

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

No. Labr/35 . . . /((LC-IR)/22015(16)/2/2023. Date.....11/01/2023

ORDER

— WHEREAS an industrial dispute existed between M/s Bayer Zydus Pharma Pvt. Ltd., Ecospace Building No. 3A, Unit No. 502, 5th Floor, New Town, Rajarhat, Kolkata - 700156 and their workman Shri Sudipta Paul, 552, S.H.K.B. Sarani, Ramkrishna Park, Kolkata - 700074 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 First Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the First Industrial Tribunal has submitted to the State Government its Award dated 22.12.2022 vide memo no. 1885 - L.T. dated 23/12/2022.

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,



Joint Secretary

to the Government of West Bengal

355633/2023

(2)

11/1/23

No. Labr.....³⁵/1(2) - IR Dated ^{11/01/}.....2023.

Copy forwarded for information to:

Amranda

1. The Judge, First Industrial Tribunal with reference to his Memo No. 1885 - L.T. dated 23/12/2022.
The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

13/01/2023

sd/-

Joint Secretary

No. Labr.....³⁵/2(5) - IR Dated ^{11/01/}.....2023

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

1. M/s. Bayer Zydus Pharma Pvt. Ltd., Ecospace Building No. 3A, Unit No. 502, 5th Floor, New Town, Rajarhat, Kolkata - 700156.
2. Shri Sudipta Paul, 552, S.H.K.B. Sarani, Ramkrishna Park, Kolkata - 700074.
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.
- ✓ The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

sd/-

Joint Secretary

In the matter of an Industrial Disputes exists between Shri Sudipta Paul, 552, S.H.K.B. Sarani, Ramkrishna Park, Kolkata – 700 074 against his employer M/s Bayer Zydus Pharma Pvt. Ltd. having its regional officer at Ecospace Building No. 3A, Unit No. 502, 5th Floor, New Town, Rajarhat, Kolkata – 700 156 and registered office at “Bayer House”, Central Avenue, Hiranandani Estate, Thane (W), Pin – 400 607, Maharashtra.

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

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

Date of Order: 22.12.2022

Case No.: 03/2021 u/s 2A (2)

The instant case is initiated on filing an application u/s 2A(2) of the Industrial Disputes Act 1947 as amended by the Workman Shri Sudipta Paul of 552, S.H.K.B. Sarani, Ramkrishna Park, Kolkata – 700 074 against his employer M/s Bayer Zydus Pharma Pvt. Ltd. having its regional officer at Ecospace Building No. 3A, Unit No. 502, 5th Floor, New Town, Rajarhat, Kolkata – 700 156 and registered office at “Bayer House”, Central Avenue, Hiranandani Estate, Thane (W), Pin – 400 607, Maharashtra for adjudicating the termination of service of the Workman w.e.f. 02.12.2020 after declaring the same was illegal and unjustified and also for reinstatement in service with full back wages, interim relief and other consequential benefits.

The case of the Workman in a nutshell is that he joined the Company on 5th June, 2013 in the post of Business Officer Trainee at the Kolkata Headquarter. His service was confirmed on and from December 2013. In spite of giving diligent and sincere efforts for perform his duty as a Sales Promotion Employment all on a sudden on 17.11.2020 he was served with a show cause notice regarding his performance against which the Workman replied on 20.11.2020.

Thereafter, the Workman was summarily retrenched from his service w.e.f. 02.12.2020 violating all relevant provisions of law as applicable in vindictive manner.

However, the Workman wrote another letter to the Company on 07.12.2020 requesting revocation of such order of termination of his service but in vain.

As no reply came from the Company after a lapse of reasonable period of time the Workman filed a complaint petition on 21.12.2020 before the Labour Commissioner, West Bengal raised an industrial dispute against the Company for his illegal retrenchment to revoke and withdraw and allow the Workman to join his duties and since no conciliation has ever been taken place the Workman has filed the instant case before this Tribunal with a prayer for passing an Award of reinstatement of his service with full back wages along with all consequential benefits together with any due interest as admissible.

Thereafter, the Company appeared and filed Written Statement on 29.11.2021 denying all material allegations against them and contended inter-alia that the application being filed by the Workman is malafide and filed with malicious motive and the employer neither be granted any interim relief nor any other relief as prayed for.

