day, a Director of the Company got infuriated. Thereafter the Company declared suspension of work on 11.03.2008 and thereby stopped his entry into the factory. But it is claimed on behalf of the Company that the workman had worked intermittently as a casual employee and he never completed 240 days of work at a stretch. He was very negligent and he often remained absent without any intimation. The Company has also claimed that in spite of its best efforts, due to labour unrest and illegal activities of the workmen it was forced to declare suspension of work w.e.f. 10.03.2008 and the same is still continuing. It is further claimed by the Company that it never refused the services of the workman and that as works of it is under

suspension w.e.f. 10.03.2008 the question of refusal of employment of the workman on and from 11.03.2008 does not arise

8. In respect of the above rival claims, the workmen Shri Tapan Adhikary has deposed in the tenor of his written statement. It is stated by him in his examination-in-chief that the Company declared suspension of work on 11.03.2008 and thereby stopped his entry into the factory. But during cross examination, he has clearly admitted that since 10.03.2008 the Company was under suspension of work. On the other hand, the C.W.1, Shri Jai Krishna Poddar has deposed in the line of the W.S of the Company. He has urged in his deposition that the Company has not terminated the service of the workman by way of refusal of employment and that the Company is under suspension w.e.f. 10.03.2008 and said suspension of work is still continuing and the operation of the Company is closed. It is further stated by him that no one on behalf of the Company is at the factory premises and it is under lock and key. During cross examination also he has stated that after 10.03.2008 the Company is not working.

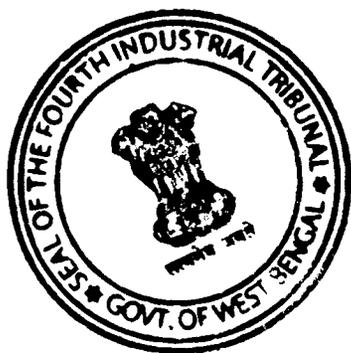
9. From the evidence of the witnesses of both sides it depicts that the work of the factory of the Company is under suspension. P.W.1 Shri Tapan Adhikary though claimed in his examination in chief that said suspension of work was declared on 11.03.2008 but during cross examination he has clearly admitted that since 10.03.2008 the Company was under suspension of work. The C.W.1, Shri Jai Krishna Poddar has claimed that said suspension work is started on and from 10.03.2008 and said suspension of work is still continuing. It has become crystal clear from the evidence of both sides that suspension of work was declared on 10.03.2008 and since then it is continuing.

10. Ld. Advocate for the workman argued forcefully that no notice of suspension of work was given to the workman and that the Company resorted to the process of suspension of work after keeping the workman in dark. In reply, Ld. Advocate for the Company emphatically submitted that notice of suspension of work was duly put to the notice board of the Company and main gate of its factory and as such all



workmen including the present workman became aware of the said matter.

11. In respect of the above matter, I do not find any evidence from the workman to show that he was not aware of the matter of suspension of work. On the contrary, it depicts from the evidence of the workman Shri Tapan Adhikary that he was / is fully aware of the matter of suspension of work. Now let me see the documents produced and proved by the workman. Exhibit-2 is a photo copy of a letter dated 02.04.2008 given by the workman Shri Tapan Adhikary to the Regional Provident Fund Commissioner, Kolkata. In said letter it is claimed by the workman that on 11.03.2008, a notice of suspension of work was issued under the signature of a director of the Company and affixed to the main gate of the factory and that the workmen were not allowed to enter into the factory. Exhibit-3 is a photo copy of an another letter of the workman Shri Tapan Adhikary addressed to the Labour Commissioner, Kolkata. In this letter also the workman has claimed that the Company affixed a notice of suspension of work to its notice board on 11.03.2008. He has also made some other allegations against the Company in said letter. Exhibit-4 is a copy of a complaint made by the workman Shri Tapan Adhikary to the officer in charge of the Belghoria Police Station wherein he has stated about the notice of suspension of work put to the gate of the office of the Company on 11.03.2008. In last paragraph of the said complaint it is mentioned that "I am, therefore, humbly to request you to kindly intervene into the matter and take necessary steps in this regard so that I can continue my service, in future, as soon as the Suspension of Work notice will be withdrawn". Said documents also crystalize that the notice of suspension of work was not only put to the main gate of the factory but also to the notice board of the Company and that the present workman was fully aware of said notice. From the last paragraph of aforesaid complaint dated 10.04.2008 it appears that the workman was/is aware of his right to continue his service in future as and when the suspension of work would be withdrawn. Therefore, I do not find any substance in the submission of Ld. Advocate of the workman that the Company resorted to the process of suspension of work after keeping the workman in dark.



