

Government of West Bengal
Labour Department,
I. R. Branch,
N. S. Buildings, 12th floor, Block-A,
1, K. S. Roy Road, Kolkata – 700 001.

No.Labr./1016/(LC-I.R)
22015(16)/594/2018

Dated, Kolkata, the 26th Dec.2018.

O R D E R

WHEREAS an Industrial Dispute existed between M/s, Singh Intelligence Security Pvt. Ltd. (SISPL), 36, R.N.R.C. Ghat Road, Shibpur, Howrah-711102 and Sri Dinanath Mishra, S/o, Late Sudarshan Mishra, Vill.- Sabuj Pally, P.O. Belda, Dist. Paschim Midnapur, Pin- 721 424 regarding the issue, being a matter specified in the third schedule to the Industrial Disputes Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Second Labour Court, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.7.1997.

AND WHEREAS, the Judge of the said Second Labour Court, Kolkata heard the parties under section 10 (1B)(d) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS the said Judge Second Labour Court, Kolkata has submitted to the State Government its Award u/s 10(1B)(d) of the Industrial Disputes 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



**Deputy Secretary to the
Government of West Bengal.**

No.Labr./1016/1(5)/(LC-IR)

Dated, Kolkata, the 26th Dec. 2018.

- Copy with a copy of the Award forwarded for information and necessary action to:-
1. M/s, Singh Intelligence Security Pvt. Ltd. (SISPL), 36, R. N. R.C. Ghat Road, Shibpur, Howrah – 711 102.
 2. Sri Dinanath Mishra, S/o, Late Sudarshan Mishra, Vill. Sabuj Pally, P.O. Belda, Dist. Paschim Midnapur, Pin- 721424.
 3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
 4. The Labour Commissioner, West Bengal, New Secretariat Buildings, (11th floor), 1, K. S. Roy Road, Kolkata-700 001.
 - ✓ 5. The O.S.D., IT Cell, Labour Deptt. with the request to cast the Award in the Department's Website.

P.T.O.



**Deputy Secretary to the
Government of West Bengal**

(2)

No.Labr./1016/2(2)/(LC-IR)

Dated, Kolkata, the 26th Dec. 2018.

Copy forwarded for information to :-

1. The Judge, Second Labour Court, West Bengal, with respect to his Memo No. 2075-L.T. dtd. 11.10.18.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata-700 001.

**Deputy Secretary to the
Government of West Bengal**

Um./Order.


26/12/18

An application U/s.10(1B)(d)of the Industrial Disputes Act, 1947 filed by Dinanath Mishra Son of Late Sudarshan Mishra, residing at Village Sabuj Pally, P.O-Belda, Dist-Paschim Midnapur, Pin Code:721 424 against Singh Intelligence Security Pvt. Ltd. (SISPL), 36, R.N.R.C. Ghat Road, Shibpur, Howrah-711 102

(Case No. 07 of 2017 U/s. 10(1B)(d) of Industrial Disputes Act, 1947)

BEFORE THE SECOND LABOUR COURT, WEST BENGAL, KOLKATA

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

Date : 05.10.2018

EX-PARTE-AWARD

This case is taken up for passing award ex-parte. Before passing such order, this court goes through the record for its satisfaction regarding service of notice. It appears from record that the notice was served properly upon the O.P. and the O.P. took steps by writing letter directly to this court twice vide its memo No. SISPL/KOL/LEGAL/7 dated 18.04.2017 and memo No. SISPL/KOL/LEGAL/12 dated 28.12.2017 praying for adjournments. This case was adjourned and ultimately, the O.P. did not take any steps. Many adjournments were granted suo motu. Thereafter, the company was directed by issuing a show cause letter asking to submit show cause as to why this case shall not be heard ex-parte. This show cause notice was also delivered by the postal department. Still then, none appeared on behalf of the company. Accordingly, this case was heard ex-parte.

The case of the applicant in nut shell is that he was an employee under the Security Intelligence Service Pvt. Ltd. since last six years and his post



was caretaker of SRI-ATM Kaushallya and his gross salary was Rs. 7072/- per month and he used to receive net salary @ Rs. 6099/- only after deduction of ESI contribution of Rs. 124/- and P.F contribution of Rs. 849/- P.M.

It is alleged that the company namely Security Intelligence Service Pvt. Ltd. surreptitiously transferred its business with the present O.P. Company namely Singh Intelligence Security Pvt. Ltd. without any information to the applicant and to its other employees. After receiving above information, the applicant approached to the present O.P. for issuing appointment letter and daily attendance Register for signing. But instead of issuing appointment letter and attendance register, the company threatened the applicant for dire consequences. Thereafter, the Opposite Party stopped the salary of the applicant from the month of April, 2016 with the allegation that as if the applicant left the ATM keeping vacant during the night times. On the pretext of false and malafide allegation, the company did not allow him to continue his service.