Be it mentioned here that during pendency of the suit an application was filed by the Company demanding the present petition being filed on 23.03.2022 is not maintainable and out of jurisdiction of this Tribunal after introduction of Repealing and Amending Act 2016 w.e.f. 09.05.2016 by which the Industrial Disputes (Amendment) Act 2010 has been repealed including the present provision i.e. Section 2A (2) of the Industrial Disputes Act and the same application dated 23.03.2022 was rejected on contest but without cost and Company was asked to proceed according to the provision of law being applicable in this respect.

Thereafter, Company on its own will was remain absent from appearing before this Tribunal and ultimately the case was fixed for exparte hearing of the instant case on 12.09.2022.

Thereafter, 5 (five) days were expired even then Company did not feel any necessary to appear before this Court. Hence the case was heard on exparte and today i.e. 22.12.2022 is fixed for delivery of Award.

In view of the above facts and circumstances the following issues have been framed for my adjudication with reason:

ISSUES

- 1) Whether the dismissal of Sri Sudipta Paul from his service w.e.f. 02.12.2020 by the Company is justified?
- 2) What relief, if any is the Workman entitled to?

In support of the case the Applicant Sudipta Paul has been examined himself in full as PW-1 and that apart Mr. Paul filed some documents which have been marked as Exhibit – 1 to 5.

- 1) Photocopy of letter dated 20.11.2020 through e-mail. Marked as **Exhibit – 1**.
- 2) Photocopy of show-cause notice dated 17.11.2020 served on the Workman. Marked as **Exhibit – 2**.
- 2) Photocopy of e-mail letter dated 20.11.2021. Marked as **Exhibit – 3**.
- 3) Photocopy of the retrenchment letter dated 02.12.2020. Marked as **Exhibit– 4**.
- 5) Photocopy of the complaint petition dated 21.12.2020 to the Labour Commissioner by the Workman. Marked as **Exhibit – 5**.

Thereafter, additional documents have been filed by the petitioner after SLP being allowed in this respect and consequently 2 (two) further documents namely photocopy of the letter (e-mail) dated 02.12.2020 and another photocopy of the letter dated 20.01.2021 regarding the request of revoking the order of termination suffered by the Workman.

- 1) Photocopy of letter (e-mail) dated 02.12.2020 on behalf of the Workman to withdraw/revoke the order of termination of the Workman. Marked as **Exhibit – 6**.
- 2) Photocopy of letter (e-mail) dated 20.01.2021 further asking the management of the Company to revoke the order of termination suffered by the Workman. Marked as **Exhibit – 7**.

Ld. Counsel for the Workman has argued at length along with Written Notes of Argument on behalf of the Workman.

Ld. Counsel for the Workman has argued claiming that the Workman has been illegally retrenched for which at first the Workman thought there must have been some internal reasons in the management behind his illegal retrenchment which was hurriedly executed and no principle of natural justice was followed by the Company and the Workman waited for few days expecting that the Company would take positive step to leave his order of dismissal in terms of his representation dated 07.12.2020.

But since no reply or anything else has been taken from the ends of management the Workman was forced to file the instant case after failure of conciliation.

Since the Company did not dare to come before this Tribunal to challenge the claim of the Workman and since the Court has opted to hear the case on exparte the order of dismissal by the Company is liable to be set-aside on the basis of unchallenged evidence being led by the Workman.

In support of the case Ld. Counsel has cited the following rules.

- 1) (2010) 5 Supreme Court Case Page 497.
- 2) [2022 (174) FLR 357] Supreme Court.
- 3) (2013) 10 Supreme Court Case Page 324.
- 4) (2012) (2) CLJ SC Page 129-131.

I have perused the pleadings of the parties, documents filed by the Workman and the citations filed by the Workman and since the Company did not challenge the fact of the Case as claimed by the petitioner in true sense or spirit. I have found no reason to go otherwise and therefore I am constraint to hold that the dismissal of the Workman in this respect without following any lawful recourse is illegal and unjustified w.e.f. 02.12.2020 and thereafter, issue No. – 1 is decided against the Company.

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

In sum the case succeeds.

Hence it is

AWARDED

That the instant case being No. VIII – 03/2021 u/s 2A (2) of the Industrial Disputes Act be and the same is allowed on exparte with cost of Rs. 10,000/- (Rupees ten thousand) only against the Company.

The Company is directed to reinstate the Workman in his service, if, he 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 his 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 liberty 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/-

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)
Judge

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata