

File No. LABR-22015(16)/543/2018-IR SEC-Dept. of LABOUR

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

No LABR/941/(LC-IR)

Date 07/12/2018

ORDER

WHEREAS an industrial dispute existed between M/S: Tecpro System Ltd, Ashtech Division, P-452B Hemanta Mukhopadhyay Sarani (Keyatala Road) , Kolkata-29 and their workman Sri Tapas Kanti Batabyal, Vill. Patharberia, P.O.: Ramchandranagar, Dist. South 24 Parganas, Pin-743503 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 of 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

No.Labr/941/1(2) – IR

Dated 07/12/2018.

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 1961-LT dated 25/09/2018.
2. The Joint Labour Commissioner (Statics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No.Labr/941/2(5) – IR

Dated 07/12/2018

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

1. M/s : Tecpro System Ltd, Ashtech Division, P-452B Hemanta Mukhopadhyay Sarani (Keyatala Road) , Kolkata-29
2. Sri Tapas Kanti Batabyal, Vill. Patharberia, P.O.: Ramchandranagar, Dist. South 24 Parganas, Pin-743503 .
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Building (11th 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

In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata

Present : **Sri Avani Pal Singh,**
Judge, Seventh Industrial Tribunal, West Bengal.

Case No.35/2A(2)/2016; under Section 2A(2) of the I. D. Act, 1947

Tapas Kanti Batabyal, Vill. Patharberia,
P.O. Ramchandranagar, Dist. South 24-Parganas,
PIN – 743503.

....Applicant

versus

M/s. Tecpro System Ltd., Ashtech Division,
P-452B Hemanta Mukhopadhyay Sarani (Keyatala Road),
Kolkata – 700 029.

.....OP/Company

A W A R D

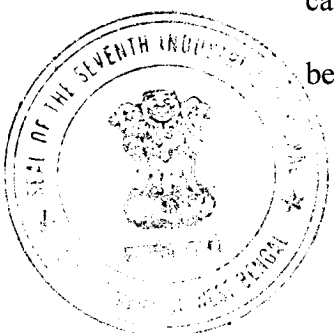
Dated : 31-08-2018

1. This **ex-parte** proceeding under Section 2A(2) of the Industrial Disputes Act, 1947 has its origin in an application filed under that section by Tapas Kanti Batabyal, hereinafter referred to as the applicant, on 20.09.2016 against his employer M/s. Tecpro Systems Ltd., Ashtech Division, P-452B, Hemanta Mukhopadhyay Sarani, Keyatala Road, Kolkata – 700029, hereinafter referred to as the OP/Company, in connection with the alleged illegal termination of his employment by such employer, with prayers for reinstatement in service with full back wages, and consequential benefits.
2. Upon the filing of the aforesaid application under Section 2A(2) of the Industrial Disputes Act, 1947, the instant case came to be registered on 20.09.2016 and thereafter a notice, along with a copy of the application, was issued to the OP/Company at its given address by registered post with A.D, directing the OP/Company to appear before the Tribunal on 28.10.2016 and file their written

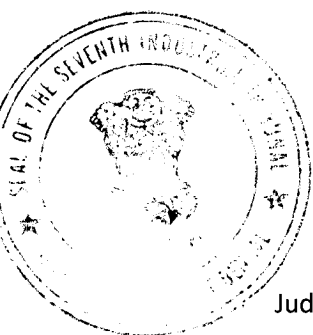


statement. Records reveal that on 28.12.2016, this Tribunal noted that the notice sent to the Kolkata address of the OP/Company had returned undelivered with postal remark '**refused**' and accordingly held that it was '**good service**', however, since the address of the two other offices of the OP/Company at Pune and Chennai were also stated in the application, this Tribunal further directed that such notices, together with copies of the application, be sent to those other two addresses. Records further reveal that on 23.02.2017, this Tribunal noted that the notice issued to the OP/Company at its Pune address had been duly served, however nobody appeared on behalf of the OP/Company and further, since the "service report" of the notice sent to the Chennai office address of the OP/Company had not returned, the applicant was directed to take steps so that fresh notice could be issued to the OP/Company at its Chennai office. Records further reveal that on 29.11.2017, this Tribunal noted that the notice issued to the Chennai address of the OP/Company had been duly served, but nobody appeared on behalf of the OP/Company on that date and accordingly, for the ends of justice the case was adjourned and the matter was fixed for filing written statement by the OP/Company on 05.01.2018. Records further reveal that on 05.01.2018, this Tribunal noted that nobody appeared on behalf of the OP/Company, nor was any written statement filed on their behalf, despite several opportunities having been granted in that regard and accordingly, it was directed that the matter shall proceed for **ex-parte** hearing on 21.02.2018, and it has proceeded as such till date.

