

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

No. Labr./186/../(LC-IR)/22025/25/2018.

Date as 10/10/2021

ORDER

WHEREAS an industrial dispute existed between M/s. Karan Global Security and Services Pvt .Ltd. HPL Link Road, Basudevpur, P.O. - Khanjanchak, Haldia, Purba Medinipur, Pin - 721602 and their workman Sk. Farhad Ali, Village - Uttar Basulia, P.O. - Tajnagar, P.S. - Sutabata, District - Purba Medinipur, Pin - 721635 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 Second Labour Court Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the said Second Labour Court heard the Parties and framed the following issues as the "Issue" of the said dispute;

AND WHEREAS the said Second Labour Court has submitted to the State Government its Award dated 09/09/2021 on the said Dispute vide memo no.1089 L.T. dated-15/09/2021.

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,

.Sd/ —

Joint Secretary

to the Government of West Bengal

(2)

No.Labr...../1(2) - IR

Dated 05/10/2021.

Copy forwarded for information to :

1. The Judge, Second Labour Court with reference to his Memo No. 544. - L.T. dated 07/04/2021 .
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

Sd/-
Joint Secretary

No.Labr...../2(5) - IR

Dated 07/10/2021

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

- 1.M/s. Karan Global Security and Services Pvt .Ltd. HPL Link Road, Basudevpur, P.O. - Khanjanchak, Haldia, Purba Medinipur, Pin - 721602.
- 2.Sk. Farhad Ali, Village - Uttar Basulia, P.O. Tajnagar, P.S. - Sutabata, District - Purba Medinipur, Pin - 721635 .
3. The Assistant Labour Commissioner, W.B., In-Charge of 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 Deputy, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Joint Secretary

Ahanda (IT)
RL 5/10

In the matter of an application u/s. 10 read with Section 2A(2) sub section 2 of the Industrial Disputes Act, 1947 filed by Sk. Farhad Ali, resident of Village – Uttar Basulia, P.O. – Tajnagar, P.S. – Sutabata, District – Purba Medinipur, PIN - 721 635 against M/s. Karan Global Security and Services Private Limited, HPL Link Road, Basudevypur, P.O. – Khanjanchak, Haldia, Purba Medinipur, PIN – 721 602.

(Case No. 03/2012 u/s. 2A(2) of Industrial Disputes Act, 1947).

BEFORE THE SECOND LABOUR COURT, WEST BENGAL, KOLKATA

PRESENT: SMT. DIPASHYAM RAY, JUDGE

SECOND LABOUR COURT

KOLKATA.

DATED: 09.09.2021.

A W A R D

This is a written statement u/s 2A(2) of Industrial Disputes Act, 1947 filed by the applicant challenging the dismissal order dated 13.05.2012 and prayed for reinstatement in service with full back wages and other consequential relief.

The fact of the case in a nutshell is that the applicant Sk. Farhad Ali joined in the Company of M/s. Karan Global Security and Services Private Limited as security personnel from 19.07.2010. Company issued charge-sheet dated 25.10.2011 bringing certain allegations against the workman who submitted his reply vide letter dated 19.01.2012. Management thereafter conducted domestic enquiry but applicant was not allowed to be represented by a lawyer. The said enquiry could not be attended by the applicant. Applicant has alleged that the Enquiry Officer without following the principles of natural justice and reasonable norms of conducting domestic enquiry found the applicant guilty. Management even did not forward the copy of the proceedings and the findings of the 'Enquiry Officer' to submit his comments. Then on the basis of one sided ex parte enquiry, proceeding and findings of the Enquiry Officer the dismissal order dated 13.05.2012 was passed. Applicant was paid subsistence allowance after the intervention of the Conciliation Officer. Workman has contended that he was earning Rs. 7,015/- per month and is not gainfully employed else the dismissal order passed by the Management, according to the applicant is illegal, inoperative and violation of principles of natural justice. Workman is praying for reinstatement in service with full back wages and other consequential benefits. The workman Sk. Farhad Ali challenged the validity and legality of the order of his dismissal from service in the present application u/s 2A(2) of the Industrial Disputes Act, 1947.

The opposite party company, on the other hand, by filing amended written statement has contended that there was no Industrial Dispute at any point of time between the Company and the workman. According to opposite party Sk. Farhad Ali had been working with the company in the pollution department of their principal employer M/s. Modern India Concast. Since his engagement on 19.07.2010, he was involved in immoral activities and illegal work.

For such act he was left under suspension from 25.10.2011. After framing of charges the enquiry was done by the Enquiry Officer and with the level of charges Company discharged him from his service on and from 13.05.2012. On the basis of report and receiving one copy of letter dated 18.10.2011 filed by Sk. Farhad Ali originally addressed to the working president (INTTUC), wherein he admitted his

dishonest connection with transaction of quality control, pollution department. charge-sheet was issued on 25.10.2011 by framing charges of theft, taking, giving, offering or asking for bribes / illegal gratification and act of subversive of discipline. He was dismissed from service in terms of enquiry report. Following terms of settlement had been retorted before the Conciliation Officer and Assistant Labour Commissioner, Haldia.

