

Government of West Bengal
Labour Department
I. R. Branch

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

No. Labr/. . . / (LC-IR)/22015(17)/43/2019 Date: 29/11/2022

ORDER

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WHEREAS an industrial dispute existed between M/s. The Kelvin Jute Company Limited, Park Road, Talpukur, Distt. - 24 - Parganas (North), PIN - 700123 and their workman Shri Ganga Ram, 107, Karunamoyee Road, P.O. - Talpukur, 24 - Parganas (North), PIN - 700123 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workmen has filled an application under section 10(2A) of the Industrial Dispute Act, 1947 (14of 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, Second Industrial Tribunal, Kolkata heard the parties under section 10(2A) of the I.D. Act, 1947 (14of 1947).

AND WHEREAS Second Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(2A) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 1947), the Governor is pleased hereby to publish the said Award dated 14/10/2022 as shown in the Annexure hereto vide memo no. 1545 - L.T. dated - 17/10/2022.

ANNEXURE

(Attached herewith)

By order of the Governor,

salt
Joint Secretary
to the Government of West Bengal

H/A ET M
25/11

1046/1(5) :2: 29/11/
No. Labr//(LC-IR) Date :..... 2022

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

1. M/s. The Kelvin Jute Company Limited, Park Road, Talpukur, Distt. - 24 - Parganas (North), PIN - 700123.
2. Shri Ganga Ram, 107, Karunamoyee Road, P.O. - Talpukur, 24 - Parganas (North), PIN - 700123.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

1046/2(2) Joint Secretary 29/11/
No. Labr//(LC-IR) Date :.....2022

Copy forwarded for information to:-

1. The Judge, Second Industrial Tribunal, West Bengal, with respect to his Memo No. 1545 - L.T. dated - 17/10/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Join Secretary

Before the Ld. 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge

Case No. VIII-79 of 1994

Under section 10(2A) of The Industrial Disputes Act, 1947

**M/s. The Kelvin Jute Company Limited,
Park Road, Talpukur, Distt.-24-Parganas (North)**

-Vs-

**Shri Ganga Ram,
107, Karunamoyee Road, P.O.-Talpukur, 24-Parganas (North)**

Dated 14.10.2022

J U D G E M E N T

This case has been referred by the Labour Department, Govt. of West Bengal, Kolkata to this Tribunal for disposal of an industrial dispute between the parties of this case and the Labour Department has framed two following issues for adjudication:-

- 1) Whether dismissal of Shri Ganga Ram, E.B. No. 7206 of Finishing Department from his service is justified.
- 2) What relief, if any, is he entitled to?

The case of the petitioner in short is that he was the permanent workman of the O.P. company since 1979 as Majdur but suddenly on 30.04.1992 the O.P. company made one allegation to the point that some workers under the leadership of one Saheba and another Shumbhoo assaulted the acting Mill Manager and the Commercial Manager on 25.04.1992 at about 10.30 a.m. and caused serious hurt to them and then this petitioner was suspended and then one domestic enquiry was held by the O.P. company against him and then on 21.09.1992 he was dismissed from service illegally and the principles of natural justice were not followed in the said domestic enquiry and then the petitioner approached the Assistant Labour Commissioner, Barrackpore, for conciliation but the matter was not settled and then this case has been referred to this Tribunal for disposal. Hence the petitioner has prayed for reinstatement in his service and full back wages from the date of dismissal.

The O.P. company has contested this case by filing a written statement denying therein all the material allegations of the petitioner and this company submits that on 25.04.1992 the petitioner along with other workers came to the chamber of the Manager and assaulted him mercilessly and the said Manager and acting Mill Manager were sent to the hospital for their treatment and then one domestic enquiry was held against the petitioner and in that enquiry he was found guilty and subsequently he was dismissed from his service and the principles of natural justice were duly followed and all the allegations of the petitioner are false. Hence the O.P. company has prayed for dismissal of this case.

Record shows that thereafter the case was taken up for adjudication on the validity of the domestic enquiry and evidences were taken and by order dt. 28.07.2000, this Tribunal held that the said domestic enquiry held by the enquiry officer was not fair, proper and valid, and it was not held according to the principles of natural justice and then this Tribunal fixed the dates for hearing of the case **on merit**.

Record shows that this order dt. 28.07.2000 has not been set aside or modified by any higher forum and thereafter evidences were taken on merit from both sides and **at present** this judgement is passed on the basis of the evidence on record produced by both sides **on merit only** and the evidences recorded during the adjudication of validity of domestic enquiry will not be taken into consideration.