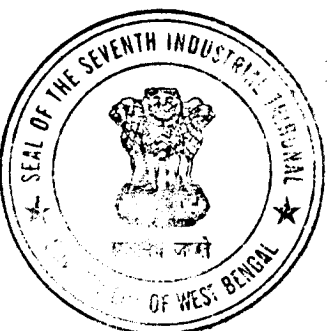
3. The case made out by the applicant in his application briefly is that the OP/Company is a company registered under the Companies Act, 1956 having its office located, among others, within the jurisdiction of this Tribunal at Kolkata and that the applicant came to be employed under them on and from 26.09.2012 and further, that he has been in uninterrupted service of the OP/Company without an iota of blemish and that



his monthly salary rose to Rs. 40,000/- under the OP/Company. It is the further case of the applicant that though the OP/Company came under the purview of the West Bengal Shops & Establishments Act, 1965, but they did not follow the mandatory provisions thereof nor discharge the legal obligations prescribed therein and adopted “hire and fire policy” to victimise the applicant and when the applicant went to his workplace on 12.03.2015, he was asked to submit his resignation letter and was informed that if he failed to submit his resignation he would lose his lien of employment without payment of his dues, and in consequence of such stand taken by the OP/Company, the applicant was compelled to submit a resignation letter so that he would get his statutory dues, without realising that the OP/Company had sought to terminate his employment under the veil of obtaining his resignation, and upon realising the same the applicant had requested the OP/Company to reinstate him with full back wages/salary and consequential benefits for his forced idleness that was created due to the unlawful acts of the OP/Company with a further prayer to consider the applicant’s demand of justice dated 30.06.2016, but it all yielded little result. It is the further case of the applicant that when there was no outcome from the OP/Company in respect of the applicant’s said demand of justice, he submitted a copy of the representation on 03.08.2016 to the office of the Labour Commissioner, Government of West Bengal. It is the further case of the applicant that since there was no outcome in the conciliatory proceedings within 45 days, he filed the instant application before this Tribunal, wherein he prayed that this Tribunal would declare the alleged termination of employment of the applicant, by way of obtaining his resignation by the OP/Company, was unlawful and unjustified and that the applicant was entitled to reinstatement in his service with full back wages and other consequential benefits.



4. Testifying in support of his aforesaid case, the applicant examined himself as PW-1 on 25.05.2018 by tendering his affidavit-in-chief, on oath, and further the PW-1 identified copies of his demand of justice dated 30.06.2016 (**Exhibit-1**), of his representation/demand of justice dated 04.07.2016 (**Exhibit-2**) and original consignment notes (**Exhibit-3, coll.**) showing due despatch of the said representations to the OP/Company, all of which were taken into such **ex-parte evidence**.
5. Having examined the testimony of PW-1, this Tribunal noted that nowhere within the four-corners of his affidavit-in-chief has the applicant testified that he was a 'workman' or that his nature of work and responsibilities would bring him under the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, 1947. In this regard, this Tribunal further noted that nowhere in his affidavit-in-chief has the applicant even mentioned his designation, which may have given an idea in respect of his job as well as work responsibilities, though he did state therein that he was getting a salary of more than Rs. 40,000/- from the OP/Company. In this context, this Tribunal further examined the documents brought on record by PW-1, as aforesaid, and from **Exhibit-1**, which is a copy of his demand of justice dated 30.06.2016 addressed to the OP/Company at its Kolkata office, it appears that the applicant referred to an **appointment letter dated 26.09.2012 therein** and stated that he was appointed as Assistant Manager (Electrical) and worked as such, till cessation of employment by taking his resignation letter w.e.f. 12.03.2015, and further, in **Exhibit-1** it is stated that the OP/Company had utilised his manual, operational, technical and clerical nature job at different power plants, as dictated to him by the OP/Company. However, the applicant for reasons best known to him, has not brought into evidence a copy of his said appointment letter dated **26.09.2012**, and hence this Tribunal has been precluded from examining the same with a view to find



out the correct status/designation, job nature as well as different work responsibilities, with a view to determine if the applicant was a '**workman**', or otherwise. This Tribunal further noted that from **Exhibit-2**, which is another demand of justice dated 04.07.2016 purportedly sent by the applicant to the OP/Company, there is no assistance available in that regard, as the **relevant portions are nothing but verbatim reproduction** of the said letter dated 30.06.2016 (*Exhibit-1*). There is nothing further in evidence from where this Tribunal could determine if the applicant would fall under the definition of '**workman**' as under Section 2(s) of the Industrial Disputes Act, 1947.

