

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

No.Labr/ 33. / (LC-IR)/11L-116/17 Date: 11/01/2023.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/475-IR/I.R./11L-123/05 dated 18/19-04-2006 the Industrial Dispute between M/s. Martina Surgical Pvt. Ltd., 34/4, N.S.C. Bose Road, Kolkata - 700040 and its workman Smt. Dipa Ghosh, Vill. - Maheshpur, P.O. - Birshibpur, P.S. - Uluberia, Dist. Howrah regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, First Industrial Tribunal, West Bengal.

AND WHEREAS the First Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 20/12/2022 on the said Industrial Dispute vide memo no.1865 - L. T. dated. 21/12/2022.

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,

Sd/-

Joint Secretary
to the Government of West Bengal

No. Labr/ 33/1(5) / (LC-IR)

Date: 11/01/2023.

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

1. M/s. Martina Surgical Pvt. Ltd., 34/4, N.S.C. Bose Road, Kolkata - 700040.
2. Smt. Dipa Ghosh, Vill. - Maheshpur, P.O. - Birshibpur, P.S. - Uluberia, Dist. Howrah.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

No. Labr/ 33/2(2) / (LC-IR)

Joint Secretary

Date: 11/01/2023.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 1865 - L. T. dated. 21/12/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

In the matter of an Industrial Disputes exists between M/s Martina Surgical Private Limited, 34/4, N.S.C. Bose Road, Kolkata – 700 040 and their Workman named Smt. Dipa Ghosh, Vill. – Maheshpur, P.O. – Birshibpur, P.S.- Uluberia, Dist. - Howrah.

G.O. No. 475-I.R./IR/11L-123/05, dated 18/19-04-2006

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 20.12.2022

Case No.: VIII – 39/2006

The instant case arose out of a dispute raised by the Workman Smt. Dipa Ghosh, Vill. – Maheshpur, P.O. – Birshibpur, P.S.- Uluberia, Dist. - Howrah against M/s Martina Surgical Private Limited of 34/4, N.S.C. Bose Road, Kolkata – 700 040 being referred by the Government of West Bengal vide reference No. 475-I.R./IR/11L-123/05, dated 18/19-04-2006 from the Labour Department for adjudication the issues being framed by the Department as follows:

ISSUES

- 1) Whether the dismissal of Smt. Dipa Ghosh from service w.e.f. 01.12.2004 by the Company is justified?
- 2) What relief, if any is she entitled to?

The fact of the case of the Workman as per claim of statement in a nutshell to the effect is that she joined the service in the year 1994 in the Packaging Department and had been working as a permanent employee without any break or interruption and having unblemished record of service.

The Workman used to raise her voice against various unfair labour practice as indulged by the Company and the management being infuriated to such acts of the Workman used to threaten her to dismiss from service and as a result of which she received a purported letter of suspension against which she replied by her letter dated 26.03.2004. Then she was issued a chargesheet dated Nil written in Bengali language by one Shri Shyam Sundar Adhikari on behalf of the Company having no authority of him to issue such chargesheet.

The Workman replied to the chargesheet by letter dated 29.04.2021 denying all material allegations calling the same a false chargesheet and also prayed for withdrawn such false chargesheet and allow her to join duty.

Thereafter, a domestic enquiry was held at the whims of the Company without considering the submission of the Workman and ultimately dismissed her from service w.e.f. 01.12.2004.

Thereafter, a dispute raised by the Workman before the Labour Commissioner, Government of West Bengal challenging the order of dismissal.

On the other hand, the Company had appeared and contested the case by filing written statement denying all material allegations and contended to the effect that the contents of claim statements are false, fake and baseless, unfounded, motivated and required to be dismissed in limini and it is also prayed for passing Award by holding that the order of reference is not maintainable, the order of dismissal by the Company is fair and the Workman is not entitled to any relief as prayed for.

Since the said dismissal order was followed by domestic enquiry, validity of such domestic enquiry was required to be adjudicated as preliminary issue before adjudication of issued mentioned in the order of reference on merit.

This Tribunal considering all aspects of the material on record had been pleased to held that the entire departmental enquiry conducted by Enquiry Officer has been done violating the basic and fundamental principles of natural justice and the entire proceeding was done in a biased manner causing immense prejudiced to the chargesheet against the employee and accordingly it was decided that the domestic enquiry was not found fair and proper along with liberty being given to the Company to adduce evidence on merit.

Thereafter, the record is fixed for evidence on behalf of the Company, who remained absent for date after date and lastly the Company was asked to file show-cause as to why the case shall not be heard on exparte.

Since instead of repeated summons being served upon the Opposite Party/Company who did not appear or response by any means for which the case has been dragging since long and thereafter on 10.01.2020 this Tribunal fixed the case for exparte hearing of the case.

In support of the case the Workman has filed affidavit-in-chief.