Record shows that vide order no. 173 dt. 20.07.2007, on consent of both sides, both the cases bearing No. VIII-79 of 1994 and Case No. VIII-78 of 1994 have been ordered to be heard analogously and order no. 167 dt. 20.07.2007 passed in Case No. VIII-78 of 1994 filed by one Saheba Dora also mentions that both these two cases have been ordered to be heard analogously and all the oral evidences and documentary evidences on merit have been noted in Case No.VIII-79 of 1994.

On perusing the record of Case No.VIII-78 of 1994 and Case No.VIII-79 of 1994, I find that on merit the OPW-1 Shri Chandra Sekhar Singh has been examined in chief and crossexamined twice as the OPW-1 and one Dirib Kr. Behera has been examined as the OPW-2 in Case No.VIII-78 of 1994 and one Ajoy Kr. Bose has been examined in full as the OPW-2 in Case No.VIII-78 of 1994 and Case No.VIII-79 of 1994 and thereafter witness S.B. Heda has been examined as the OPW-3 in both the cases and witness Swapan Kumar Dolai has been examined as the OPW-4, Shri Anjan Kr. Kar has been examined as the OPW-5, one Amal Chandra Roy has been examined as the OPW-6 & Dr. Nisith Baran Mondal has been examined as the OPW-7 in Case No.VIII-79 of 1994 and both sides have proved copies of some documents. Both the petitioners of both the cases have been examined as the PW-1 and the PW-2.

In this case, as per the allegation of the O.P. company, it has to be adjudicated on the basis of the evidences on merit as to whether the petitioner along with others came to the chamber of the acting Mill Manager and the Commercial Manager on 25.04.1992 at about 10.30 a.m. and dragged them out of their chamber and assaulted them mercilessly till the arrival of the local police.

The Hon'ble Supreme Court has held in a case namely Commissioner of Central Excise, Bangalore-Vs-Srikumar Agencies Etc. Etc. as reported in LAWS(SC) 2008 11 200 that Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgements of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgements. They interpret words of statutes, their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

Regarding Affidavit in Chief:-

According to Rule 24 of The West Bengal Industrial Disputes Rules, 1958, a Tribunal has power to consider reception of evidence taken on affidavit according to the Code of Civil Procedure, 1908 while trying a labour dispute.

Order 18 Rule 4 of the Code of Civil Procedure, 1908 is related to evidence in chief in the form of affidavit. As per this provision evidences in chief in the form of affidavit can only be in relation to the fact or facts required to be proved by the parties and the examination in chief of a witness shall be only on an affidavit as per order 18 Rule 4 of the Code of Civil Procedure and each witness of both sides has to submit affidavit in chief in respect fact or facts required to be proved in a case as evidence and this is a mandatory provision and without any affidavit in chief of any witness of any of the parties, his evidence in chief in respect of the fact or facts and circumstances cannot be considered legally as per this provision.

The provisions of Order 18 Rule 4 of the Code of Civil Procedure, 1908 has come into force w.e.f. 01.07.2002 and it is concerned with evidences of the witnesses of both sides in chief **only** by affidavit and it is not concerned with the proof of documents in chief and cross examination of the said witness by the other side and if a witness does not submit his evidences in chief by affidavit, his evidences in chief cannot be considered legally as per Order 18 Rule 4 of the Code of Civil Procedure 1908 but if he

proves any documents in his examination in chief, that will be considered legally and his cross examination will also be considered legally.

So after 01.07.2002 all the witnesses of both sides in each case have to file their affidavit in chief regarding their evidences in chief and in this case from **29.04.2005** the evidences on **merit** has started but all the witnesses of both sides have not filed their affidavits in chief regarding their evidences in chief before this Tribunal and accordingly I hold in view of Rule 24 of The West Bengal Industrial Disputes Rules, 1958 and Order 18 Rule 4 of the Code of Civil Procedure, 1908 that the evidences in chief of all the witnesses of both sides cannot be considered legally in this case because the **mandatory provisions** of Rule 24 of The West Bengal Industrial Disputes Rules, 1958 and Order 18 Rule 4 of the Code of Civil Procedure, 1908 have been violated without any explanation, but from the documents exhibited by both sides and crossexaminations of all the witnesses it has to be seen as to whether the allegation of the O.P. company against the petitioner has been proved legally or not.

The PW-1 Shri Ganga Ram, the petitioner of Case No.VIII-79 of 1994, has proved one ESI Scheme as Exbt.1, one chargesheet as Exbt.E-1/1, one reply as Exbt.1, Exbt.1/1 and Exbt.1/2 and three medical certificates as Exbt.2, Exbt.2/1 and Exbt.2/2. There is nothing in the crossexamination of the PW-1 to show that the allegation of the O.P. company has been proved.