6. This Tribunal, in light of the aforesaid findings, considers it imperative to reiterate that the onus to establish that he/she is a '**workman**' under the Industrial Disputes Act, 1947 lies on the applicant, **even in an ex-parte proceedings**, for the simple reason that in the absence of materials on record showing or establishing that the applicant, by dint of duties/work/job performed during his/her employment, would fall within the definition of '**workman**' as under Section 2(s) of the said Act of 1947, this Tribunal would not have jurisdiction to proceed under Section 2A of the said Act of 1947, the provisions of which are reproduced hereinafter :

"2A. 1) 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.]

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 three months 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

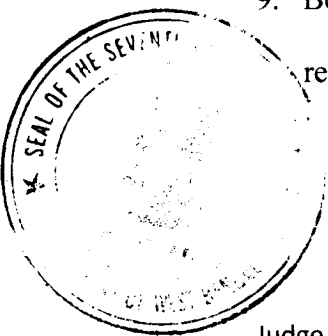


such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(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).

(emphasis added)

7. A plain reading of the Section 2A and the various provisions thereunder, as aforesaid, makes it clear that an application under *sub-Section (2) thereof*, as is in the present case, can only be preferred by a 'workman' as specified in sub-Section (1), the language whereof is also specific and states that when an employer "discharges, dismisses, retrenches, or otherwise terminates the services of an **individual workman**" only then a dispute or difference between the employer and the said individual workman could be termed as an "Industrial Dispute".
8. This Tribunal is mindful that the Industrial Disputes Act, 1947 was created as social welfare legislation and time and again, Hon'ble Supreme Court as well as the Hon'ble High Courts have consistently guided Tribunals and Labour Courts to view the provisions of the said legislation in the light of the facts that the workman/workmen in the country are mostly uneducated and rustic people who may not be well aware of the procedures and legal requirements and may also not be able to afford proper legal advice or legal representation and yet, keeping in mind the constitutional guarantees of social justice, the Courts and Tribunals would be required to act in a manner so that the burden of legality does not defeat any genuine lawful entitlement and protection that the said legislation sought to give to workmen, as well as to an individual workman.
9. Be that as it may, this Tribunal is also conscious of the fact that certain minimum requirements, as prescribed in law, as well as prudent safeguards are also required to



be addressed so that the fruits of beneficial legislation reach only to those who are deserving. Keeping the aforesaid in mind, this Tribunal noted that even though the applicant sought to mention details of his appointment letter, his designation, his job-nature and functions etc in his representations (*Exhibit-1 & Exhibit-2*) to the OP/Company as well as to the office of the Labour Commissioner, he failed to make such statements, during his evidence in the dock, on oath. In this context, the position of law is well-settled that making of a statement in a representation or in a letter to the employer or to an administrative authority is not the same, and cannot be construed to be same either, as making a statement on oath, before a Court of Law. While there may not be consequences for statements/claims made in letters and representations, a statement on oath before a Court of law must necessarily pass the muster of truth failing which the maker of such statement, on dock, renders himself liable for committing the offence of perjury.

10. In the present case, this Tribunal has noted that the applicant chose not to make any statement regarding his nature of work, designation or even his alleged appointment letter, while testifying on oath before this Tribunal, even though he had made such claims clearly in his representations, as aforesaid. In this context, this Tribunal also noted that the applicant had engaged the services of a Learned Advocate of his choice, all through the proceedings, and hence there is nothing before this Tribunal to draw an inference that the applicant was ignorant of the legalities involved or of the procedural requirements, for which he chose to or failed to bring his appointment letter dated 26.09.2012 into evidence, as claimed, and further, failed to make statements regarding his status and designation, nature of job and duties etc while testifying in support of his contentions in his application.



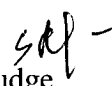
11. In the light of the aforesaid deliberations, this Tribunal is constrained to hold that the applicant has failed to establish, by way of cogent and consistent evidence, that he was a 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947 during his employment with the OP/Company and as such, this Tribunal further holds that the applicant cannot be held to be a 'workman' in the eyes of law and accordingly, he is not found entitled to any relief under Section 2A(2) of the Industrial Disputes Act, 1947, as prayed for, as his application cannot be held 'maintainable' under the said or any other provisions of the Industrial Disputes Act, 1947.

Hence, it is,

ORDERED

That the prayer(s) made in the instant application be and the same are hereby refused and the instant case is held to be not maintainable under the provisions of Section 2A(2) of the Act, and accordingly the instant Case No. **35/2A(2)/2016** is disposed of, as rejected, **ex-parte**.

Dictated & corrected by me


Judge
Seventh Industrial Tribunal


Judge,
Seventh Industrial Tribunal
31/08/2018
Judge
Seventh Industrial Tribunal