At that time on perusal of the record before taking the evidence on exparte it was revealed that initially the instant case had been referred against M/s Martina Surgical Private Limited situated at 34/4, N.S.C. Bose Road, Kolkata – 700 040. Then during the pendency of the instant case the said Company had changed their name as Martina Biogenics and therefore, show-cause notices and summons have been issued at their official address to them an opportunity to defence the case as per prayer of the Workman dated 06.12.2019 and accordingly summons had been served upon the new Company named Martina Biogenics situated at 78, Kalitala Road, 2nd Floor, Kolkata – 700 078 as it was revealed from the application of the

Workman with affidavit to the effect that the Martina Surgical Private Limited and Martina Biogenics is same and identical institute situated at 78, Kalitala Road, 2nd Floor, Kolkata – 700 078 and the instant case was taken of from the stage of evidence on exparte.

In spite of the fact it is revealed that summons upon both institutes in their respective addresses with AD along with photocopy of the order were sent and on 04.04.2022 Ld. Counsel for the Company appeared and submitted that the show-cause reply should be submitted by them by the next date.

Then on 11.05.2022 Ld. Counsel for the Company named M/s Martina Surgical Private Limited submitted that the matter would be discussed with the present Company whether the Company would stand in the name of Martina Biogenics as submitted by the Ld. Counsel for the Workman on 25.03.2021.

Thereafter, adjournments were taken by the Company again date after date and lastly on 19.09.2022 since the last chance was expired without any response from the Company the case was fixed for exparte hearing again.

In support of the case the Applicant Smt. Dipa Ghosh has been examined in full and that apart Smt. Dipa Ghosh filed dome documents which have been marked as Exhibit 1 to 9.

- 1) Photocopy of show cause notice dated 24.03.2004 issued by the Company. **Marked as Exhibit – 1.**
- 2) Photocopy reply dated 26.03.2004 of the Workman against the show cause notice along with medical certificate. **Marked as Exhibit – 2.**
- 3) Photocopy of Chargesheet dated Nil issued to the Workman by the Company. **Marked as Exhibit – 3.**
- 4) Photocopy of reply to the said chargesheet by the Workman dated 29.04.2004. **Marked as Exhibit – 4.**
- 5) Photocopy of Workman's letter dated 27.10.2004 to the Company. **Marked as Exhibit – 5.**
- 6) Photocopy of Notice of dismissal dated 25.11.2004 issued by the Company to the Workman. **Marked as Exhibit – 6.**
- 7) Photocopy of a demand for justice dated 17.12.2004 of the Workman to the Company. **Marked as Exhibit – 7.**
- 8) Photocopy of Workman's letter dated 27.12.2004 to ALC, Uluberia, Howrah. **Marked as Exhibit – 8.**
- 9) Photocopy of Salary Sheet for May, June of 2003 and March of 2004 series. **Marked as Exhibit – 9.**

Argument was heard at length on 14.11.2022 from the Ld. Counsel for the Workman. Ld. Counsel for the Workman submitted that Workman was a permanent employee of the Company under reference. She was illegally dismissed from her service followed by a purported departmental enquiry and validity of such domestic enquiry has been held unfair and not proper by this Tribunal vide order No. 142 dated 16.01.2018 and since then the Company Martina Surgical Private Limited or Matina Biogenics whoever may be did not come to counter the order of this Tribunal as passed vide order No. 142 dated 16.01.2018.

I have perused the pleadings of the parties and the orders of my predecessors specially the order on the point of validity of domestic enquiry which was held to the effect that domestic enquiry was found unfair and not proper and the same remains unchallenged and disproved by the Company till the end and if that be so, I am constraint to hold that the dismissal of the Workman by the Company was illegal in all respects whatever may be and therefore, the petitioner is entitled to the reliefs as prayed for since in the instant case the dismissal order of the Workman from her service was followed by domestic enquiry which has been proved unfair and not proper.

So, considering all circumstances stated above and from the unchallenged evidences of the Workman both oral and documentary I am of opinion that the Workman had succeeded to prove her case beyond all reasonable doubts and therefore, she is entitled to reliefs as prayed for.

In sum the case succeeds.

Hence it is

AWARDED

That the instant case No. VIII – 39/2006 u/s 10 of the Industrial Disputes Act be and the same is allowed on exparte with cost of Rs. 10,000/- (Rupees ten thousand) only

The Company is directed to reinstate the Workman in her service, if, she does not cross the age of retirement along with full back wages and other consequential benefits thereto.

The Company shall also pay a compensation to the tune of Rs. 50,000/- (Rupees fifty thousand) only to the Workman for her mental agony and unnecessary harassment arising out of this litigation.

The Company is also directed to pay the all dues and outstandings as ordered by this Tribunal within 3 (three) months from the date of receipt of this order, in default the Workman shall have the right to execute the Award as per provision of law being applicable in this respect.

This is my Award.

Let the Award be sent to the Government.

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)
Judge