

I/26094/2018

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

No. Labr/ 669/(LC-IR)/

Date : 07.09.18

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 2297-I.R. dated 16.11.95 the Industrial Dispute between M/s Lytton Hotel, 14, Sudder Street, Kolkata-700 016 and their workman Mrs Mary Mendes, Kalighat Road, Kolkata-700 026 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 Judge of the said First Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

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,

*Sdf*Deputy Secretary
to the Government of West Bengal

No. Labr/ 669/1(5)/(LC-IR)

Date : 07.09.18

- Copy, with a copy of the Award, forwarded for information and necessary action to:
1. M/s Lytton Hotel, 14, Sudder Street, Kolkata-700 016.
 2. Mrs Mary Mendes, Kalighat Road, Kolkata-700 026.
 3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
 4. The Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
 - ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to post the Award in the Department's website.

Deputy Secretary

Date : 07.09.18

No. Labr/ 669/2(2)/(LC-IR)

Copy forwarded for information to :

- 1 The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No.1208-L.T. dated 15.06.2018.
- 2 The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

In the matter of an industrial dispute between M/s. Lytton Hotel, 14, Sudder Street, Kolkata-700 016 and their workwoman Mrs. Mary Mendes, Kalighat Road, Kolkata-700 026.

(CASE NO. VIII-08/96)

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

SHRI TANMOY GUPTA, JUDGE,
FIRST INDUSTRIAL TRIBUNAL, KOOLKATA

A W A R D

The instant case arose out of an order of reference no. 2297-IR./IR/11L-47/91, dated 16.11.1995 by which an industrial dispute between M/s. Lytton Hotel, 14, Sudder Street, Kolkata-700 016 and their workwoman Mrs. Mary Mendes, Kalighat Road, Kolkata-700 026 as referred by the Labour Department, Govt. of West Bengal to this tribunal for adjudication.

The issues specified in the order of reference are as follows:

I S S U E(S)

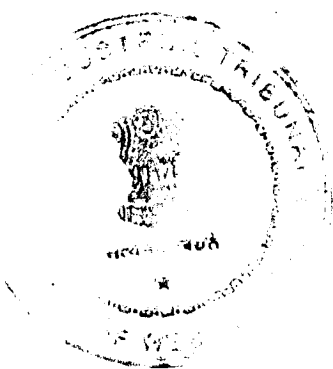
1. Whether the termination of service of Mrs. Mary Mendes by the management of M/s. Lytton Hotel from 02.05.1994 is justified?
2. What relief, if any, is she entitled to?

On receipt of the aforesaid reference notices were issued to both parties. They appeared and contested the same by filing written statement. The written statement of the workman, Mrs. Mary Mendes has been filed by Lytton Hotel workers union. It is contended by the union in the written statement filed on behalf of the workman that she was appointed as Telephone Operator cum Receptionist by M/s. Lytton Hotel vide letter dated 23.01.1984 and she was confirmed in her service w.e.f. 01.02.2004. She had performed her duties for about nine years continuously in the said capacity. Thereafter she was withdrawn from Telephone department and she asked to sit in P.R.O. table though she was not appointed for that office. Her weekly off day was also changed. She was given work which had no relation with that of Telephone operator cum receptionist. During that period, she was suspended and she was humiliated in various ways although there was no fault on her part. In spite of all provocations and humiliations she performed her duties which was allotted to her and she tolerated all the atrocities of the management. Thereafter, the management transferred her to the Accounts Section vide letter dated 12.02.1994 on the plea that there was no sufficient job in the Reception Section. The workman had no knowledge about the accounts and as such she had expressed her inability to work in the accounts department. Her request was turned down by the management and she was asked that her service would no longer be required provided she does not work in the Accounts Department. The workman then brought the matter to the notice of the union and the union raised protest against such activity of the management by writing letter. It was informed to the management that the workman was lying sick and requested the management not to disturb the workman. On 28.02.1994 when the workman went to resume her



duty, the management refused to allow her to resume her duty. The union raised protest against such activity of the management by writing a letter dated 29.04.1994. The management then published in the Telegraph paper that the workman was absent from his duties without information and workman was directed to join her duties, failing which actions shall be taken against her. The management also wrote a letter on 30.04.1994 to the union which was received by the union official on 01.05.1994. In the said letter the management made some distorted statement. Factually when the workman went to resume her duty then she was not allowed to perform her duty in the capacity of Telephone operator cum Receptionist. Thereafter the management terminated her service by sending a letter dated 02.05.1994. The workman raised dispute with the management against such decision of illegal termination. Union also raised dispute and ultimately the dispute was raised with the Labour Commissioner. On that score the union has prayed for passing an award for reinstatement of the service of the workman with full back wages and consequential relief.

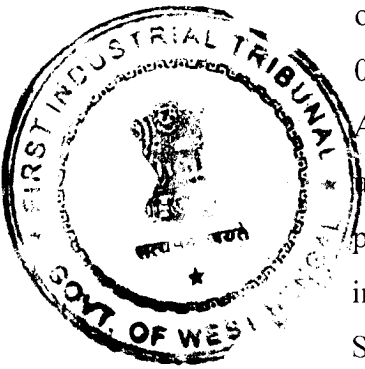
The Hotel management in the written statement has contended inter alia that the order of reference is not maintainable both in law and in fact and that the union has got no locus standi to expouse the cause of the workman and that there was no existence of any industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act. The further case of the management is that the concerned workman was working in the reception department of the hotel and initially engaged as a telephone operator with effect from 23.01.1984. At the time of termination of service she was drawn a salary of Rs.2652/- per month. Her service record was totally unsatisfactory. On so many occasions the management issued show cause notice/ charge sheet against her and also warned her both verbally and in writing. Because of her repeated acts of misconduct, she was found unsuitable for the post of telephone operator for the interest of customer/guest. She used to make trunk call to the customer of hotel at Delhi and Bombay and asked them to bring various gifts for her personal gain with the words of threatening that if such gifts are not given to her then she will report to their wives to the effect that they were having affairs with other girls in the hotel. Due to her such repeated act of misconduct the management lost confidence on her and she was entrusted with the job of Bill verification and posting the same in the register without affecting any salary of her and other benefits of her. The siting arrangement of the workman was made in the Accounts Section vide letter dated 02.12.1994. She did not attend her duties and submitted ESI certificate from 14.02.1994 to 27.02.1994. She did not attend her duties even after she was declared fit by the ESI authority. She was in the habit of taking unauthorised leave. The management attempted to serve notice on the workman calling her explanation through special messenger, courier but failed and as such the management had to publish notice in the daily newspaper i.e. The Telegraph dated 27.04.1994. Even after publication of such notice the workman did not resume her duties and as such finding no other alternative, the management had to terminate her service with effect from 02.05.1994 issuing a



notice on the same date and the management sent full and final dues of the workman vide letter dated 30.06.1994 but the workman refused to accept such payment. All the allegations made by the workman /union in the written statement/claim petition against the management have been specifically denied. The management has prayed for dismissal of the case of the workman.

Decision with Reasons

Before entering into discussion relating to the present dispute, it would be appropriate to narrate some aspects which are available in the record. After receipt of the instant reference summon was issued to the parties whose name transpire in the order of reference. The parties appeared and filed their respective written statement. Thereafter, an application was filed for the workman under section 15(2)(b) of the Industrial Disputes Act for interim relief and this tribunal passed an order directing the company to pay to the workman Mrs. Mary Mendes 50% of Rs. 1800 per month for the first three months from 02.05.1994 and thereafter @ 75% of Rs. 1800 per month towards interim relief fixing a date for hearing of the case on merit. The evidences of the parties were recorded. The workman Mrs. Mary Mendes examined and cross examined as WW1 and Mr. Sachin Roy Chowdhury was examined and cross examined as WW2. Some documents were marked as exhibit for the workman. CW1 Raja Punwani examined and cross examined in part and ultimately, he not having turned up his further evidence was closed and award was passed on 09.09.1999 by the then Presiding Officer holding that the termination of service of Mrs. Mary Mendes w.e.f 02.05.1994 was not justified. It was further ordered that the workman do get award for reinstatement of her service w.e.f. 02.05.1994 under M/s. Lytton Hotel with full back wages and consequential relief. After lapse of a considerable years on 27.09.2016 the workman prayed for putting up the record and for hearing of the case in terms of the order dated 02.08.2000 passed by the Hon'ble Division Bench of High Court, Calcutta in APO -292/2000 in WP No. 145 of 2000 and also copy of order passed by Hon'ble Apex Court in SLP(c) No. 1424 of 2001. The then Presiding Officer of this tribunal on such application filed for the workman had to open a skeleton record for non-availability of the original record readily. The original record was made available and the then Presiding Officer vide order no. 62 dated 20.12.2016 fixed 20.01.2017 for hearing of the case and in the mean time order was made for issuance of notice to the opposite party, company. It appears from the xerox copy of the order passed by the Hon'ble High Court that the present opposite party M/s. Lytton Hotel moved the Hon'ble High Court in WP no. 145 of 2000 against said award passed by this tribunal and the Single Bench of the Hon'ble High Court by order dated 04.04.2000 was pleased to set aside the said award passed by this tribunal and directed this tribunal to hear the case from the stage as it stood on 08.09.1999 and to conclude the industrial adjudication once again and to pass its award. Against the said order of the Hon'ble Single Bench of the Calcutta High Court, the workman Mrs. Mary Mendes moved the Hon'ble Division Bench in APO no. 292 of 2000 in connection with WP no. 145 of 2000. From the xerox copy of the order passed by Hon'ble