It is further stated in the application that the applicant informed the matter to the All Bengal Contractual Security Guard Worker's Development Union and the said union made a petition to the Labour Commissioner (Central) under Industrial Disputes Act, 1947. After receiving the application, the Assistant Labour Commissioner (Central) directed the Opposite Party to clear up the salary of the applicant from the first day of April, 2016 to July, 2016, but the O.P. Company did not pay heed to. The O.P. Company paid Rs. 4957/- instead of 6099/- for the month of April, 2016, which is less payment.

It is the claim of the petitioner that he is entitled to receive his salary for the month from May, 2016 till the month of January, 2017 @ Rs. 6099/- and the balance amount of Rs. 1142/- due for the month of April, 2016, i.e.



total Rs. 55223/-(there is a clerical mistake in computing 9 months' salary @ 6099/- which would be actually Rs. 54891/- and he also prays for allotting his duty as per rules.

In support of his case, the applicant has adduced evidence ex-parte as P.W.1. In his affidavit-in-chief he has categorically supported his case as made out in his application. During adducing evidence, the applicant produced eight documents and those were marked as Exhibit.

Exhibit 1 - is the posting order issued by the Singh Intelligence Security Pvt. Ltd.

Exhibit 2 - is the memo dated 13.06.2016 issued by Singh Intelligence Security Pvt. Ltd. to the applicant wherein it has been alleged that the applicant left vacant the ATM as if it was reported by the Branch Manager of SBI Kaushallya. By this letter, the O.P. directed the applicant to clarify the reason why he left the ATM vacant. In fact the O.P. did not contest this case to disprove the case of the applicant, rather to establish that the applicant was the habitual absentee in the night time and/or at any point of time he left vacant the ATM. There is no authentic proof that the so called Branch Manager informed against the applicant.

Exhibit 4 - is the request letter written by the applicant to the Security Intelligence Service Pvt. Ltd, (it is to be called henceforth as SISPL) for releasing his salary.

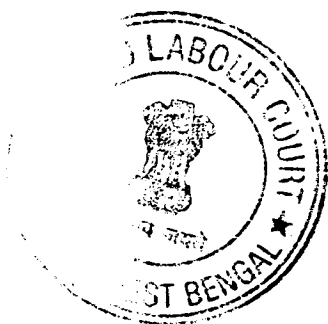


Exhibit 6 - is the petition filed by the Vice President of All Bengal Contractual Security Guard Worker's Development Union addressed to the Assistant Labour Commissioner (Central) requesting him to take up the matter with the Opposite Party for an amicable settlement.

Exhibit 6/1 - is the result of the sitting of tripartite meeting, wherein the representative of the management was present and knew all the discussions and decisions taken in that meeting. But afterwards, the management did not follow up the same.

Exhibit 7 - is the demand notice sent by the lawyer of the applicant to the Branch Manager of Singh Intelligence Security Pvt. Ltd. The Opposite Party remained silent over the demand of the applicant.

Exhibit 8 & 8/1 - are the Identity Cards issued by SISPL.

Exhibit 9 - is the petition under the I.D Act, 1947 preferred by the applicant to the Deputy Labour Commissioner, Howrah.

Exhibit 10 - is the certificate under Form(s)

Exhibit 11- is the representation to the Deputy Chief Labour Commissioner (Central).

Exhibit 12 & 12/1 - is another representation to the Labour Commissioner, New Delhi.

Exhibit 13 - is the letter issued by Assistant Labour Commissioner (C) HQ to Dy. CLC(C), Kolkata with request to look into the matter of applicant.



Exhibit 14 – is the letter of Deputy Chief Labour Commissioner (Central) written to the Singh Intelligence Security Pvt. Ltd. for compliance of the assurance given by it during the conciliation proceedings.

Exhibit 15 – is the result of conciliation proceedings.

Exhibit 15/1 – is the tripartite result wherein the management agreed to post Mr. Dinanath Mishra at Datan or in an around Kharagpur area. But the management did not keep it promise.

Exhibit 15/1 – is another tripartite result wherein the management wanted more ten days for posting of the applicant, but ultimately the management did nothing.

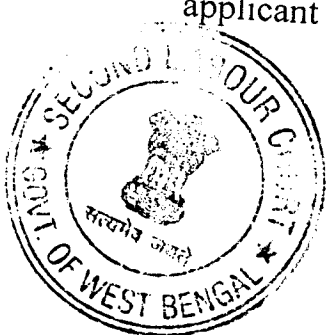
Exhibit 16 – is the certificate issued by Assistant Labour Commissioner (C).

