

Government of West Bengal
Labour Department
I.R. Branch
N.S. Buildings, 12th Floor, Kol-1

No.Labr./1023/(LC-IR)

Date 31.12.2018

ORDER

WHEREAS an industrial dispute existed between Disha Eye Hospitals & Research Centre Pvt. Ltd. of Rd.-100, Palasdiha, Durgapur-8 and Sri Avijit Ghosh of 1A/4A, Nehru Avenue, Durgapur-5 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 filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Ninth Industrial Tribunal, Kolkata specified for this purpose under this Department's Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the said Judge of the said Ninth Industrial Tribunal heard the parties under section 10(1B)(d) of the I.D.Act, 1947 (14 of 1947).

AND WHEREAS, the said Judge, Ninth Industrial Tribunal, Durgapur, 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



Deputy Secretary to the
Government of West Bengal.

Date : 31.12.2018

No. Labr./1023/1(3)/(LC-IR)

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

1. The Deputy Labour Commissioner , W.B. In-Charge, Labour Gazette, 6, Church Lane, 4th Floor, Kolkata-700 001.
2. The Labour Commissioner , W.B., N.S. Buildings.(11th Floor),1, K.S. Roy Road, Kol-1.
- ✓ 3. The O.S.D. IT Cell, Labour Department, with the request to case the Award in the Department's Website.

Deputy Secretary to the
Government of West Bengal

Date : 31.12.2018

No. Labr./1023/2(2)/(LC-IR)

Copy forwarded for information to :-

1. The Judge, Ninth Industrial Tribunal, Kolkata, with respect to his Memo No. 129- I.T., dated 27.07.2018.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Deputy Secretary to the
Government of West Bengal


31/12/18 Sabita/IR/31122018

In the matter of an industrial dispute raised between Sri Avijit Ghosh of 1A/44, Nehru Avenue, Durgapur-5 and Director/Chief Medical Officer of Disha Eye Hospitals & Research Centre Pvt. Ltd. of Rd. -100, Palasdiha, Durgapur-8.

X-4/14



Before the Judge, 9th Industrial Tribunal, Durgapur.

Present : Debasish Halder, W.B.J.S.

A P P E A R E N C E

For Workman : Sri S.K. Panda, Advocate.

For Employer : Debasish Mondal, Advocate.

The date of Award : 26.07.18.

A W A R D

This is a case under Industrial Disputes Act, 1947 initiated on the application filed by Sri Avijit Ghosh, an alleged retrenched workman of Disha Eye Hospitals & Research Centre Pvt. Ltd. for his reinstatement in the service with full back wages, cost of litigation and any other relief to which he is entitled.

It is the case of the petitioner that he is a permanent workman of the opposite party who was appointed as a Pharmacist on 01.11.2011, on obtaining "certificate of registration" from the West Bengal Pharmacy Council after successful completion of his training and he worked under Opposite Party/Employer who was terminated from service on 09.11.2013 for the charge of "selling of drugs belonging to the category of physicians sample to customers", without following the principle of natural justice and violating the service Rules & Regulations without giving him an opportunity to defend himself. He made several appeals to the employer for his reinstatement, but the employer did not take any positive step(s) and finding no other alternative he was compelled to raise an Industrial Dispute before the Conciliation Authority i.e. the Assistant Labour Commissioner, Durgapur, but due to lackadaisical attitude of the Authority, the conciliation proceedings failed and after lapse of statutory period finding no other way he is compelled to file this case directly before this Tribunal according to the Provision of Industrial Disputes Act, 1947. He prays for order of reinstatement in the service with full back wages.

Chief Medical Officer, Disha Eye Hospitals & Research Centre Pvt. Ltd. (hereinafter, referred to the Hospital) submits written statement on the ground that no conciliation proceeding has been taken place in this case which is a prerequisite for raising an industrial dispute and that no Form-S has been issued by the Conciliation Officer i.e. the Assistant Labour Commissioner, Durgapur and the application is not maintainable allegedly filed under Section 10(1B) of the Industrial Disputes Act, 1947 by Sri Avijit Ghosh (hereinafter, referred to the employee/petitioner).



//2//

Upon the above pleadings of the parties following issue has been framed for adjudication of the present proceeding :

1. Whether Sri Avijit Ghosh was bonafide employee of Disha Eye Hospital at any point of time and if so, whether his termination by the Employer justified?

