

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

No. Labr/.⁹⁹⁹ / (LC-IR)/22015(16)/51/2022

Date: ¹⁶⁻¹¹⁻ /2022

ORDER

WHEREAS an industrial dispute existed between M/s. McNally Sayaji Engineering Ltd., 4 Mangoe Lane, (5th & 7th floor), Kolkata - 700001 and Sri Joydeb Mukherjee, S/o. Late Jagabandhu Mukherjee, Vill - Karangapara, Durgapur - 713201 regarding the issue, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B) (d) of the Industrial Dispute Act, 1947 (14of 1947) to the Second Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Ninth Industrial Tribunal heard the parties under section 10(1B) (d) of the I.D. Act, 1947 (14of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

AND WHEREAS the Ninth Industrial Tribunal has submitted to the State Government its Award dated 28/09/2022 under section 10(1B) (d) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute vide memo no. 87 - I.T.(J) dated 29/09/2022.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 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
Joint Secretary
to the Government of West Bengal

I/338485/2022

: 2 :

11/11/2022
13/11/2022
Amanda
17/11/2022

No. Labr/999 /1/(3)/(LC-IR) Date 16-11-2022

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

1. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
2. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
3. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

[Signature]
 Joint Secretary

No. Labr/999 /2/(2)/(LC-IR)

Date 16-11-2022

Copy forwarded for information to:-

1. The Judge, Ninth Industrial Tribunal West Bengal, Durgapur, Administrative Building, City Centre, Pin – 713216 with respect to his Memo No. 87 - I.T.(J) dated 29/09/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Joint Secretary

Case No. 14/2021 U/s 10(1B)(d) of Industrial Disputes Act,1947.

BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL AT
DURGAPUR.



PRESENT

SRI SUJIT KUMAR MEHROTRA,
JUDGE, 9TH INDUSTRIAL TRIBUNAL

MR. JOYDEB MUKHERJEE

VS.

MCNALLY SAYAJI ENGINEERING LTD.

20/28.09.2022

CR is taken up for passing order with respect to preliminary issue framed on 02.05.2022 and which was heard completely on 23.09.2022.

During the course of hearing it was contended by the ld. lawyer for the O.P/employer that the instant case is not maintainable U/S 10(1B)(d) of the Industrial Disputes Act ----- hereinafter referred to as the Act,1947, as the applicant/workman did not file the requisite prescribed Form - S as per the West Bengal Industrial Dispute Rules, 1958.

He also submitted that it is mandatory on the part of the applicant/workman to file the pending certificate in the prescribed Form-S obtained from the Conciliation Officer while approaching this tribunal's jurisdiction under West Bengal Amended provisions of 10(1B) (d) of the Act,1947 but as he did not file the same, so the instant case is not maintainable under the provisions of the Act,1947.

On the other hand, it was submitted from the side of the applicant/workman that after illegal termination of service on 25.11.2019 of the applicant/workman he approached the Joint Labour Commissioner(JLC), Asansol, on 20.12.2019 for conciliation.

Ld. lawyer further submitted that he and the representative of the O.P/employer did appear before the J.L.C and the J.L.C heard both the parties but did not pass any order for more than 9 months and that finding no other way the applicant/workman approached this tribunal by filing an application on 16.09.2021.

In refuting contention of the ld. lawyer for the O.P/employer regarding the effect of not filing the pending certificate in the prescribed Form-S, the ld. lawyer

S. Joydeb
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contended that the same is not the mandatory requirement of the provisions of law under the Act, 1947.

Perused the entire CR including the WS of the O.P/employer on the basis of which the preliminary issue regarding maintainability of the case under the Act, 1947 has been framed on 02.05.2022 in the following manner :-

1) Is the instant case maintainable under the Industrial Disputes Act, 1947?

The undisputed fact as emerged from the written statements of both the parties is that the applicant/workman was an employee of the O.P/employer.

In my considered view since the preliminary issue only involved the question of law and not on facts as alleged by both the parties, so there is no impediment to dispose of the same at this stage.


