

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

No. Labr/ 900/(LC-IR)/.....

Date : 24-09-19.

ORDER

WHEREAS under the Government of West Bengal, Labour Department an application under section 33(C) (2) of the I.D. Act, 1947, the Industrial Dispute between M/s Aanag Enterprises (P) Ltd. Jalan Industries Complex, N.H.6, P.O.- Begri, P.S. – Domjur, Howrah-711411 and their workmen Shri Kalipada Santra and others 38, Roy Para, P.O.- Argori, P.s.- Sankrail, Dist- Howrah, Pin-711302 regarding the issues mentioned in the said order, being a matter specified in the Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Second Labour Court, West Bengal.

AND WHEREAS the Judge of the said Second Labour Court, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

sd/-

Deputy Secretary
to the Government of West Bengal

No. Labr/ 900/1(5)/(LC-IR)

Date : 24-09-19.

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

1. M/s . Aanag Enterprises (P) Ltd. Jalan Industries Complex, N.H.6, P.O.- Begri, P.S. – Domjur, Howrah-711411 .
2. Shri Kalipada Santra and others 38, Roy Para, P.O.- Argori, P.s.- Sankrail, Dist- Howrah, Pin-711302 .
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate 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.

No. Labr/ 900/2(2)/(LC-IR)

RO 24.9.19.
Deputy Secretary
Date : 24-09-19.

Copy forwarded for information to :

- 1.The Judge, Second Labour Court, West Bengal with reference to his Memo No. 1178-L.T. dated 30.08.2019 .
- 2.The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

An application U/s. 33(c)(2) of the Industrial Disputes Act, 1947 filed by **Kalipada Santra** residing at Roy Para, P.O-Argori, P.S.-Sankrail, Dist-Howrah, Pin-711302 and 38 Others (thirty eight employees) against **M/s. Aanag Enterprises (P) Ltd.**, Jalan Industries Complex, N.H.6, P.O.-Begri, P.S.-Domjur, Howrah-711411.

(Computation Case No. 12/2014, U/s. 33(c) (2) of Industrial Disputes Act, 1947)

BEFORE THE SECOND LABOUR COURT, WEST BENGAL,
KOLKATA

PRESENT: **SRI ARABINDA PANTI, JUDGE**
SECOND LABOUR COURT
KOLKATA.

Date: 21-08-2019

A W A R D

This computation case filed by 39 workmen. Applicant No.1 is Kalipada Santra. He has been authorized to file the instant case by another 38 workmen.

It is the allegation of the workmen/applicants that the company namely M/s. Aanag Enterprises (P) Ltd. has been indulging to resort several malpractices with the object to deprive the workmen from their legitimate demand and claim.

It is specifically alleged that the company did not disburse the salary of these workmen for the month of February, 2014, although they performed their duties. It is further alleged that the company all on a sudden declared "LAYOFF" from 10th March, 2014 to 23rd April, 2014 issuing a notice to the 27 employees. In that notice it was mentioned that the workmen shall be paid as per layoff provision.



It is further stated that on 11-03-2014, Howrah Metal & Engineering Workers' Union sent a letter to the management of the Opposite Party on behalf of the workmen raising dire dispute on alleged notice in respect of layoff pasted on the gate and on the same score, the Opposite Party herein was requested to withdraw the said layoff notice and to allow the workmen under layoff to join their usual duties immediately. The applicants under layoff had regularly attended the factory along with the workmen who were not under layoff during the period of lay off illegally declared by the Opposite Party. These applicants were in the hope that due salaries would be disbursed, but the Opposite Party did not pay heed to.

In this application it is mentioned that the Opposite Party did not pay the dues of the present applicants for the month of February, 2014, for the period from 01-03-2014 to 09-03-2014, 10-03-2014 to 23-04-2014, 24-04-2014 to 30-04-2014 and May, 2014 to September, 2014 and the calculation of due wages for the above mentioned period has been shown in a separate sheet which stood at Rs. 9,42,642/- .

It is further alleged that the Opposite Party did not disburse the due salaries to the other workmen who were not under layoff, for the period from February, 2014 to September, 2014. The calculation of due wages has been shown in a separate sheet which amounts to Rs. 6,48,111/-.

It is further stated in the application that all the workmen jointly made a representation on 08-09-2014 through FAX to the Opposite Party demanding due wages, but all are in vain. Finding no other alternative, the instant case has been initiated by 39 workmen, praying for computation of due salaries and making direction upon the Opposite Parties for making payment of the same.

The Opposite Party namely M/s. Aanag Enterprises (P) Ltd. entered appearance in this case and filed written objection contending inter-alia the allegations made out in the application and denying the claim of the applicants.



It is the further case of the Opposite Party that the layoff was called up owing to absolute dearth of job since the situation in the market became bad to worse and there was not sufficient order from the customers to run the factory and as such with due formalities, the layoff was declared. The Deputy Labour Commissioner declared that the said layoff was not illegal however it was held that the management may consider the payment to be disbursed to the workmen. Several meetings were conducted between the Labour Union, Company and the Deputy Labour Commissioner.