(i)	Suspension allowance of Rs. 6.660 + 12.321/-	= Rs. 18,981/-
(ii)	Unpaid wages of October, 2011	= Rs. 5,079/-
(iii)	Retrenchment benefit	= Rs. 5,100/-

Rs. 29,160/-

Aforesaid amount has been paid by the Company towards full and final settlement through cheque Nos. 342895, 342896 and 342897 upon the UCO Bank, Haldia Branch on 01.08.2012.

Opposite party has further confirmed that total amount of Rs. 29,160/- has been paid to the workman Sk. Farhad Ali and credited from the bank of the Account of Company i.e. UCO Bank, Haldia Branch on 01.08.2012. The workman has accepted his dues towards the full and final settlement. Though the workman has no dispute pending against the Company he has filed the instant case without having any merit. Opposite party has denied that the workman was honest and sincere towards his service. Further according to the Company, workman was given enough opportunity to be heard represented. Instead, he was absent in spite of repeated notice to him. Company has further denied the monthly remuneration of the workman was Rs. 7,015/-. According to the Company it was Rs. 5,079/- per month which has been taken into consideration while computing his subsistence allowance, due wage and retrenchment benefits. Company is praying for passing an Award holding that the workman is not entitled to get any relief as prayed for.

From the above pleadings following issues have been framed:-

- 1) Is the case maintainable in its present form and prayer?
- 2) Has this Court any jurisdiction to try the present state of affairs of the case?
- 3) Whether the dismissal is just and proper?
- 4) Is the applicant entitled to get relief as prayed for?
- 5) To what other relief/reliefs, if any, the applicant is entitled as per law and equity?

It transpires from the case record that one Shri Prasad Ranjan Ghosh who claimed himself as Senior Manager (HRD) under M/s. Karan Global Security and Services Private Limited adduced evidence as O.P.W.-1. Certain documents are marked Exhibit A to H during his examination-in-chief. Exhibits 1, 2 & 3 were marked in favour of the workman during further cross-examination of Shri Prasad Ranjan Ghosh. After cross-examination at length this witness was discharged. Thereafter, one Mr. Vivek Singhania who claimed himself as the Assistant General Manager of M/s. Modern India Concast Limited adduced evidence as O.P.W.-2. One Shri Gour Hari Hazra who claimed himself as Supervisor of M/s. Karan Global Security and Services Private Limited also adduced evidence as O.P.W.-3. One Mr. Samir Sengupta who claimed himself as the Site Supervisor of M/s. Karan Global Security and Services Limited adduced evidence as OPW-4. On the contrary applicant Sk. Farhad Ali was examined as P.W.-1 and certain documents were marked as Exhibits 4 to 11 during his examination-in-chief. No other witness is adduced as evidence for the workman. Ld. Advocate for the OP has submitted

a brief argument and did not turn up on the subsequent date whereas Ld. Advocate for applicant placed lengthy argument challenging the dismissal order candidly.

Now, let me discuss how far the workman is capable of establishing his grievances.

DECISION WITH REASONS

Issue No. 1 & 2.

For sake of brevity and precision these two issues are taken up together for discussion.

Ld. Advocate for the opposite party contended that after discussion held in the chamber of Assistant Labour Commissioner, Khanjanchak, Haldia on 09.07.2012 all legal dues including retrenchment compensation, due wages, subsistence allowance were paid by the company sending three A/c payee cheques in full and final settlement. Workman accepted the payment and after receiving the cheques in full and final settlement now workman cannot raise Industrial Dispute further.

According to Ld. Advocate for O.P. at present applicant is estopped from raising industrial dispute before Labour Court and therefore this case is not at all maintainable after acceptance of all his dues by the workman from the O.P. Company. Perused the evidence in chief filed by the workman, Sk. Farhad Ali wherein he vaguely denied the payment of all his dues by the O.P. Company. Ld. Advocate for O.P. has drawn my attention towards the Exhibit 2 i.e. the calculation sheet dated 23.07.2012 prepared by the O.P. Company and signed by Shri Sukumar Midya, authorised signatory for M/s. Karan Global Security and Services Private Limited which clearly denotes that as per the discussion held in the chamber of Assistant Labour Commissioner, Khanjanchak, Haldia where the workman was also present on 09.07.2012, Company was paying all his dues through 3 (three) A/c payee cheque. Ld. Advocate for O.P. fervently argued that conciliation was arrived in between the Company and the workman in presence of Assistant Labour Commissioner, Khanjanchak, Haldia who was also competent authority to do the conciliation. Ld. Advocate for O.P. has pointed out that workman himself admitted in his examination-in-chief that Assistant Labour Commissioner issued a Memo under reference No. 847(2)DLÇ/HLD on 05.07.2012 requesting him and the Company to attend a joint conference on 09.07.2012 while the settlement regarding dues of the workman was allegedly made between the parties. Further, according to Ld. Advocate for opposite party it is not the case of the workman that he did not receive total Rs. 29,160/- (Rupees Twenty nine thousand one hundred sixty) only.