12. Exhibit-5 is a copy of letter dated 26.05.2008 of the Deputy Labour Commissioner, West Bengal addressed to the workman. A copy of letter dated 28.04.2008 of the Company was enclosed with the said letter. Exhibit-6 is a copy of a letter dated 10.06.2008 of the workman addressed to the Labour Commissioner and Exhibit-7 is a photo copy of a letter of the Company dated 17.09.2008 addressed to the Deputy Labour Commissioner. In the said letter also the Company has stated about its notice for suspension of work. During cross-examination, when a copy of the letter dated 06.11.2007 was shown to the workman by the Ld. Advocate of the Company, he accepted clearly that he admitted his guilt in said letter. Exhibit-B is a photo copy of a resignation letter submitted by the sixteen workers to the director of the Company. Exhibit-C is a photo copy of the Register of Wages of the Company which shows that the gross wage of Shri Tapan Adhikary for the month of January, 2008 was Rs. 1562/-. Exhibit-D is a photo copy of a letter dated 06.11.2007 signed by the workman Shri Tapan Adhikary. In respect of said letter the workman (PW1) has accepted that he admitted his guilt therein. Exhibits-E, H, I & J are photo copies of the letters issued on behalf of the Company to the Officer in Charge of the Belghoria Police Station. Exhibit-F Series are copies of four notices of the Company and Exhibit-G is a photo copy of the notice dated 10.03.2008 of the Company declaring suspension of work. It appears that said documents are relating to the suspension of work, conciliation proceedings etc.

13. During argument, Ld. Advocate for the workman emphatically submitted that the workman is a permanent employee of the Company. In support of her submission she relied upon the Exhibit-1. It appears that Exhibits-A & 1 are copies of a certificate issued on behalf of the Company in favour of the workman on 17.04.2007 showing that the workman is an employee of the Company and his gross income for the financial year 2006-2007 was Rs. 27,029/- only. In said certificate it is not mentioned that Shri Tapan Adhikary is a permanent workman. In fact, from the said document it cannot be said in any way that Shri Tapan Adhikary is a permanent employee of the Company.



14. Ld. Advocate for the Company emphatically submitted that the Company never refused or terminated the services of the workman. It is also argued by him that as there is a suspension of work the jural relationship between the Company and the workman still subsists and the present workman is still a workman of the Company and therefore there is no industrial dispute between them and the present reference should be held to be not maintainable. In support of his submission, he has referred to a portion of the judgement of the Hon'ble Supreme Court reported in (2005) 12 Supreme Court Cases, page 738 wherein the Hon'ble Court has been pleased to observe inter alia that *"It is true that normally a writ petition under Article 226 of the Constitution should not be entertained against an order of the appropriate Government making a reference under Section 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised"*.



15. Ld. Advocate for the Company has further argued that this tribunal cannot enlarge the scope of the reference and it should confine its decision to the issues specifically mentioned in the order of reference and anything which is strictly incidental thereto. In support of his submission he has referred to a portion of a ruling of the Hon'ble Apex Court reported in 1967, 1 LLJ Supreme Court, page 423 (Delhi Cloth and General Mills Company Ltd. Vs Their workmen and others) wherein it has been observed inter alia by the Hon'ble Court that *"From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing*

to be connected therewith for adjudication, the tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word "incidental" means according to Webster's New World Dictionary:

*"happening or likely to happen as a result of or in connexion with something more important; being an incident; casual; hence, secondary or minor, but usually associated."*

*"Something incidental to a dispute" must therefore mean something happening as a result of or in connexion with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct".*

16. Ld. Advocate for the Company has also referred to another portion of the said judgement wherein the Hon'ble Apex Court has been pleased to observe inter alia that *"The parties would be allowed by their respective statement of cases to place before the tribunal such facts and contentions as would explain their conduct or their stand, but they could not be allowed to argue that the order of reference was wrongly worded and that the very basis of the order of reference was open to challenge. The cases discussed go to show that it is open to the parties to show that the dispute referred was not an industrial dispute at all and it is certainly open to them to bring out before the tribunal the ramifications of the dispute. But they cannot be allowed to challenge the very basis of the issue set forth in the order of reference.*

*On behalf of the respondents, Sri Chari put before us four propositions which according to him the tribunal had to consider before coming to a decision on these two issues. They were:*

- (i) *The fact that there was a recital of dispute in the order of reference did not show that the Government had come to a decision on the dispute;*



- (ii) *The order of reference only limited the tribunal's jurisdiction in that it was not competent to go beyond the heads or points of dispute;*
- (iii) *Not every recital of fact mentioned in the order of Government was irrebutable; and*
- (iv) *In order to fix the ambit of the dispute it was necessary to refer to the pleadings of the parties. No exception can be taken to the first two points. The correctness of the third proposition would depend on the language of the recital.*