The Hon'ble Supreme Court in the case of Sathyanath Vs. Sarojamani, AIR 2022 SC 2242 observed that preliminary issue can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the court or the Bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision.

Applicant /workman in his WS averred that he was employed on 05.01.2007 as an H.P Welder and thereafter he was discharged his service in unblemished manner of and under the O.P/employer but his service was illegally terminated on 25.11.2019 and thereafter he repeatedly approached the O.P/employer for reconsideration of the same and the same yielded no result.

Applicant/workman further states that finding no other alternative he raised the dispute before the J L C, Asansol on 20.12.2019 for conciliation of the same and accordingly the J L C heard him and the representative of the O.P/employer but he did not pass any order even after elapsed of more than 9 months.

Applicant/workman further states that he filed a petition before the J L C for issuance of certificate but the JLC did not pay any heed to his such prayer and accordingly he was compelled to file this case before this tribunal.

From above discussed averments of the applicant/workman's petition it is the admitted position that he filed the instant case without obtaining the pending


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certificate from the Conciliation Officer. His plea for not filing the pending certificate is that the same was not issued by the Conciliation Officer even after his making representation before him.

Now, the question arises whether it is mandatory on the part of the applicant/workman to file the pending certificate in prescribed Form while making an application for adjudication of Industrial Disputes under the Act of 1947 or not.

To consider the same we are to discuss the relevant provisions of the Act, 1947 as well as West Bengal Industrial Rules, 1958.

Discussion on relevant provisions of law is also required as because this tribunal does not have the power to directly entertain an application for adjudication of Industrial Disputes either from the workman/employee or employer U/S 10 of the Act of 1947 but the amended provisions of Sec.10(1B) (d) of the Act, 1947 empowers it to adjudicate an Industrial Dispute on the representation of a workman.


Sec.10(1B)(d) has been incorporated in the original Sec.10 of the Act of 1947 by virtue of West Bengal Act(33) of 1989, Sec.4.

In section 10, after sub-section (1A), the following be inserted;

(1B) (a) Notwithstanding anything contained elsewhere in this Act, where in a conciliation proceeding of an industrial dispute relating to an individual workman, no settlement is arrived at within a period of 60 days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer in such manner and in such form as may be prescribed, for a certificate about the pendency of the conciliation proceedings.

(b) The Conciliation Officer shall, on receipt of the application under Clause (a) issue a certificate within 7 days from the date of receipt in such manner, in such form and containing such particulars as may be prescribed. A copy of the certificate shall also be sent to the appropriate Govt. for information.

(c) The party may, within a period of 60 days from the receipt of such certificate or, where such certificate has not been issued within a period of 60 days from the receipt of such certificate or where such certificate has not been issued within 7 days as aforesaid, within a period of 60 days commencing from the day


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immediately after the expiry of 7 days as aforesaid, file an application in such form and in such manner and with such particulars of demands as may be prescribed, to such Labour Court or Tribunal as may be specified by the appropriate Govt. by notification. Different Labour Courts or Tribunals may be specified for different areas or different classes of industries.

(d) The Labour Court or Tribunal specified under clause(c) shall, within a period of 30 days from the date of receipt of an application under clause (c) give a hearing to the parties and frame the specific issues in dispute, and shall thereafter proceed to adjudicate on the issues so framed as if it were an industrial dispute referred to in sub-section (1)-W.B. Act (33 of 1989, section-4).

From the above provisions, it is clear that by virtue of such amendment a right has been conferred upon an individual workman to approach the tribunal or Labour Court, as the case may be, for determination of the industrial dispute after fulfilment of mandatory criteria of approaching the conciliation officer for settlement of the industrial dispute by way of conciliation within a stipulated period. And it also confers a right to the workman to approach the tribunal or the labour court, as the case may be, if the conciliation proceeding remains pending for 60 days and after obtaining pending certificate in Form-S.

This West Bengal Amendment is an exception to the general scheme of I.D Act, 1947 which empowers the tribunal to adjudicate on any industrial dispute on the issue referred to it by the appropriate Govt. for adjudication.

