

1964/2019

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

Date : 17/10/2019

No. Labr/932./LC-IR/IR/11L-34/2015

**ORDER**

WHEREAS an industrial dispute existed between M/s Udyogi Moulders (P) Ltd., Jalan Complex, Gate No. 3, Alampur, Domjur, Howrah-711411 and its workman Rintu Mondal, Sk. Para, Begri, Domjur, Howrah-711411 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 filled an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Second Industrial Tribunal, Kolkata 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 Second Industrial Tribunal, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS the said Judge Second Industrial Tribunal, Kolkata 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,

*Sdf*  
Deputy Secretary  
to the Government of West Bengal

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No. Labr/932/1(4)/LC-1RDate 17-10-2019.

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

1. M/s Udyogi Moulders (P) Ltd., Jalan Complex, Gate No. 3, Alampur, Domjur, Howrah-711411.
2. Rintu Mondal, Sk. Para, Begri, Domjur, Howrah-711411 The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
3. The OSD & EO Labour Commissioner, W.B., New Secretariat Buildings, (11<sup>th</sup> Floor), 1, , Kiran Sankar Roy Road, Kolkata - 700001.
4. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

RS 17 X 19,  
Deputy Secretary

No. ~~Labr/932/2(2)/LC-1R~~Date 17-10-2019.

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, West Bengal, with respect to his Memo No. 1258-LT dated 12.09.2019
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. Udyogi Moulders (P) Ltd., Jalan Complex, Gate No. 3, Alampur, Domjur, Howrah – 711411 and their Workman Rintu Mondal, Sk. Para, Begri, Domjur, Howrah – 711411.( Case No. 04/2016 U/s. 10(1B)(d)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT: SHRI SRIBASHJ CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

Date of passing award – 30.08.2019

A W A R D

Workman Rintu Mondal has already been admittedly reinstated in his service by the management of the company M/s. Udyogi Moulders (P) Ltd. as mentioned in order No. 18 dt. 18.01.2018 on the basis of verified petition filed by Ld. Lawyer for the workman on 21.11.2017 and accordingly after being reinstated, the workman already joined in his service w.e.f. 01.12.2017 in the post of stitching of jacket uniform at a monthly salary of Rs. 6000/- and thus issue No. 1 – whether the termination of service by way of refusal of employment w.e.f. 01.12.2015 is justified or not and issue No. 2 – is the case maintainable and is the dispute an industrial dispute as per law under Industrial Disputes Act, 1947 – are already decided without contest.

The remaining issue is issue No. 3, it is about – to what other relief, if any, is the workman entitled and it is to be decided now as it is contested.

The matter in the backdrop appears to be that the O.P. Company M/s. Udyogi Moulders (P) Ltd. having its works at Jalan Complex, gate No. 3, Alampur, Domjur, Howrah – 711411 is an well established profit earning establishment engaged in manufacturing of personal protective equipment employing about 200 employees but this O.P. Company has a habit to follow hire and fire policy in matters of employment. Workman was a permanent employee under the O.P. Company and he had been working as a machine-man for more than one year continuously. The workman took leave for one month commencing from 03.11.2015 on the ground of medical treatment of his wife and his wife was relieved from hospital on 28.11.2015, and on 01.12.2015 the workman reported for joining his duties but the management of the O.P. Company did not allow him to work, and after that the workman started visiting the place of his work in the O.P. Company but the O.P. Company by taking one plea after another refused to allow him to join his duty. After that the workman made a written request to the management of the O.P. Company to allow him to his duties with a copy of the same to Labour Commissioner, Government of West Bengal. The applicant / workman raised an industrial dispute and then the O.P. Company appeared in the conciliation proceeding and raised a false plea before the conciliation officer that the management of the company did not terminated the service of the applicant and also sent letter to the applicant

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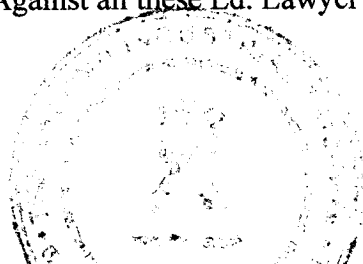


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requiring him to report for duty, yet the applicant did not join. It is further raised that the applicant went to join his duties but management of the company did not allow him and instead stated to be the applicant / workman the management of the company would not give him any bonus and he must work 10 hours a day and then applicant / workman made a written protest with information to conciliation officer. Last of all no settlement could be arrived at before the conciliation officer due to adamant attitude from the part of the management of the company and then conciliation officer issued certificate as has been filed in this case. It is further stated that the applicant / workman during his service in the company earlier used to work from 9 a.m. to 7 p.m. for a net pay of Rs. 5607/- per fortnight as per pay slip for the month of August, 2015 but O.P. Company did not issue any pay slip thereafter. The workman is unemployed after termination of his service and has been passing days in difficulties. It is also stated that the O.P. Company had been maintaining attendance register, salary register for its employees and though he had been working as a machine-man he was shown as a helper to victimize him. It is also stated that the termination of his service by O.P. Company is illegal, unjustified and in violation of mandatory provisions of law as in Industrial Disputes Act, 1947. The applicant / workman prayed for holding and declare that the termination of his service w.e.f. 01.12.2015 is illegal, unjustified and to direct the O.P. Company to reinstate him with full back-wages and consequential benefits. The O.P. Company also contested the dispute by filing written statement, wherein as I find some legal technicalities such as non-maintainability of the case, non-termination of workman etc. have been taken to bar the case altogether, and denying contention of written statement filed by the applicant / workman, the O.P. Company has raised mainly that the workman had been absenting himself from his duties on and from 03.11.2015 without any intimation, yet the O.P. Company did not take any coercive step against him on humanitarian ground and it is also mentioned that there should be a direction on the workman to join in his duty under the company.