According to O.P. Company under no circumstances he can now dispute the said settlement and raise industrial disputes freshly before this Labour Court. Ld. Advocate for O.P. has opined that if such practice is indulged unending litigation would continue. On the other hand, Ld. Advocate for workman has argued that rule of estoppel has no role to play in case of industrial dispute. In favour of his contention he cited a decision reported in **2003(4) CHN page 439** wherein Hon'ble Justice Shri Pranab Kumar Chattopadhyay determined the question –

“Whether estoppel, waiver and acquiescence apply in industrial adjudication—When can an order of reference be interfered with by the High Court.

It was held:

(1) Although the learned counsel of the petitioner has submitted that the workman concerned was estopped from raising any industrial dispute after receiving entire payment in full and final settlement of his all legal dues but the said objection in my opinion is devoid of any merit as the law of estoppel, waiver and acquiescence does not apply in industrial adjudication.

But in another decision reported in (2005) 5 Supreme Court Cases 91 it was held that procedural laws like estoppel, waiver and acquiescence are equally applicable to industrial proceedings – A person in certain situation may even be held to be bound by the doctrine of acceptance sub silentio.

After careful scrutiny, it is crystal clear that workman accepted the aforesaid Rs. 29,160/- (Rupees Twenty nine thousand one hundred sixty) only towards the full and final settlement of his dues in front of Assistant Labour Commissioner, Khanjanchak, Haldia. No where either in written statement or in affidavit in chief workman categorically contended that the aforesaid amount was not credited to his account. In absence of candid denial by the workman, reliance has been placed upon the aforesaid decision of the Hon'ble Apex Court. The decision of the Hon'ble Supreme Court is directly contrary to the observation of the decision cited by Ld. Advocate for applicant. This Court has no option but to abide by the decision pronounced by the Hon'ble Supreme Court. In the present case applicant has accepted the retrenchment benefit also. Exhibit 2 reveals that discussion with the applicant was held in the chamber of Assistant Labour Commissioner, Khanjanchak, Haldia and as per the said discussion the three cheques bearing No. 342895, 342896 and 342897 were issued in favour of the applicant for subsistence allowance, unpaid wages and retrenchment benefit respectively. Applicant did not contend that Rs. 29,160/- was not credited to him. So after acceptance of the aforesaid amount by the applicant, fresh litigation challenging the dismissal order should not be entertained. Rather rule of estoppel should come into force preventing the workman to agitate further litigation. Held in my considered view this case is not maintainable in its present form and prayer being barred by the rule of estoppel. Thus issue No. 1 is decided against the applicant.

In respect of issue No. 2 Ld. Advocate for O.P. did not raise any objection. So this Court has jurisdiction to try the present state of affairs of the case. Thus issue No. 2 is also settled accordingly.

Issue Nos. 3, 4 and 5.

Discussions of these three issues are so well knitted that to avoid repetition these three issues are taken up together.

Ld. Advocate for applicant has pointed out that no complaint was lodged against the workman before the police station for his act of immoral activities and illegal gratification. Further Ld. Advocate for applicant has vehemently argued on the loopholes of the charge-sheet. But surprisingly he has bypassed the legal aspect of acceptance of the amount given by the Company for full and final settlement of the disputes. In the light of the discussion of issue No. 1, the workman is now estopped to raise this dispute that whether the dismissal from service is just and proper. A workman cannot permitted to blow hot and cold simultaneously. His acceptance of retrenchment

benefit automatically prevents him from challenging the dismissal order. So issue No. 3 is also settled against the workman / applicant. Consequently applicant is not entitled to get the relief as prayed for or any other reliefs. Thus issue No. 4 and 5 both are determined against the applicant.

To sum up, though Ld. Advocate for workman has tried to convince this Court that rule of estoppel, waiver and acquiescence is not applicable in industrial adjudication, the decision of the Hon'ble Supreme Court opined the contrary. Observation of the Hon'ble Supreme Court – Procedural laws like estoppel, waiver and acquiescence are equally applicable to industrial proceedings – disentitles the applicant to raise fresh litigation after acceptance of dues towards full and final settlement. Hence,

It is ordered

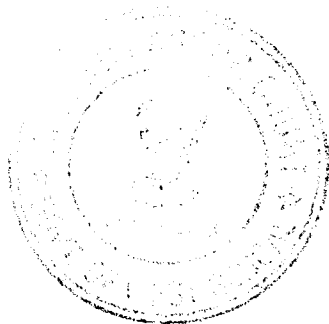
That the instant case u/s. 2A(2) of Industrial Disputes Act is hereby rejected on contest without any cost.

This is my award.

The copy of the award be sent to the concerned department of the Government.

Dictated & Corrected by me

Sd/—
Judge
Second Labour Court



Sd/—
(Dipa Shyam Ray)
Judge
Second Labour Court
09.09.2021.