Similarly, amended provision 2A of the Act, 1947 also speaks about conferring jurisdiction upon tribunal to adjudicate on the industrial dispute under some circumstances.

From the above discussed amendment of Sec.10 by substitution of Provisions of (1-B) by West Bengal Amendment, in the Act of 1947 and a scope to the workman concerned given to raise the dispute straightway by taking his case from the Conciliation Officer for effective adjudication of issues by the Labour Court or the tribunal on framing the issues by it subject to fulfilment of the requirements as mentioned therein.

On perusal of the amended provisions of Sec.10(1B)(a) of the Act, 1947 it is evident that the said provisions starts with a non-obstante Clause "notwithstanding

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anything content elsewhere in this Act." It signifies the amended provisions shall prevail upon the other provisions of the Act, 1947.

The said provision provides that if no settlement is arrived at within a period of 60 days from the date of raising of the Industrial Disputes, the party raising the dispute may apply to the Conciliation Officer in such a manner and in such form as may be prescribed, for a certificate about the pendency of the conciliation proceeding. The Conciliation Officer shall issue the pendency certificate within 7 days from the date of receipt in prescribed manner and shall send a copy of the same to the appropriate Govt. for information.

From such provision it is clear that it is mandatory on the part of the Conciliation Officer to issue a pendency certificate in the prescribed manner within 7 days from the date of receipt of the application from the party raising the disputes and not only that, he has to send a copy of the same to the appropriate Govt. for information.

Rule 12A of the West Bengal Disputes Rules, 1958 laid down the procedure to be followed for invoking jurisdiction of the Tribunal under the amended provision of Sec. 10(1B) (d) of the Act of 1947.

In other words, Rule 12(A) of the West Bengal Industrial Dispute Rule, 1958 speaks about the procedure to be adopted for settlement of dispute on representation from individual workman. It provides that:-

1) The Conciliation Officer on receipt of a representation relating to an individual workman shall investigate the matter and if he is satisfied that an industrial dispute exists, he shall take all such steps as he thinks fit and proper for the purpose of inducing the parties to come to a speedy, fair and amicable settlement of the dispute.

2) If no settlement of the industrial dispute mentioned in sub-rule (1) is arrived at within a period of 60 days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer personally or by registered post with acknowledgement due in Form-P-4 for a certificate about the pendency of the conciliation proceedings before such Conciliation Officer.

3) The Conciliation Officer, on receipt of the application referred to in sub-section (1B) of section 10 shall within 7 days from the date of receipt of such

[Handwritten Signature]
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application, issue a certificate about the pendency of conciliation proceedings to the applicant in Form-S.

4) The party may, within a period of 60 days from the date of receipt of such certificate or when such certificate has not been issued within 7 days under sub-rule (3) within a period of 60 days commencing from the day immediately after expiry of 7 days as aforesaid; file an application in Form T to such Labour Court or Industrial Tribunal as may be specified by the State Government by notification in the Official Gazette.

On perusal of the aforesaid provisions and especially 12A(2)(3) it is clear that if no settlement is arrived at within the period of 60 days from the date of raising of dispute by the individual workman then he has the right to approach the conciliation officer for issuance of pending certificate and on receipt of the same, the conciliation officer has to issue a certificate about pendency of the conciliation proceeding before him in Form-S.

From above mentioned sub-rule-2 of Rule 12A it is clear that if no settlement of Industrial Dispute is arrived at within the period of 60 days from the date of raising the same, the concerned party may apply to the Conciliation Officer personally or by registered post with acknowledgement due in Form-P-4 for a certificate about the pendency of the conciliation proceeding before such Conciliation Officer.

Other words, sub-rule 2 imposes a duty upon the workman to apply to the Conciliation Officer personally or by Registered post with acknowledgement due in a prescribed format for the pending certificate and not otherwise.