The workman in support of his case has examined himself as P.W.-1 and 3 documents i.e. E.S.I. Card of Sri Avijit Ghosh, his Pay Slip for the Month of October 2013 and Certificate of Registration issued by West Bengal Pharmacy Council were marked as Ext.-1, 2 and 3 respectively.

On the other hand Partha Mondal the Authorised Representative of the Hospital was examined as O.P.W.No.-1 and documents filed by him were made X, Y series, Y/1, Y/2 and Y/3 for identification. On admission by Sri Avijit Ghosh, Xerox copy of receipt of M/S Get Well Pharmacy, Benachity dated 24.12.15 and Signature of Madan Mondal on a prayer affixed therewith a label showing Physicians sample not to be sold were marked Ext.-A & B.

Decision with reasons

The case and evidence of the petitioner Sri Avijit Ghosh is that he is a bonafide permanent employee/workman of the O.P./Hospital who was appointed as a Pharmacist on 01.11.2011 on obtaining "Certificate of registration" from the West Bengal Pharmacy Council after successful completion of his training. The Certificate of Registration (Ext.-3) proves that the name of Sri Avijit Ghosh has duly been registered as a Pharmacist who gets qualification Bachelor of Pharmacy. The Pay Slip for the Month of October 2013 in the name of the staff of the O.P. Hospital namely Avijit Ghosh proves beyond doubt that he was appointed on 01.11.2011 who continued service above 240 days with the O.P. Hospital. Ext.-1 shows that the name of Avijit Ghosh was registered with Employees State Insurance Corporation. All these prove that Sri Avijit Ghosh was a permanent workman/employee under the O.P. Hospital/Employer.

It is not disputed that Sri Avijit Ghosh was terminated from the service on 09.11.2013.

According to O.P.W.-1 service of Sri Avijit Ghosh was terminated on the basis of charge of selling of "Not to be Sold" symbolic medicines which are "Physicians Sample" to a patient party named Sri Madan Mondal, in connivance with Mrs. Dipanwita Ghosh who was "Pharmacist" and In Charge of the Employer's (Hospital's) Pharmacy.

In cross examination O.P.W.-1 admits that no show-cause has been issued against the workman Avijit Ghosh for the allegations levelled against him and no Charge Sheet has been submitted against said workman. He stated that he was the Enquiry Officer in respect of the allegation made against delinquent Avijit Ghosh, but he admits that no one has appointed him as Enquiry Officer. Further he admits that he did not inform Avijit Ghosh as to venue, date & time of holding enquiry and that no Presenting Officer has been appointed from the end of O.P. Hospital and the O.P. Hospital did not file any Criminal Case against Avijit Ghosh for the allegations of selling "Physicians Sample" marked "not to be sold" and for unauthorized user of the seal of the O.P. Hospital. He stated that he cannot recollect as to the particulars of the complaint of Madan Mondal.

The so-called complainant Madan Mondal did not examine in support of his complaint of selling of drugs belonging to the category of Physicians Sample to him. Ext.-B is the Signature of Madan Mondal on a paper affixed therewith a label Physicians sample not to be sold, itself does not prove beyond reasonable doubt that any drug/medicine to the category of Physician Sample was sold to said Madan Mondal. To prove such allegation, Madan Mondal ought to have been examined and/or so-called delinquent workman ought to have been charge sheeted for such allegation after enquiry maintaining all legal formalities as required under law before issuance of termination/dismissal letter to him. The complaint of Madan Mondal being not proved, on the basis of such complaint/allegation termination/dismissal of service of Sri Avijit Ghosh without proper enquiry is not tenable in the eye of law which violates the principal of natural justice, rather held illegal.

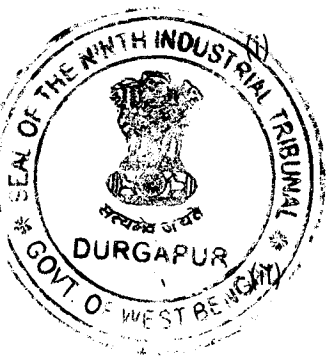
It is evident that the petitioner/workman raised an industrial disputes before the Assistant Labour Commissioner, Durgapur in writing which was duly received by it's office on 17.02.14. The case of the petitioner/workman is that due to lackadaisical attitude of the Authority, the conciliation proceedings failed.