*So far as proposition (iv) is concerned; Sri Chari argued that the tribunal had to examine the pleadings of the parties to see whether there was a strike at all. In our opinion, the tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the conciliation officer and it was certainly open to the management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. Under S. 10 (4) of the Act it is not competent to the tribunal to entertain such a question”.*

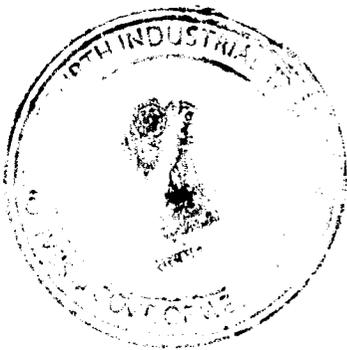
17. *Ld. Advocate for the Company has also referred to a judgement of the Hon'ble Calcutta High Court reported in 1976 (33) FLR, page, 14 (Sabitri Motor Service Pvt. Ltd. vs. State of W.B. and others). It appears that in the said judgement the Hon'ble Calcutta High Court has been pleased to observe inter alia that “In law, the Tribunal could not travel beyond the ambit of the reference. It was only left for the Tribunal to decide whether termination of service was justified or not and on the basis of the answer to that question, to award or not to award relief.”*



18. In view of the aforesaid solemn principles of law enunciated by the Hon'ble Courts, it is clear that the tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto and that it is open to the parties to bring out before the tribunal the ramifications of the dispute and it is open to the management to show that the dispute which had been referred is not an industrial dispute at all. But the parties cannot be allowed to contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else.

19. Ld. Advocate for the Company has also referred to two other rulings of the Hon'ble Apex Court reported in (2009) 5 Supreme Court Cases, page 705 and 2006 1 CLR, page 39. Ld. Advocate for the workman has referred to a judgement of the Hon'ble Supreme Court reported in 1993 (II) LLJ, Supreme Court, page, 696 (D.K. Yadav Vs J. M. A. Industries Ltd.) and a judgement of the Hon'ble Madras High Court reported in 2007 (114) FLR, page 530. The principles enunciated in the said judgements do not appear to be applicable to the facts and circumstances of this case.

20. It is clear from the evidence of both sides that suspension of work was declared on 10.03.2008 and since then it is continuing. The workman also has claimed that after declaring suspension of work the Company stopped his entry into the factory. In this case the points of dispute referred to this Tribunal are (1) Whether termination of service by way of refusal of employment of Sri Tapan Adhikary by the management of M/s. M. L. Day & Co. (P) Ltd. with effect from 11.03.2008 is justified and (2) What relief, if any, is the workman entitled to? I do not find any cogent evidence or material in respect of the said issues. On careful analysis of the facts and circumstances of the case and evidence on record I find substance in the submission of Ld. Advocate of the Company that there is no industrial dispute between the parties. It is true that this Tribunal has jurisdiction to adjudicate the points of dispute referred to it and matters incidental thereto but in my humble opinion the question of validity of the



suspension of work cannot be treated as an incidental matter to the issues referred to this Tribunal.

21. Considering the facts and circumstances of the case, evidence on record and in view of the solemn principles of law enunciated by the Hon'ble Courts, I am to hold that there is no industrial dispute between the workman and Company as per provisions of the Industrial Disputes Act. Therefore, no relief as prayed for by the workman can be granted in this case.

Hence, it is

**ordered**

that there is no industrial dispute between the workman and Company as per provisions of the Industrial Disputes Act and the workman Shri Tapan Adhikary is not entitled to get any relief in this case.

This is my Award.

Sd/- G.K. Dalmia -  
Judge

Dictated & Corrected by me,

Fourth Industrial Tribunal

Kolkata

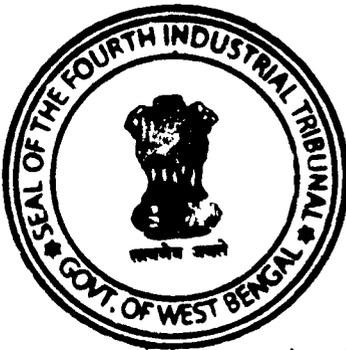
Sd/- G.K. Dalmia

29.07.2019

Judge

**Judge**

**Fourth Industrial Tribunal. W.B**



Copy forwarded to: The Additional Chief Secretary,  
Labour Department,  
Government of West Bengal,  
N.S. Buildings, 12th Floor,  
A Block, Kolkata-70001.

A  
29-07-2019  
Judge

**Fourth Industrial Tribunal. W.B**