Reverting back to the statement of the applicant/workman as made in his WS, it is evident that he averred in paragraph no.7 that he filed a petition before the Commissioner for issuance of certificate but he nowhere stated when he filed the said petition and in which form he filed the petition. He further states that as the Commissioner did not pay any heed to his such petition he has to file the instant case before this tribunal.

In my considered view, had it been a fact that the applicant filed the petition for getting the pending certificate of the proceeding before the Conciliation Officer and then he must have been in possession of received copy of the same which he


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could have filed alongwith his application / representation at the time of filing in this case.

Sub-Rule 3 of Rule 12A imposes mandatory duty upon the Conciliation Officer to issue certificate about the pendency of conciliation proceeding to the applicant in Form-S within 7 days from the date of receipt of such application.


If for the sake of argument I do accept the contention of the ld.lawyer for the applicant/workman that the workman applied for the pending certificate with the Conciliation Officer but he was not supplied with the same, then too, as per sub-rule 4 of Rule 12A the applicant/workman has to file an application in Form T to the tribunal within a period of 60 days commencing from the day immediately after expiry of 7 days as aforesaid .

In other words, as the said provision of law speaks about the period of limitation of 60 days commencing from the date immediately after expiry of 7 days from the date of receipt of such application, as applicable on the factual matrix of the instant case, so non-disclosure of date of alleged filing of application for the pending certificate by the applicant/workman is very much essential. But, he in his entire WS nowhere stated on which date he filed such application with the Conciliation Officer.

As I have already discussed herein above that the applicant/workman did not produce any scratch of paper in support of his such contention, so the workman of the ld. lawyer for the O.P/employer that the applicant/workman intentionally drafted Paragraph 17 in such a manner which could cover the period of limitation evasively as provided by the Sec.10(1B)(d) of the Act,1947 and Rule 12A of the West Bengal Industrial Dispute Rules,1958.

It is further evident from Rule 12A of Rules of 1958 that all the sub-rules are inter linked with each other which should be followed in settlement of dispute on representation from an individual workman and the same cannot be interpreted in such manner which could lead to an interpretation authorising either the Conciliation Officer or the tribunal to give relaxation of the same as per its whims.

It is the settled proposition of law that the court of law or the tribunal, as the case may be, shall follow the golden rule of interpretation while interpreting a particular provision of law and if the words and sentences of the concerned


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provisions of law itself is clear to understand the object of the same, then the same is to be interpreted in the manner giving fruitful meaning of the same. In other words, the courts must interpret statute according to the intend of that made it.

In my view as steps to be followed for settlement of an Industrial Dispute of an individual representation has clearly been mentioned in Sub-Rules 1-4 steps by steps, so workman and the Conciliation Officer and the tribunal has to follow the same in a strict manner. The tribunal does not have the power to give any sort of relaxation in compliance of the same. In other words, i find no merit in the submission of the ld.lawyer for the applicant/workman that filing of certificate in Form-S is sot mandatory for invoking jurisdiction of this tribunal under the amended provisions of Se.10(1B)(d) of the Act of 1947.

Since in the instant case the applicant/workman neither filed the Form -S nor filed copy of his alleged application in Form P-4 for certificate about the pendency of the conciliation proceedings before the J.L.C, Asansol nor mentioned the date on which he allegedly filed the application in Form P-4, so it cannot be said that the applicant/workman fulfilled the mandatory requirement of provisions of law as discussed herein above.

Having regard to my above discussion, I am of the view that the instant case is not maintainable in its present form under the provisions of Act 1947 for want of pending certificate in prescribed Form-S issued by the Conciliation Officer. Thus, I decide the preliminary issue against the applicant/workman.


Hence, it is


Ordered

that the instant case under 10(1B)(d) of the Industrial Disputes Act, 1947 is dismissed, being not maintainable against O.P/employer /Macnally Sayaji Engineering Ltd. Accordingly, an award is passed to that effect.

Send copy of this order to the Principal Secretary, Labour Department, Govt. of West Bengal for doing the needful.

Furnish copy of this order to the parties free of cost.

D. Chy me.

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