It is further stated in the written objection that the company was ready to pay the workers' but the company personnel was prevented by the workers' to enter into the factory premises. Just before the expiry of layoff period, the workers' illegally called up the strike all on a sudden.

It is specifically denied and stated that none of the workmen attended the factory during the layoff period. All other averments of the application are categorically denied in the written objection. The composite chart of calculation sheet is totally denied. The dispute was created by some workmen when the company was forced to declare lay off on and from 10th March, 2014.

It is further stated in the written objection that from the month of November, 2013 several times the manufactured materials of the company became rejected by the ordinance factory of the Govt. of India. The workmen deliberately and negligently manufactured those defective materials. As a result, the company suffered huge loss and also lost its reputation, resulting no further orders procured by the company. Under such compelling circumstances, the company declared lay off. In spite of the predicaments made as a stated above, the company time to time paid salaries/wages to the workers' up to January, 2014. The company was ready to pay salaries/wages to the employees/workers' for the month of February, 2014 but failed as the management was not allowed to take entry in the factory by the workers'.



The amounts of claim in the annexures '4' and '5' are totally denied by the company and accordingly as per the company's case, the instant application is not maintainable and it is bad in law. Accordingly, the Opposite Party prayed for rejection of the application.

This case initially was contested by the company. The company took part up to the cross-examination of P.W.1 in full. After adducing evidence by P.W.1 i.e. the applicant, Ld. Advocate for the applicant declined to adduce evidence by further P.W. Next date was fixed for adducing evidence by the Opposite Party/Company. Since then many adjournments were allowed but ultimately the Opposite Party did not turn up. As a result, the case was posted for hearing of argument. The company did not take part in argument, but the applicant took part in argument and after completion of argument from the side of applicant, date has been fixed for passing award.

Now this court turns its eyes towards the oral testimony of the applicant (P.W.1 namely Kalipada Santra). On close scrutiny of the examination in chief it appears that this P.W.1 has corroborated the case made out in the claim petition. During adducing evidence, P.W.1 marked and exhibited some documents as follows:-

1. Exhibit-1 Notice of layoff.
2. Exhibit-2 Letter written by Kalipada Santra to the opposite party with a prayer to withdraw the layoff.
3. Exhibit-3 Letter written by the applicants to the management dated 08-09-2014 praying for payment of legal dues.
4. Exhibit-4 The statement of due wages from the month of February to September, 2014.
5. Exhibit-5 The letter of authority executed by 38 workmen in favour of Sri Kalipada Santra, applicant No. 1.

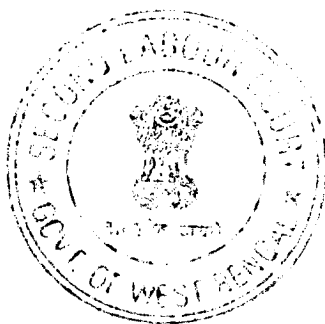


The opposite party/company all along took the defence that the layoff was called up owing to the absolute dearth of job since the situation in the market became bad to worse and there was not sufficient order from the customers to run the factory and as such with due formalities the layoff was declared.

It is fact the applicants got notice of layoff and that has been marked as Exhibit-1. Though the company has taken defence that observing all formalities lay off was declared. But it appears to this court that no payment was made to the employees during the layoff period as per provision of the Act. The company has admitted it by submitting writing objection in which it has been stated that the personnel of the company wanted to disburse the due wages but they were prevented in taking entry in the factory.

In cross-examination of PW-1, the opposite party has also put the same fact, but P.W.1 has denied it. It further appears from cross-examination of P.W.1 that the management was willing to pay the salary for the layoff period. Therefore, it is very much transparent that the company did not pay the workers their wages for the lay off period and it is the claim of the applicants in this case.

In the written objection, the company has stated that *".....on and from November, 2013 several times the manufactured materials of the company became rejected by the ordinance factory of the Government of India. The workmen deliberately and negligently manufactured those defective materials. The materials produced by the factory are used for defence forces of the India and as such in case of any irregularity the manufactured items are liable to be rejected by the concerned authority of the Government of India. The company suffered huge loss and moreover, due to rejection of the material manufactured by the company, the company lost its reputation and as such there was no further orders procured by the company....."*. But the opposite party did not substantiate this averment by adducing fortified and cogent evidence, either oral or documentary. In fact the company did not examine any witness.



The opposite party took further defence that the due wages statement submitted by the applicant and marked as Exbt.-4, is not genuine. But the company did not produce contrary statement of accounts to discard Exbt-4.

In fact, the company observed layoff and no compensation was given for the layoff period to the applicants and it is also admitted by the opposite party in their written objection. Defence was taken that the company personnel wanted to disburse the compensation amount, but they were not allowed by the workmen to take entry in the factory. Therefore, it is crystal clear that no layoff compensation was given to the applicants.

