

I/80542/2020

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/. 93.../(LC-IR)

Date 07/02/2020

ORDER

WHEREAS an industrial dispute existed between M/S. Secure Prints, 297/1/H8, A.P. Road, First floor, Kolkata-70009 and their workman Habibur Rahaman Molla, Vill-Bagur P.O.: Bagnan, Dist.:- Howrah, Pin-711303 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 c Section 2A of the Industrial Dispute act, 1947 (14of 1947) to the Judge, Seventh Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the said Judge, Seventh Industrial Tribunal has submitted to the State Government its Award on the said Dispute.

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

ANNEXURE

(Attached herewith)

By order of the Governor,



Deputy Secretary  
to the Government of West Bengal

/80542/2020

(2)

No. Labr/93/1(2) – IR

Dated ..07/02/2020

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 26-LT dated 08/01/2020.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. Labr/93/2(4) – IR

Dated ..07/02/2020

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

1. M/S Secure Prints, 297/1/H8, A.P.C. Road, First floor, Kolkata-70009
2. Sri Habibur Rahaman Molla, Vill-Bagur, P.O.: Bagnan, Dist.:- Howrah, Pin-711303.
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Building (11<sup>th</sup> 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.



Deputy Secretary

**CASE NO. 11 of 18**

**Under Section 2A(2) of the Industrial Disputes Act, 1947**

*Habibur Rahaman Molla vs. M/s. Secure Prints*

**Order No.18, dated 07.01.2020**

Applicant Habibur Rahaman Molla is present with his Ld. Advocate.

OP/Company namely, M/s. Secure Prints is present through its Ld. Advocate.

Today is fixed for hearing of two verified petitions dated 08.07.2019 and 02.12.2019, filed on behalf of OP/Company.

At this stage, one verified petition has been filed by the applicant Habibur Rahaman Molla praying for permission to withdraw the instant case with a liberty to file a fresh case in terms of existing law mainly on the ground that Section 2A(2) of the Industrial Disputes Act, 1947 has been repealed by the Repealing and Amending Act, 2016 (No.23 of 2016) w.e.f. 09.05.2016.

Ld. Advocate for the OP/Company submits that OP/Company will not file any written objection against the above petition for withdrawal of the instant case.

All the above three petitions are taken up for hearing.

Heard Ld. Advocates for both the parties. Also heard the applicant Habibur Rahaman Molla in person, who submits that today he has filed a petition for withdrawal of the instant case voluntarily with a liberty to file a fresh case in terms of existing law and he put his signatures on each and every page of the said petition. Considered.

Perused the petition dated 08.07.2019 filed by the OP/Company along with its written objection dated 21.08.2019 filed by the applicant. By filing the petition dated 08.07.2019 OP/Company has prayed for an order to hear the preliminary points before going into the merit of the instant case mainly on the ground that the instant application under Section 2A(2) of the Industrial Disputes Act, 1947 is not maintainable since the applicant has taken the amount as full and final settlement and left the company. Also perused the petition dated 02.12.2019 filed by the OP/Company praying for an order to decide the question of admissibility and / or sustainability of the instant proceedings under Section 2A(2) of the Industrial Disputes Act, 1947 at first as preliminary issue and to reject the application / proceedings due to lack of jurisdiction mainly on the ground that the Section 2A(2) of the Industrial Disputes Act, 1947, as amended, has already been repealed by the Repealing and Amending Act, 2016 (No.23 of 2016) w.e.f. 09.05.2016, while the instant case under Section 2A(2) of the Industrial Disputes Act, 1947 has been filed on 15.02.2018. Instead of filing written objection against the above petition dated 02.12.2019, the applicant has filed today the above petition for withdrawal of the instant case. Also perused the said petition for withdrawal along with statement of claim / written statement and materials on record.

This is a case under **Section 2A(2) of the Industrial Disputes Act, 1947, as amended**, filed by the applicant/workman namely, Habibur Rahaman Molla on **15.02.2018** against his employer OP/Company namely, M/s. Secure Prints in connection with termination of his service by way of refusal of employment w.e.f. 27.06.2017 declaring that such termination of service is illegal, with a prayer to reinstate him in service with full back wages and other consequential benefits.



Contd....

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

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

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

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

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

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

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

Admittedly, this case has been filed under Section 2A (2) of the Industrial Disputes Act, 1947, as amended, on **15.02.2018**, which is long after repealing of the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), repealed by the Repealing and Amending Act, 2016 (No.23 of 2016). So, it is clear that on the date of filing of the instant case i.e.

[11/2A(2)/18]

on 15.02.2018, there is no existence of Section 2A(2) of the Industrial Disputes Act, 1947 and/or Section 2A(2) of the Industrial Disputes Act, 1947 had no application on 15.02.2018.

Therefore, in view of my above made discussion and findings, I think that the applicant should be permitted to withdraw the case for the interest of justice with a liberty to sue afresh in terms of existing law. Consequently, the petitions dated 08.07.2019 and 02.12.2019, filed on behalf of OP/Company, call for no order.

Hence, it is,

**ORDERED**

that the applicant is permitted to withdraw the instant Case No. 11 of 18 under Section 2A(2) of the Industrial Disputes Act, 1947 with a liberty to sue afresh in terms of existing law.

All the three petitions dated 08.07.2019 and 02.12.2019, filed on behalf of OP/Company and the petition for withdrawal of the instant case, filed by the applicant today, are thus, disposed of.

Consequently, the proceeding stands disposed of as withdrawn.

This is my **Award**.

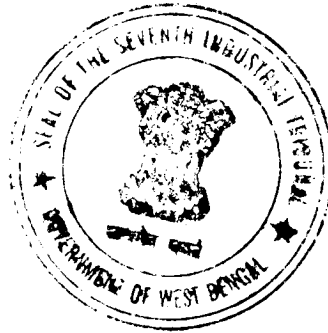
Let 6 (six) copies of this Order/Award be sent to the appropriate authority for information and taking necessary action.

Dictated & corrected by me

sd/-

Judge

Judge  
Seventh Industrial Tribunal



sd/-

(Ashis Kumar Das)

Judge,  
Seventh Industrial Tribunal,  
Kolkata  
07/01/2020

Judge  
Seventh Industrial Tribunal