

I/60698/2019

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

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

No. Labr/ 833/(LC-IR)/11L-38/16

Date : 06.09.19

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 388 – IR/11L-38/16 dated 29.04.16 the Industrial Dispute between M/s Lalbaba Industrial Corporation Pvt. Ltd., 78, Lalababu Shire Road, Belur, Howrah - 711202 and Lalbaba Industrial Group of Industries Permanent Employees' Union, Flat – 4A (3rd Floor), Dasarath Ghosh Lane, Bamangachi, Salkia, Howrah - 711106 regarding the issues 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, Second Industrial Tribunal, Kolkata.

AND WHEREAS the Judge of the said Second 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,

[Signature]

Deputy Secretary

to the Government of West Bengal

Date : 06.09.19

No. Labr/ 833/(S)/(LC-IR)

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

1. M/s Lalbaba Industrial Corporation Pvt. Ltd., 78, Lalababu Shire Road, Belur, Howrah - 711202.
2. The Secretary, Lalbaba Industrial Group of Industries Permanent Employees' Union, Flat – 4A (3rd Floor), Dasarath Ghosh Lane, Bamangachi, Salkia, Howrah - 711106.
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, 11th Floor, Kolkata- 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

[Signature]
Deputy Secretary

No. Labr/ 833/2(2)/LC-IR

Date : 06.09.19

Copy forwarded for information to :

1. The Judge, Second Industrial Tribunal, Kolkata with reference to his Memo No. 989 – L.T. dated 23.07.2019.
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. Lalbaba Industrial Corporation Pvt. Ltd., 78, Lalababu Shire Road, Belur, Howrah-711202 and Lalbaba Industrial Group of Industries Permanent Employee's Union, Flat-4A (3rd floor), Dasarath Ghosh Lane, bamangachi, Salkia, Howrah – 711106. (Case No. VIII-21/2016)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT: SHRI SRIBASH CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

Date of passing award – 28.06.2019

A W A R D

This case arose by way of order of reference having No. 388-I.R./IR/11L-38/16 dt. 29.04.2016 by order of the Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, New Secretariat Buildings, 12th Floor, 1, K.S. Roy, Kolkata – 1 in the way that an industrial dispute exists between M/s. Lalbaba Industrial Corporation Pvt. Ltd., 78, Lalababu Shire Road, Belur, Howrah-711202 and Lalbaba Industrial Group of Industries Permanent Employee's Union, Flat-4A (3rd floor), Dasarath Ghosh Lane, bamangachi, Salkia, Howrah – 711106 relating to issues as mentioned later stated to be matters specified in second schedule to the Industrial Disputes Act, 1947 and as it became expedient, as mentioned, that the said dispute should be referred to an Industrial Tribunal constituted U/s. 7A of the Industrial Disputes Act, 1947 and then in exercise of power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947 the Governor became pleased by this order of reference to refer this dispute to this Tribunal stated to have been constituted under notification No. 808-I.R./IR/3A-2/57 dt. 11.03.57 for adjudication requiring this Tribunal to submit its award to the State Government within a period of three months from the date of receipt of this order of reference by this Tribunal in terms of sub-section 2A of Section 10 of the Industrial Disputes Act, 1947 subject to other provision/ provisions of the Act, the issues mentioned in the order of reference being,

- 1) Whether the transfer of three workmen and subsequent refusal of employment from service w.e.f. 03.11.2014 is justified or not,
- 2) If not, what relief are the workmen is entitled to?

From the case record it is found that after having taken cognizance over the matter in the order of reference, summons were issued to both sides and then both sides entered into appearance and also filed written statements. From the written statements filed by union, it is found that three workmen namely Sri Arjun Prasad, Sri Motilal Yadav and Sri Hakim Thakur were appointed by the management of the company on various dates for performing jobs as were assigned to them at the time of their appointment at the factory of the company locating at 78, Lalababu Shire Road, Belur, Howrah-711202 and accordingly all the workmen started rendering the services with highest degree of security and efficiency with unblemished record