Division Bench of Calcutta High Court, it appears that the Hon'ble Division Bench allowed the said appeal and the impugned judgement as also the order impugned in the writ application passed by this tribunal set aside and the appeal as also cross objection were disposed of with the direction as mentioned in the bodies of the judgment passed by the Hon'ble Division Bench. Such direction runs as follows: -

“As indicated in Rai Bahadur (Supra case) even after a defence is struck off, the management is not debarred from raising the question of jurisdiction which goes to the root of the matter. Striking off the defence would only mean, such defence which leads to the issues on merit and not to the issues of jurisdiction. We are, therefore, of the opinion that the interest of justice would be sub-served, if the writ application filed by the respondent herein is allowed subject to the following directions: -

- 1) The respondent shall within two weeks from this day, pay to the appellant a sum of Rs. One lakh;
- 2) The balance arrears up to August, 2000 shall be paid by 30th September 2000;
- 3) Until the matter is disposed off by Ld. Tribunal, he shall go on paying the payment unto the respondent, the monthly interim relief in terms of the direction of the Ld. Tribunal dated 10th November, 1997 by the 15th of next month for which the payment false due.


If the respondent complies with the afore-mentioned direction, the Ld. Tribunal shall hear them on merit of the matter, failing which he can proceed as if the respondent has no defence on merit of the matter. However, having regard to the Division Bench decision of this court, it is directed that the respondent shall be entitled to raise jurisdictional issue, if any. For the reasons afore-mentioned this appeal is allowed. Impugned judgement as also the order impugned in the writ application passed by the Ld. Tribunal are set aside and the appeal as also cross objection are disposed off with the afore-mentioned directions. Having regard to the facts and circumstances of this case, however there shall be no order as to costs”.

It appears from the documents filed by the workman that the opposite party Hotel moved the Hon'ble Apex Court in SLP(c) No. 1424 of 2001 against the said order of Hon'ble Division Bench of Calcutta High Court and the Hon'ble Apex Court vide order dated 13.07.2001 dismissed the said Special Leave petition as withdrawn.

As already mentioned that on the application filed by the workman together with such copy of the orders of the Hon'ble High Court and Hon'ble Apex Court praying for putting up the record, my predecessor vide order no. 62, dated 20.12.2016 fix a date for hearing of the case and order was passed for issuance of notice to the Hotel management, namely, the opposite party to the present proceedings before this tribunal in the meantime. On 22.02.2017 the said Hotel management/company appeared through Ld. Advocate Mr. Ananda Mukherjee and