Section 2A(2) of the Industrial Disputes Act, 1947 [inserted by the Industrial Disputes (Amendment) Act, 2010 (24 of 2010), Section 3 w.e.f 15.09.2010] is produced below :

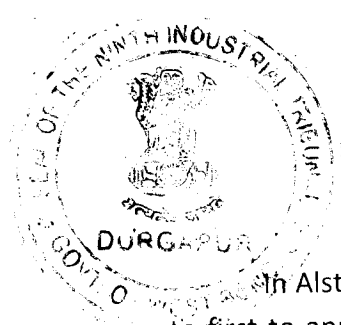
Notwithstanding anything contained in Section 10, any such workman as is specified in Sub-section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation 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 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.

A plain reading of Section 2A(2) of the Industrial Disputes Act, 1947 proves beyond doubt that :

making an application to the Conciliation Officer of the appropriate Government for conciliation of the dispute is the only prerequisite for filing a case before the Tribunal under the Industrial Disputes Act, 1947 and the issuance of Form-S according to Section 10(1B) of the West Bengal Amendment of the Industrial Disputes Act, 1947 has no relevance; even no conciliation proceeding is held between the parties to the dispute in presence of the Conciliation Officer within 45 days from filing of such application by the workman due to the failure on the part of Conciliation Officer or the Employer, the workman has liberty to file a case directly before the Labour Court /Tribunal which will have the jurisdiction to adjudicate upon the dispute.



The judgment reported in Re : Orissa Industries (P) Ltd. -Vs.- Presiding Officer, Industrial Tribunal & Ors. Reported in 1976 Lab. I.C.285 and Sindhu Resettlement Corporation Ltd. -Vs.- Industrial Tribunal of Gujrat & Ors. (AIR 1968 Supreme Court 529) relied upon by the Ld. Advocate of the O.P./ Employer, both being passed before the aforesaid amendment of 2010, are distinguishable, for not taking into consideration the subsequent Amendments.



//4//

In Alstom Projects India Ltd. -Vs.- State of Karnataka it was held that it is not mandatory to first to approach the Conciliation Officer nor it is mandatory for the Conciliation Officer to hold such conciliation talks between the employer and the employee/workman and then only make a reference, if considered appropriate by him because in these events, deemed to be an Industrial Dispute by fiction of law requiring adjudication by the competent Labour Court or Tribunal.

In Haji Abdulla Haji Adam Sait -Vs.- T.V. Hameed (A.I.R. 1985 Kerala 93) it was held that may be the defendant has not pleaded the ingredients of Section 70 specifically, but we are of the view that the pleadings do disclose the substance of the Section.

In this case though specific Section has not been pleaded by the workman, but Order No. 16 & 17 passed on the point of maintainability shows the relevant Provision of Law under which the petitioner has sought for relief.

It is evident that after the dismissal the petitioner/workman was working at Binapani Medical Shop but his Registration Certificate, renewed time to time, was attached with Get Well Pharmacy, Benachity. According to the petitioner/workman to maintain his livelihood he had no other alternative but to work under Binapani Medical Shop and Get Well Pharmacy, Benachity and his Registration Certificate was firstly attached with O.P. Hospital then with M/S Get well Pharmacy.

Having regard to the oral and documentary evidence of the parties, I hold that the termination of the service of Sri Avijit Ghosh by the O.P. Employer/Hospital on and from 09.11.13 is illegal and liable to be set aside. Thus the management of the O.P. Employer/Hospital is bound to reinstate the concerned workman, one of its permanent employee, but as the workman is working with above named concerns and getting his registration certificate attached with M/S Get Well Pharmacy, Benachity, Durgapur, he is not entitled to get back wages.

Accordingly the issue is disposed of.

In the result, the present proceeding succeeds.

Hence,

ORDERED

that case no. X-4/14 under Provision of Industrial Disputes Act, 1947 be and the same is disposed of on contest against the management of Disha Eye Hospital & Research Centre Pvt. Ltd. The dismissal/termination/retrenchment of Sri Avijit Ghosh by the management of the hospital on and from 09.11.2013 is hereby declared illegal and unjustified.

The management of the hospital is hereby directed to reinstate the concerned workman Sri Avijit Ghosh in the same post which he was holding at the time of his retrenchment/termination/dismissal and in the same pay scale forthwith.

Send copy of this award to Secretary, Labour Department, Govt. of West Bengal for doing needful. Supply free copy of this award to the concerned parties.

Dictated & corrected by me.

Sd/- Debasish Halder
JUDGE 26.7.18.

NINTH INDUSTRIAL TRIBUNAL
DURGAPUR

Sd/- Debasish Halder
Judge, 26.7.18.

9th Industrial Tribunal,

Durgapur.

JUDGE

DURGAPUR