of service to their credit. It is next stated that the O.P. company is a well-known manufacturing unit being engaged in manufacturing of different components of wagon and bogie as per requirement of Indian Railways. It is next stated that though all the workmen rendered their services to the company with utmost dedication but the management of the company had chosen to deprive them from their legitimate dues arising out of wages, bonus, P.F., medical benefits etc. besides management of the company has entered into a settlement with the representatives of 70 employees leaving out all the workmen from this settlement and thereby deprived them from getting legal benefits as were given to those employees under the settlement. It is next stated that as a result the workmen individually became helpless having no power to bargain with the management of the company and to demand their salary and other benefits as per law at par with the other permanent staff of the company doing similar jobs, and to get relief from such illegalities and discrimination on the part of the management, some workmen form an union under name and style of Lalbaba Group of Industries Permanent employees with Sri Amritalal Singh Roy as its president and Sri Sanat Ghosh as its secretary and it was also registered under Society Registration Act, 1965 with registration No. 29858/14 and it was affiliated to Indian National Congress, and the formation of this union was also informed the management of the company in the month of October, 2014 and immediately the company became extremely vindictive and then transferred the workmen of this case along with some other workmen from the factory place at Belur to the Factory place at Haldia by letter dt. 01.11.2014 and the management of the company also attempted desperately to dissolve this union and as a result and also with the influence of the management of the company some of the workmen namely Tarun Ghorai and Jalim Khan dissociated themselves from the union and to shelter under the management of the company by way of surrender and as a result these dissociated workmen were instantly favoured by the management of the company and they were allowed to continue the services at the factory of the company at Belur. It is also mentioned that 2 workmen of the present case namely Arjun Prasad and Tarun Gharui were at that time on the verge of retirement and were not in a position to take trouble to join their services at Haldia stated to be 50 miles away from their place of original posting, and describing the impugned transferred order as highly punitive and violative of service rules and settlement applicable in the factory of the company, it is stated that they after that through their union lodged a protest letter dt. 01.11.2014 with the Assistant Labour Commissioner, Howrah virtually raising an industrial dispute challenging such illegal and arbitrary order of transfer and then after that when the present workmen with some-other workmen of the factory of the company went to join their duty on 03.11.2014, they were refused to enter inside the factory and also asked them to join duty at Haldia. It is next stated that the management of the company then issued a letter dt. 07.11.2014 as reminder to the present workmen to join their services at Haldia mentioning that in case they failed the company would replace them by bringing fresh persons at that place treating the non-attendance of the workmen at Haldia as abandonment of service, and in reply to that letter dt. 07.11.2014 by the management of the company the workmen through their union made a representation dt. 14.11.2014 to the Assistant Labour Commissioner highlighting the



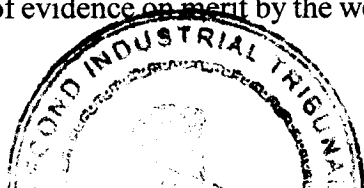
entire matter, yet the company illegally started insisting the workmen to join their service at Haldia by a further letter dt. 23.11.2014 and at the same time the management of the company kept workman Tarun Gharui and Jalim Khan who surrendered before the management of the company at the factory unit of the company at Belur, thus the management of the company has shown glaring instance of highhandedness, arbitrariness and undue favouritism amounting to unfair labour practice. It is also stated in the W.S. on behalf of workmen that though the union ventilated their grievances to Assistant Labour Commissioner, Howrah by a letter dt. 26.02.2016 challenging the illegal order of transfer dt. 01.11.2014 on the one hand and demanded benefit arising out of P.F. fund, E.S.I., minimum wages etc. and their company also illegally withheld their salaries without any reason. It is also stated that the conciliation proceeding then before Assistant Labour Commissioner, Howrah also failed and it was remitted to Labour Department of the Government for reference, arising out of which the order of reference in question came into existence. It is next stated that order of transfer dt. 01.11.2014 is illegal, arbitrary, mala fide and designed to inflict punishment to the present workman due to their involvement in trade union activities and there is no real reason or cause for such transfer, neither has there been any exigency for such transfer at Haldia, adding further that each workman of this case is entitled to get financial benefits such as salary from the month of November, 2014 till the date of their joining with all increments over the interim period with all other benefits. It is the prayer by the workman / union for an order by this Tribunal holding that the order of transfer dt. 01.11.2014 is prima facie illegal and invalid and the refusal of employment w.e.f. 03.11.2016 as a consequence thereof is equally bad in law and also for directing the management of the company to allow the workman to continue the services at the factory at Belur where they were all posted before the order of transfer in question with all consequential relief particularly by making payment of their respective wages till the date of presumption of duty as mentioned in the order of reference and also for such other order as may be necessary.