The PW-2 Saheba Dora, the petitioner of Case No.VIII-78 of 1994, has proved one pay slip as Exbt.3 and one reply as Exbt.G. There is nothing in the crossexamination of the PW-2 to show that the allegation of the O.P. company has been proved.

The OPW-1 Chandra Sekhar Singh has stated in his crossexamination that he has not produced any document to show that he was medically treated for his injuries and the incident took place in the chamber of the Commercial Manager and he (OPW-1) was standing just outside the chamber and nothing was visible in the chamber standing outside the said chamber and he cannot say whether Saheba Dora was on duty on the date of the incident and he (OPW-1) did not submit any FIR in the police station and he cannot remember the date of the incident. So from his crossexamination it is proved that **he did not see any incident** which occurred in the chamber of the Commercial Manager on the date of the incident as per allegation of the O.P. company because he was standing outside the chamber at the time of the alleged incident and the chamber of the Commercial Manager was not visible from his (OPW-1) place of standing.

The OPW-2 Dirib Kr. Behera has stated in his crossexamination that he cannot remember the date of the incident and except this Tribunal he did not inform this

alleged incident to anyone. There is no corroborative evidence on record to show that this OPW-2 was present at the time of the incident at the place of occurrence. There is nothing in the crossexamination of the OPW-2 to show that the allegation of the O.P. company has been proved.

The OPW-2 Ajoy Kr. Bose, one of the injured of this case, has stated in his crossexamination that he did not mention the names of the two petitioners in the FIR lodged by him before the police station as the offenders and this OPW-2 has claimed to be the eye-witness of the incident because he has stated that at the time of the incident he was present in the chamber of the Commercial Manager. So there is no cogent evidence in the crossexamination of the OPW-2 to show that the allegation of the O.P. company has been proved.

The OPW-3 S.B. Heda, one of the injured of this case, has proved his injury report as Exbt.J/1 but the Exbt.J/1 does not mention who assaulted the OPW-3 at the time of the incident and this OPW-3 did not attend the Tribunal for completion of his crossexamination in spite of getting many opportunities and accordingly his evidence is remaining incomplete and such type of incomplete evidence cannot be given any legal value.

The OPW-4 Swapan Kr. Dolai has stated in his crossexamination that he saw the incident but he cannot say the names of other workers except these two petitioners and there is no corroborative evidence on record to prove the presence of the OPW-4 at the time of the incident at the place of occurrence and accordingly his evidence cannot be relied upon at all.

The OPW-5 Shri Anjan Kr. Kar has stated in his crossexamination that he did not see the alleged incident and he has not specifically stated as to whether he heard the alleged incident from any source. So the entire evidences of the OPW-5 cannot be relied upon at all.

The OPW-6 S.I. Amal Chandra Roy has stated in his crossexamination that at the time of the incident he was not posted in the Titagarh P.S. and the FIR (Exbt.C1/1) does not mention who assaulted the injured of this case and the Exbt.A/1 also does not mention any name of the offender. So this OPW-6 has not supported the allegation of the O.P. company.

The OPW-7 Dr. Nisith Baran Mondal has stated in his crossexamination that the outdoor tickets of both the injured persons do not mention the date of the incident,

the place of the injury and how the injury was caused. So this OPW-7 also has not supported the allegation of the O.P. company.

So in view of the above discussions on the basis of the entire materials on record **on merit** I hold that the O.P. company has failed to prove that on 25.04.1992 at 10.30 a.m. the petitioner along with others entered the chamber of the victims and dragged them outside their chamber and assaulted mercilessly, and I also hold that the O.P. company has illegally dismissed the petitioner from his service on 21.09.1992, and accordingly I hold that the said dismissal order dt. 21.09.1992 is illegal and invalid and the petitioner is entitled to be reinstated in his service and he is entitled to get the entire full back wages from 21.09.1992.

Hence, it is

ORDERED

that the Case No. VIII-79 of 1994 under Section 10(2A) of The Industrial Disputes Act, 1947 is allowed on contest against the O.P. company with cost of Rs. 50,000/-.

It is declared that the order of dismissal dt. 21.09.1992 passed by the O.P. company against the petitioner is illegal, invalid and valueless.

The petitioner is entitled to be reinstated in his previous service in the previous scale with consequential reliefs from 21.09.1992 and the O.P. company is directed to reinstate the petitioner in his previous service at once and pay the full back wages of the petitioner from 21.09.1992 till this date of order with a compound interest of Rs. 10% p.a. on the entire said back wages and make further payment to him according to his scale with consequential reliefs after his reinstatement.

Let this order be treated as an Award.

According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this Award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this Award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.


Judge


Judge
2nd Industrial Tribunal
14.10.2022
Judge
2nd Industrial Tribunal
West Bengal