As per contention of para-6 filed by Ld. Lawyer for the management of the company mentioning that there should be a direction on the applicant / workman to join his duties, Ld. Lawyer for the workman filed one petition to direct the management of the company to allow the workman to pass necessary order and from the order No. 18 dt. 18.01.2018, it is found that the management of the company allowed the workman to be reinstated w.e.f. 01.12.2017 in the post of teaching of jacket uniform at a monthly of Rs. 6000/-.

Thus, the issues that have been framed have been settled accordingly, excepting the matter as to whether the applicant / workman is entitled to back-wages with consequential benefits. Over this matter Ld. Lawyer appearing on behalf of the management of the company has argued that the management of the company has already reinstated the workman mentioning further that earlier also the workman was given opportunity to resume his duty, but he did not do so and accordingly he is not entitled to get any back-wages and consequential benefits. Against all these Ld. Lawyer for the workman has argued that there



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was at all not fault on the part of the workman and has added that the workman had been working continuously but suddenly his wife Smt. Asima Begum had fallen sick seriously and she was required to be provided medical treatment after getting her admitted in the hospital and on the ground, applicant prayed for grant of leave for one month and after availing of the leave when the applicant / workman reported for duty, the management of the company did not allow him. Though during the time of conciliation management of the company raised that it would allow him in case he reported for duty and when he reported for duty, the management of the company stated to him that he would have to work more than normal time and he would not be given any bonus, and when he protested, he was not allowed to join. Ld. Lawyer for the workman further submitted that anyway last of all the workman was reinstated by the management of the company and Ld. Lawyer has filed one copy of a judgement by Hon'ble High Court, Calcutta in W.P. No. 9900(W)/2016 and submitted that in that case also during the proceeding of the case the management of the company reinstated the workman and the meaning of such re-instatement came after hearing before Hon'ble Court by way of clarification and Hon'ble Court was pleased to observe that as the termination was accepted as illegal and the workman was not in employment elsewhere, the meaning of re-instatement means reinstatement with back-wages.

The workman examined himself as P.W.-1 and from the evidences of P.W.-1 it is coming out that after his services was terminated by way of refusal of employment, he could not afford to get any other service and started passing his days in hardship and it is also in the evidence that his leave on medical ground of his wife was granted and immediately after that he (P.W.-1) reported for duty but the management of the company did not allow him to join, though management of the company raised a plea that he would be allowed to join and then accordingly he (P.W.-1) reported for duty but the management of the company stated to him that he would have to work more than normal time and he would not be given bonus and then he P.W.-1 protested. I find that management of the company also examined Rajendra AGiwal as O.P.W.-1 but there is nothing in his evidences to distort any of the evidences, both oral and documentary, adduced by workman as P.W.-1. Now it is coming out that management of the company terminated his service illegally, though in the mean time the workman has been re-instated by the management of the company.

Going through the ruling cited by Ld. Lawyer for the workman I find that the meaning of re-instatement was clarified by Hon'ble High Court, Calcutta in this case by observing that reinstatement means reinstatement with back-wages. I find that this decision of Hon'ble Court as has been cited by Ld. Lawyer for the workman is in ratio with the present one and it is applicable in the present case, and thus the workman is found to be in a position to get

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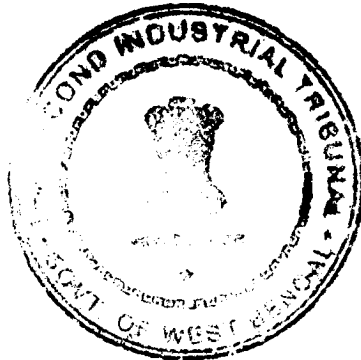
the advantage of the observation of Hon'ble Court. It is therefore,

ORDERED

that the issue No. 3 as to what other relief, if any, is the workman entitled - is decided on contest in favour of the workman Sri Rintu Mondal, Sk. Para, Begri, Domjur, Howrah - 711411 and accordingly workman Rintu Mondal is entitled to get full back-wages with other consequential benefits thereto and accordingly for a direction to get the same, and the management of the company M/s. Udyogi Moulders (P) Ltd., Jalan Complex, Gate No. 3, Alampur, Domjur, Howrah - 711411 is directed to make payment to the workman Pintu Mondal in view of the entitlement of the workman Pintu Mondal as mentioned above within one month from the date of this order and earlier reinstatement of the workman by the management of the company M/s. Udyogi Moulders (P) Ltd. as mentioned in order No. 18 dt. 18.01.2018 of the case record is hereby made absolute, and this order and direction of this Tribunal is to be treated as an award. Let necessary number of copies of this Award be prepared and send to the Additional Chief Secretary to the Government of West Bengal, Labour Department, 12<sup>th</sup> Floor, N.S. Buildings, 1, K.S. Roy Road, Kolkata - 700001 as required by law.

Dictated & corrected by me.

*S.D.*  
Judge



*S.D.*  
(Sribasi Ch. Das)  
Judge  
2nd Industrial Tribunal  
30.08.2019