Ld. Lawyer for the management of the company contested the matter of reference by filing W.S. It is found that in first part of the W.S. having totally three parts some legal technicalities such as the order of reference is not maintainable on the ground that the alleged dispute has not assumed the character of industrial dispute, the concerned workmen do not come within the scope of Section 2(s) of the Industrial Disputes Act, 1947, no dispute proper has been raised so as to transform the alleged dispute to become an industrial dispute, the order of reference does not come within the scope and ambit of industrial dispute as contemplated under the Industrial Disputes Act, 1947, the order of reference is not maintainable since the transferability being the condition of service any alleged dispute thereto suffers from the infirmity of non-application of mind, the transfer is an incident of service and alleged transfer would be per se justified, the case is based on incorrect assumption and the transfer of service of workman does not come within the scope of judicial scrutiny etc. to bar the adjudication of the matter in order of reference. In part-II of the written statement the management of the company has raised that contention of paragraph-1 of the written statement filed by workman / union are matters of record and any matter out of the record is stated to have been denied and



disputed, adding that workman Motilal Yadav was appointed at Pioneer Engineering Works, 20, Lalbabu Shire Road, Belur, Howrah in 1995 and in 2012 he was transferred to L.B.S.I.C., workman Arjun Prasad and Hakim Thakur were appointed on 01.11.1984 at National Forgenes Ltd., 72, Lalbabu Shire Road, Belur, Howrah and he worked there upto 2005 and after that they were transferred to S.F. Forgenes Pvt. Ltd., 40/107, Joybibi Road, Ghosuri, Howrah and lastly they were appointed at L.B.S.I.C. Denying contention of paragraph-2 to paragraph-8 of the written statement filed by workmen / union, it has been stated that the contention of paragraph-3 of the written statement of the workmen / union is admitted, contention of paragraph-2 of written statement filed by workmen / union is matters of record and rests are false and denied. Denying contentions of paragraph-9 and 10 of the written statement filed by workmen / union, the company has stated that as per service rules the workmen were transferred to Haldia and the Court should not interfere with the order of transfer and an employee cannot have any vested right till remain posted at a particular place and the transfer is necessary due to exigency arising out of administrative reasons and the workman Tarun gharui and Jamal Khan had left their job intentionally. Denying the contention of paragraph-11 to paragraph-13 of the written statement filed by workmen / union the company has stated that the union already raised an industrial dispute before Ld. Labour Commissioner but the Labour Department referred this dispute to this Tribunal for adjudication but the company wanted rectification of the order of reference by filing a letter dt. 01.02.2017 and the same has been pending. Denying the rest contention in the written statement filed by workmen / union it has been stated that the management of the company transferred the workmen for exigency for work at Holdia and the transfer orders are not illegal and invalid and there was no refusal of employment to any of the workmen and the workmen / union cannot get any relief.

Thus, it is found that the management of the company filed the W.S. to contest the case and then the case came up for hearing on merit and accordingly it was fixed for recording of evidence to be adduced by workmen by order dt. 17.04.2018, and after that several adjournments were also taken. The order dt. 11.07.2018 shows that on that day Ld. Lawyer for the union filed affidavit-in-chief of one Mr. Amritalal Sinha Roy but the case was adjourned on prayer of Ld. Lawyer for the union, case record further shows that Ld. Lawyer for the union after that started taking adjournments on various grounds and on 03.01.2019, last chance was given to union to adduce evidence on merit, the case record shows that after that the union started becoming absent without any step and Ld. Lawyer for the union also stopped appearing on its behalf. Order No. 33 dt. 21.02.2019 shows this day i.e. 21.02.2019 was fixed for adducing evidence on behalf of union on merit and also for adducing evidence on merit by company but on that day the union became absent and on calls Ld. Lawyer for the union appeared and submitted that he did not have any instruction from the workmen / union to proceed with the case any further, this order further shows that on behalf of company one witness namely Mr. Santosh Kr. Chourasia appeared, it further shows that on the basis of submission by Ld. Lawyer for the union that he did not have any instruction from workmen / union to proceed further with the case, the stage of recordings of evidence on merit by the workmen / union was closed and then the management

