

I/361622/2023

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

No. Labr/.80. ./(LC-IR)/8L-01/17

Date: 01-02-2023.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/17-IR/I.R./8L-04/04 dated 04.01.2011 the Industrial Dispute between M/s. Kesoram Rayon, P.O. - Nayasarai, Dist. - Hooghly and its workman Sri Bidyut Kumar Bose, Kundugali, P.O. - Bansberia, Dist. - Hooghly 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 16/01/2023 on the said Industrial Dispute vide memo no. 076 - L. T. dated. 17/01/2023.

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,

Sdt
Additional Secretary
to the Government of West Bengal

/361622/2023

No. Labr/80/1(5)/(LC-IR)

Date: 01-02-./2023.

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

1. M/s. Kesoram Rayon, P.O. – Nayasarai, Dist. - Hooghly.
2. Sri Bidyut Kumar Bose, Kundugali, P.O. – Bansberia, Dist. - Hooghly.
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.

Additional Secretary

No. Labr/80/2(2)/(LC-IR)

Date: 01-02-./2023.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No.076 – L. T. dated. 17/01/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Additional Secretary

In the matter of an Industrial Disputes exists between M/s Kesoram Rayon, P.O. – Nayasarai, Dist. – Hooghly, and their workman Sri Bidyut Kumar Bose of Kundugali, P.O. – Bansberia, District - Hooghly.

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

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

Date of Order: 16.01.2023

Case No.: VIII – 02/2011

The instant case arose on receipt of copy of government order of reference 17-I.R./IR/8L-04/04, dated 04.01.2011 from the Labour Department, Government of West Bengal referring an industrial dispute between M/s Kesoram Rayon, P.O. – Nayasarai, Dist. – Hooghly, and their workman Sri Bidyut Kumar Bose of Kundugali, P.O. – Bansberia, District – Hooghly for adjudication of the matter and submitting its award to the State Government.

From the record it is revealed an Award was passed by this Tribunal on 19.02.2020 holding that the termination of the Workman was illegal, premature, absolutely arbitrary and unjustified. Since the reinstatement is not possible so the direction was given over the management to pay full back wages from the date of illegal termination w.e.f. 11.11.2009 till the date of superannuation of Workman along with consequential reliefs as prayed by the Workman.

Against the above Award, the management filed a writ petition before the Hon'ble Single Judge of High Court Kolkata and the said writ petition has been dismissed and aggrieved by such order of the Hon'ble High Court, the management has preferred an appeal before the Hon'ble Division Bench of High Court, Kolkata, in which Hon'ble Division Bench has been pleased to remand the case to this Tribunal with a solemn direction "to consider the issue regarding the quantum of punishment that should be imposed on the workman. The Industrial Tribunal shall bear in mind that it is an Award holding that the respondent Workman is guilty of 2 of 3 charges stands confirmed and also the findings of the Tribunal that the domestic enquiry was valid, was also stands confirmed. Bearing these factors in mind, the Industrial Tribunal shall apply the settled legal principles which have been laid down by the Hon'ble Supreme Court while exercising the jurisdiction u/s 11A of the Act and pass reasoned order on merit in accordance with law.

At this stage Ld. Counsel for the parties to this case have argued before this Tribunal by contending inter-alia to decide the matter in pursuance of the solemn order of Division Bench of Hon'ble High Court.

The facts remain 3 charges were brought against the workman on the basis of certified standing order of the Company at the time of domestic enquiry and they are – 1) Dishonesty, 2) Wilful damage to or loss to company goods and 3) any act subversive of discipline.

It was hold by the Predecessor-in interest of this Tribunal that the question of dishonesty was not proved but 2 other charges were proved and domestic enquiry was valid and Company was given liberty to prove the charge of dishonesty before this Tribunal if it so desires.

Be it mention here that after taking the evidence on merit this Tribunal differs from the view being taken by the predecessor in-interest of this Tribunal regarding proof of 2 other charges while charge of dishonesty has not been proved. Considering the given charge No. 2 as an accidental case of instances and therefore it cannot be said that the Workman was a habitual offender and specially when the total loss of the Company has not been specifically mentioned and the act of misconduct was not established.

Thereafter, since the dictum of the Hon'ble Division Bench of Hon'ble High Court is at hand with a direction to settle the matter in view of Section 11A of the Industrial Disputes Act I am bound to abide by the solemn order of the Hon'ble Division Bench.

According to the solemn direction of the Division Bench of Hon'ble High Court I have to consider the punishment as per settled principles which have been laid down by the Hon'ble Supreme Court while exercising the jurisdiction u/s 11A of the Act and pass reasoned order on merit in accordance with law.

Now let us consider Section 11A of the Industrial Disputes Act.

11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. – Where an Industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on

such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

It is pertinent to mention that Section 11A of the Industrial Disputes Act 1947 applies only to disputes which are referred for adjudication after the section has come into force i.e. on or after December 15, 1971. According to view of Hon'ble Apex Court Section 11A clearly indicates that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against the Workman.

The Tribunal is now at liberty to consider not only whether the finding misconduct recorded by an employer is correct but also differ from the said finding if a proper case is made out.

After introducing Section 11A now the employer and employee can adduce evidence regarding the legality and validity of the domestic enquiry, if one had been held by an employer and Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. That's why Section 11A now gives full power to the Tribunal to go into the facts and satisfy itself on both these points.

In other words Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. Under such circumstances award to the Workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11A of the Act, 1947

In our case issues of chargesheet were examined. At this stage a validity of domestic enquiry which was held by the predecessor of this Tribunal to the effect that save and except the charge i.e. No. – 1, "dishonesty", rest 2 charges are said to be established before the enquiry officer. However, the management of the Company was given liberty to prove the charge of dishonesty before this Tribunal if it so desires.

Thereafter, Record was fixed for passing further necessary order on merit of this case in presence of both sides as per earlier order.

After taking evidences from both sides on merit and after consideration of the same, this Tribunal has given Award to the effect that the termination of the Workman was unjustified and the management was directed to pay full back wages.

Lastly, Hon'ble Division Bench of High Court, Calcutta, it is directed that the present Tribunal should consider the issue regarding the quantum of punishment that should be imposed on the Workman.

Now according to the view of the Hon'ble Division Bench of Hon'ble High Court at Kolkata it is held that since 2 issues regarding misconduct and loss of Company of chargesheet have been considered as established except the main issue dishonesty which is not established the Tribunal should consider the view as per settled principles as laid down by the Hon'ble Supreme Court u/s 11A and accordingly I am view the Award passed by this Tribunal on 19.02.2020 should be modified to the extent that the misconduct itself and the issue of loss of Company proved did no warrant the punishment of dismissal or discharge.

Therefore, it is

ORDERED

That the misconduct itself and the issue of loss of Company proved did not warrant the punishment of dismissal or discharge of the employee and since the reinstatement is now impossible as the Workman has attained the age of majority so it would be justified to direct the management to pay 70% of back wages from the date of so called termination w.e.f. 11.11.2009 till the date of superannuation of the Workman in due course of time along with consequential relief as prayed for by the workman.

This is my Award.

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