L.d. Advocate for the applicants submitted during course of argument that as per layoff notice issued against 25 workmen, the layoff period was from 10-03-2014 to 23-04-2014 as it would appear from Exbt.1. He further submitted that not only layoff compensation was given but also the wages of these 25 workmen were not given for the month of February. As per the layoff notice it is presumed that on and from 24-04-2014 to onward, those 25 workmen would be engaged in duty, but in fact they were not absorbed for the subsequent period, as submitted by L.d. Counsel for the workmen.

Now, this court turns its eyes towards Exbt.1 where from it appears that 27 workmen were put under layoff for the period from 10-03-2014 to 23-04-2014. Amongst those 27 workmen, the workmen namely Bablu Manna and Kashinath Mal (L.C. No./EMP No. W-043 and W-052) did not participate in the application. Therefore, there remains 25 workmen who came before this court and participated in the application.

Accordingly, this court has no hesitation to hold that 25 workmen who are the applicants namely,

- 1) Anup Nunia., 2) Atanu Mondal, 3) Samiran Naskar, 4) Pintu Hazra.



5) Sanjib Roy, 6) Bhaskar Sardar, 7) Bappaditta Naskar, 8) Ganapati Naskar, 9) Raja Naskar, 10) Partha Das, 11) Sk. Noor Islam, 12) Mahananda Naskar, 13) Sumit Dwery, 14) Kaushik Moshel, 15) Palash Ghosh, 16) Binay Malik, 17) Hemanta Roy, 18) Subarna Naskar, 19) Shibu Ram Samanta, 20) Kalipada Santra, 21) Binay Kr. Das, 22) Arabinda Chakraborty, 23) Arun Naskar, 24) Ujjal Patra, 25) Rabindra Nath Chakraborty were put into layoff.

It appears from Exbt.4 that the monthly wages of those 25 workmen were shown in Column No. 4. The Opposite Party cross-examined P.W.1, Kalipada Santra, but did not challenge the rate of wages of the 25 workmen shown in Exbt.4. Moreover, in cross-examination it has been taken from the mouth of P.W.1 that the layoff period was from 10-03-2014 to 23-03-2014 and 39 workmen men went to join their duties but they were restrained to enter into the gate. The unchallenged testimony regarding the rate and amount of wages are hold good by this court.

Moreover, when the corroboration of non giving employment by the company after the layoff period has been taken in cross-examination, then it is true that the workmen were not allowed to join their duties who were under layoff and even the 14 workmen who were not under layoff. Those 14 workmen as it appears from Exbt.4 are (1) Samir Das, 2) Ramprasad Mondal, 3) Swapan Naskar, 4) Somnath Patra, 5) Sanjay Gayen, 6) Addyaita Chakraborty, 7) Sanjay Bera, 8) Prasenjit Adhikari, 9) Nemai Mondal, 10) Sankar Koley, 11) Monoranjan Gayen, 12) Ranjit Manna, 13) Subrata Mondal and 14) Subhas Naskar.

In the claim statement the wages for the above mentioned 14 workers' have been claimed on and from the month of February, 2014 to September, 2014 and their monthly basic wages have been shown in Column 3 of Exbt.4. This case was filed on 30-10-2014 making claim up to the month of September, 2014. The calculation as given in Exbt.4 has not been challenged by the Opposite Party in cross-examination of P.W.1. Therefore, this court does not hesitate to hold that the rate of basic wages and claim of 39 workmen as shown in Exbt.4 are good, except the claim of interest. There is no basis of claiming interest as shown in Exbt.4.



Considering the discussions held in the foregoing Paragraphs, this court is construed to hold that the applicants are entitled to get their claim as per Exbt.4 except the interest shown therein to the tune of Rs. 1,00,007.49/-. The total claim has been shown for Rs. 15,90,753/- including interest. Therefore, after deducting interest, the claim altogether stands at Rs. (15,90,753/- - 1,00,007.49/-) = Rs.14,90,745.51/- and the 39 workmen are entitled to get award for this amount.

Hence, it is

Ordered

that the instant petition U/s. 33 (c)(2) of Industrial Disputes Act, 1947 is hereby allowed on contest in part, but without cost. The applicants do hereby get award for Rs. 14,90,745.51/- altogether and each of them would get their share as shown in Exbt.4 and this Exbt.4 is hereby made part of the award. The Opposite Party is hereby directed to pay the awarded money to each of the applicants jointly or severally, within 90 days from the date of passing of this order, in default the O.P Company shall be liable to pay simple interest @ 18% p.a. over the awarded amount till realisation of the award in full satisfaction. This is the award passed by this court.

Dictated and corrected by me

Sd/-

Judge

Sd/-

(Arabinda Panti)
Judge, 2nd Labour Court,
Kolkata.

Judge
Second Labour Court W.B.