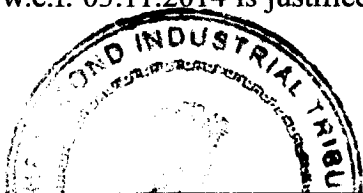


of the company examined its witness Sri Santosh Kr. Chourasia as O.P.W.- 1 and also adduced documentary evidences which are bank statements of account in the name of the company in Bank of India (Ext. 1series), one document (copy) showing full and final settlement into accounts (Ext. 2), one letter addressed to workman Hakim Thakur (Ext. 2/1), one letter dt. 16.12.2018 addressed to director of the management of the company (Ext. 2/2), one letter mentioning full and final settlement addressed to Mr. workman Hakim Thakur (Ext. 2/3), one letter addressed to workman Motilal Yadav mentioning full and final settlement (Ext. 3), one letter addressed to workman Motilal Yadav dt. 21.12.2018 (ext. 3/1), one letter addressed to the direction of the management of the company dt. 21.12.2018 (Ext. 3/2), one letter addressed to workman Arjun Prasad mentioning full and final settlement dt. 22.12.2018 (Ext. 4), one letter addressed to workman Arjun Prasad dt. 21.12.2018 (Ext. 4/1), one letter addressed to the Director of the management of the company dt. 16.12.2018 (Ext. 4/2), and one letter addressed to Arjun Prasad by director of the management of the company dt. 22.12.2018 (Ext. 4/3).

Admittedly on the date of recording of evidence on merit as mentioned above, workmen / union remained absent without any step and it was also fixed for recording on evidence on merit on behalf of management of the company, the management of the company appeared with his Ld. Lawyer with the witness as mentioned earlier, and as I also said earlier that though workmen / union became absent without step on that day, on calls Ld. Lawyer for the workmen appeared and submitted that there was no instruction from the union / workmen to the Ld. Lawyer to proceed with the case any further and accordingly the evidence on merit on behalf of workmen became closed and then Ld. Lawyer for the management of the company adduced evidences as I mentioned earlier.

The matters arising under Industrial Disputes Act is nothing but matters of welfare to both workmen / union and management of the company. it was therefore thought that though the workmen / union did not appear on that fixed date of recording of evidence on merit and their Ld. Lawyer also submitted that he did not have any instruction from workmen / union to proceed with the case further, then the matter of application of doctrine of natural justice came into existence and show cause notice to the union mentioning to file written show cause mentioning as to why necessary order as per law would not be passed in the case due to its unauthorised absence for long and this show cause notice vide No. 442 dt. 08.04.2019 was sent to the secretary of the union in question i.e. Lalbaba Group of Industries Permanent Employee's Union through the process server of the court Sri Md. Osman and the process server Mr. Osman submitted one report dt. 25.04.19 mentioning that the address given by the union in the case record is not a specific one in the way that it does not contain the house No. and in the area of the union each house has house No. and as a result the address could not be located by Mr. Osman.

I already mentioned that the issues are as to whether transfer of three workmen namely Sri Arjun Prasad, Sri Motilal Yadav and Sri Hakim Thakur and their subsequent refusal of employment w.e.f. 03.11.2014 is justified or not, and if not what other relief are the workmen



entitled to. When the case came up for hearing on merit and the union was directed to adduce evidence in support of the case, Ld. Lawyer for the union filed affidavit-in-chief or one witness namely Amritalal Singh Roy, son of late Subodh Kr. Singha Roy, president of M/s. Lalbaba Group of Industries Permanent Employee's Union of 10/1/1, Dasarath Ghosh Lane, Bamangachi within P.S. – Salkia in Howrah but after that this witness Sri Amritalal Singh Roy did not turn up and as I also mentioned earlier, on the fixed date for hearing of the case on merit Ld. Lawyer for the union appeared on merit on calls and submitted that there was no instruction from the union to him to proceed with the case further and left and then arising out of interest of natural justice show cause notice was issued to him through process server Mr. Osman and I have also mentioned the report submitted by him. Thus, witness Amritalal Singh Roy on behalf of union did not turn up to say anything in support of his affidavit-in-chief and to face cross-examination.