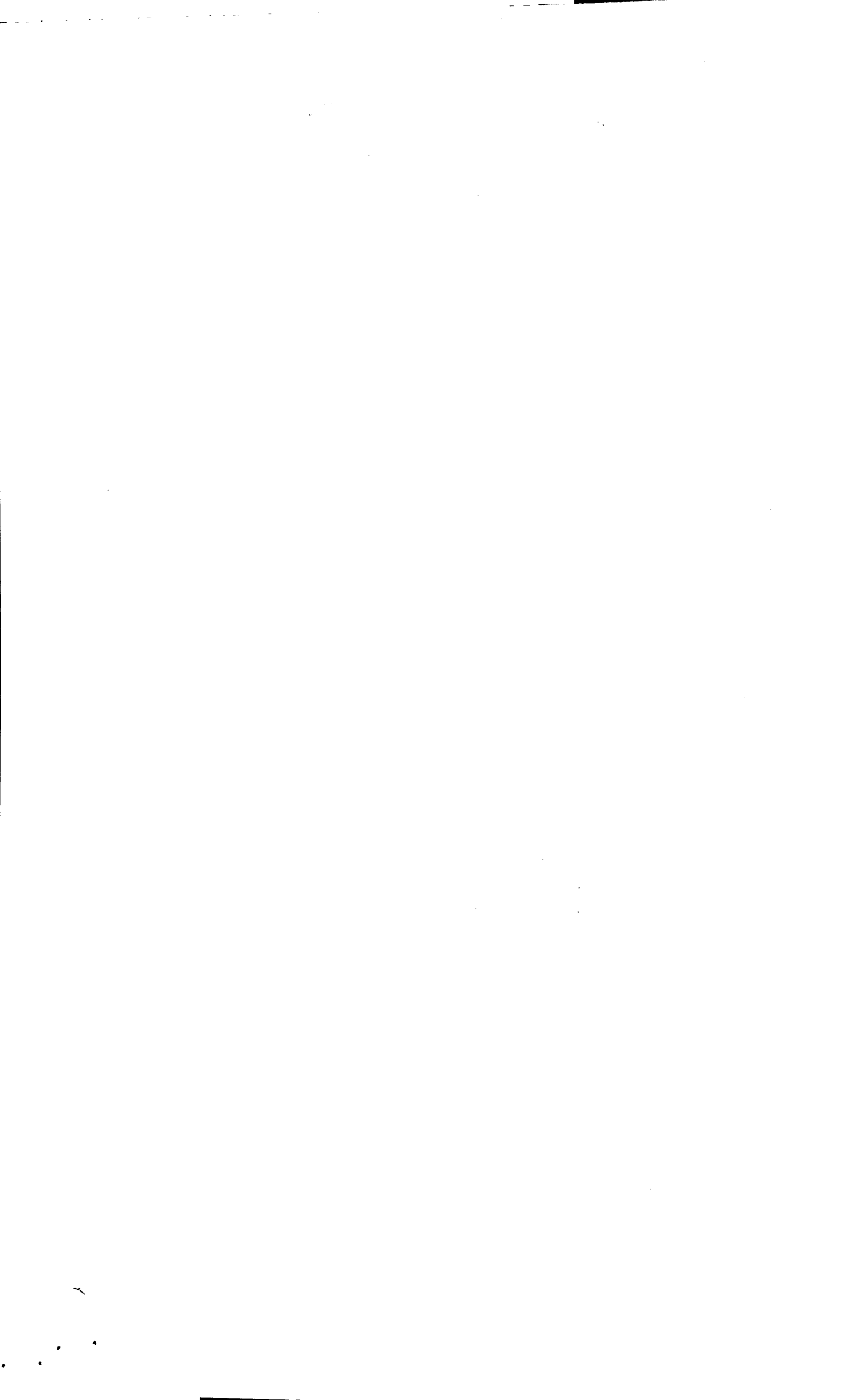
It appears from record as well as from the oral and documentary testimonies that the applicant took all positive efforts for getting back his job and back wages, but all are in vain. The Opposite Party did not issue any charge sheet against this applicant nor issued any termination letter, but surprisingly, he was not allowed to join his duties.

Considering the discussions held in the foregoing paragraphs, it is construed to hold by this court that the applicant is entitled to get relief as prayed for.

Now, the question arises regarding the determination of the salary of the applicant.

Exhibit 3 is the salary statement for the month of September, 2015 wherein it appears that his gross salary was Rs. 7072/- for that month. The applicant in his claim statement as well as in his oral testimony has stated





that his gross salary was Rs. 7072/- and ESI contribution was Rs. 124/- and P.F contribution was Rs. 849/- P.M and he used to get net salary @ Rs. (7072/- - 124/- - 849/-) =Rs.6099/-. At present he is not in service under the O.P. Company. Therefore, ESI contribution and P.F contribution do not arise at all. He would get his gross salary @ Rs. 7072/- starting from the month of May, 2016 to January, 2017 i.e. for 9 months which stands at Rs. (7072/- X 9) = Rs. 63648/- and Rs. 1142/- (outstanding for the month of April, 2016) at a total sum of Rs. (63648+1142/-) = Rs. 64790/-.

In the sum, the instant case succeeds.

Hence, it is

Ordered

that the instant case U/s. 10(1B)(d) of the Industrial Disputes Act, 1947 is hereby allowed ex-parte, but without cost. The Opposite Party is hereby directed to reinstate the applicant in service and shall pay him a sum of Rs. 64790/- along with interest @ 18% within 30 days from the date of communication of this order, failing which the petitioner is at liberty to take appropriate steps as per law for realization of the awarded amount and compliance of the order of the reinstatement.

This is the Award.

Sd/-
Dictated and corrected by me



Sd/-
Judge
(Arabinda Panti)
Judge, 2nd Labour Court
Kolkata
05.10.2018
Judge
Second Labour Court W.B.