On the date of the hearing of the case the management of the company examined its compliance manager Sri Santosh Kr. Chourasia as O.P.W.- 1, he deposed that the management of the company has compromised the case with the workmen namely Arju Prasad, Hakim Thakur and Motilal Yadav amicably and the company has given Rs. 56,230/- to Arjun Prasad, Rs. 82993/- to Hakim Thakur and Rs. 56787/- to Motilal Yadav by issuing cross cheque each of them drawn on Bank of India, Kolkata main branch and they do not have any further claim and this witness produced copy of bank statement (Ext. 1), copy of resignation letters by workman Hakim Thakur (Ext. 2), resignation letter by workman Motilal Yadav (Ext. 3) and also resignation letter by Arjun Prasad and also deposed that all these resignation letters are accepted by the management of the company. As I mentioned earlier Ld. Lawyer for the union left the case by mentioning that there was no instruction from the union to proceed with the case further.

Going through the documentary evidences I find that the bank statement is a xerox copy (Ext. 1) and the management of the company did not file the original one. The document regarding full payment workman Hakim Thakur is also a xerox copy (Ext. 2), it is in English, it shows that the purported signature of the workman Hakim Thakur thereon is in Hindi and question arises as to whether Hakim Thakur understood the contention of this document (Ext. 2) or not, it also contains names of two witnesses but none of them were produced before Court. Ext. 2/1 is a letter of acceptance of the resignation letter purported to be filed by workman Hakim Thakur, these are also in English and further question comes into existence as to whether workman Hakim Thakur understood the same or not and there is no authentication of the same by union at whose instance the case has been filed. Ext. 3 is a final settlement of account in respect of workman Motilal Yadav, Ext. 3/2 is a resignation letter by Motilal Yadav and Ext. 3/1 is its acceptance, these are copies only, the original letters were not filed, these also do not contain any endorsement by union, Ext. 4/2 is found to be a copy of resignation letter by Arjun Prasad and Ext. 4/1 is a copy of letter of acceptance of the resignation letter (Ext. 4/2), original of many of these were not filed. It is the argument of Ld. Lawyer for the management of the company that the workman voluntarily submitted resignation letters and all these were accepted by the management of the company and therefore there is no question of doubt in any of these evidences.



Admittedly, the union became absent without any step and Ld. Lawyer for the union also left the case mentioning that union did not give any instruction to proceed with the case further. Therefore it was within the knowledge of Ld. Lawyer for the management of the company that in case of amicable settlement, presence of both parties are required before the Court for examination by the Court to see the genuineness of the matter and accordingly the management of the company was required to bring union / workman along with them, the management did not do so and as a consequence the Court could not ascertain authenticity of matter of amicable settlement as has been asserted by the management of the company and such assertion of amicable settlement by the management of the company is not legally acceptable.

Further admittedly on behalf of union, as I mentioned earlier also, union became absent for long without any step and Ld. Lawyer for the union left the case mentioning that there is instruction from the union to proceed with the case further, and then this court issued show cause notice on the union mentioning as to why necessary order would not be passed due to its long absence without step, yet union did not become available, about which I also mentioned earlier mentioning the report of process server, and all these facts and circumstances go to show that the dispute under reference is no longer in existence.

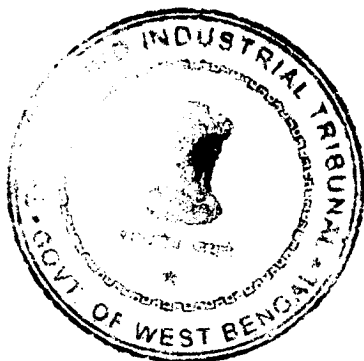
It is therefore,

ORDERED,

that the oral prayer for passing necessary order on the ground of amicable settlement as prayed by O.P.W.-1 Sri Santosh Kr. Chourasia, the compliance manager of the company M/s. Lalbaba Industrial Corporation Pvt. Ltd., 78, Lalababu Shire Road, Belur, Howrah-711202 is rejected and the case of the union is dismissed on the footing that the industrial dispute under order of reference is no longer in existence, and this is the award of this Tribunal arising out of order of reference having No. 388-I.R./IR/11L-38/16 dt. 29.04.2016. it is directed that necessary number of this copies of this award be prepared and sent to the Ld. Additional chief secretary, to the Government of West Bengal, Labour Department, N.s. Buildings, 12th floor, 1, K.S. Roy Road, Kolkata – 1.

Dictated & corrected by me.

Judge



sdr
(S.C. Das)
Judge
2nd Industrial Tribunal
28.06.2019
Judge
2nd Industrial Tribunal
West Bengal