Mr. A. Rath who filed letter of authority. Thereafter, on the fixed date none appeared for the company and order was passed on 27.04.2017 on the basis of the materials and the submissions made by the Ld. Advocate for the workman a chance was given to the Hotel management to appear and to inform this tribunal whether it has complied with the direction given to it by the Hon'ble Division Bench of the High Court Calcutta regarding mode and method of payment to the workman. On 01.06.2017 Mr. Ananda Mukherjee appeared for the company and he filed an application seeking three weeks time to take steps. On such prayer a last chance was given to the company to intimate this tribunal regarding the compliance of the direction as to the payment made to the workman in terms of direction of Hon'ble Division Bench. On the next date i.e. 19.06.2017 said Mr. Ananda Mukherjee the Ld. Advocate filed a verified application praying for recalling the notice issued by this tribunal asking the company to appear and to inform regarding the compliances of the direction given by the Hon'ble Division Bench. This tribunal on hearing both sides and by passing order on 19.07.2017 rejected such application filed by the company on 19.06.2017 and fixed up a date for hearing of the case since the earlier award passed by this tribunal and also the order of the single bench of the Hon'ble High Court were set aside by the Hon'ble Division Bench with certain observations regarding the mode and method of payment to the workman by the Hotel management. In the order dated 19.07.2017 passed by this tribunal it has clearly been mentioned that the Ld. Counsel for the company submitted that the company has not complied with the direction of the Hon'ble Division Bench regarding payment to the workman.



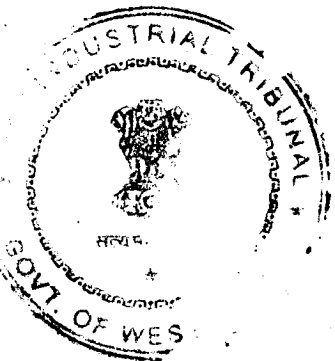
On the date fixed for recording evidence the workman Smt. Mary Mendis appeared and examined herself as WW1 by way of tendering her evidence-in-chief supported by affidavit. She relied on the documents produced earlier and those were remarked as exhibit-1 to 29. It is to be mentioned that on earlier occasion those documents were admitted into evidence as the formal proof of the same were dispensed with by the other side. None appeared for the company on repeated calls to cross examine the said WW1 even on point of law. The worker examined no further witness and as such the evidence of the workman was ordered to be closed and a date was fixed for hearing argument with the leave to the company to appear and argue the case, if it so desires, on point of law. Ultimately, on the date fixed, the Ld. Advocate for the workman argued the case but none turned up for the company to place any argument even on point of law.

WW1 in her evidence-in-chief has stated that she was appointed as Telephone Operator cum Receptionist by letter dated 23.01.1984 issued by the company. The said letter has been marked as exhibit-1. The witness stated further that subsequently she was asked to sit in PRO table though she was not appointed for attending the said office and thereby her duty hours and the weekly off date were changed causing prejudice to her. Then she stated that she was transferred to Accounts section by letter dated 12.2.1994 though she had no knowledge about the job relating to accounts. The witness tendered the said letter issued by the company

which has been marked as exhibit-2. She has stated that when she informed the management that the job of the accounts department is not known to her, she was humiliated and was forced to do the same. It is stated further by the witness that she informed the matter to the Secretary of the union and the union took up her cause with the management in writing. The letter wrote by the union on 29.04.1994, 27.04.1994 and 07.05.1994 have been tendered by the witness and those have been marked as exhibit and 3,4 & 5 respectively. The witness stated that no training was given to her relating to the job of accounts department before issuing such order of transfer. The witness has also produced the letter dated 2nd May 1994 by which the company terminated her service with effect from that date. The said letter has been marked as exhibit-6. It has come out from the further statement of WW1 that she had given reply by issuing a letter to the management on 06.05.1994 intimating the management that after expiry of ESI sick leave she went to join her duties and the security guard did not allow to join her duties. The said letter is marked as exhibit-7. She has stated further that such letter of termination was issued in contravening the provisions of law and no chargesheet was issued against her and no domestic enquiry was initiated. She has produced a number of letters by which she herself and the union raised protest against such illegal termination of service. Those letters have been marked as exhibits. The witness has stated further that the union by letter dated 17.05.1994 (exhibit-8) raised the dispute before the management in respect of the said termination of her service and subsequently raised dispute before the Labour Commissioner by letter dated 26.08.1994 (exhibit-9). The witness has stated that the allegations made against her by the management are false. She has stated further that she was never gainfully employed since the day of termination of her service and now she has no source of income to maintain her family members.

Considered the evidence-in-chief as made by the workman as WW1. Such statement of the workman come out in evidence-in-chief have remained unchallenged. None appeared for the company to cross examine her even on point of law. As mentioned earlier that the Hon'ble Division Bench of High Court, Calcutta in deciding APO No. 292 of 2000 in connection with W.P.No. 145 of 2000 observed that if the Hotel management complied with the direction given by the Hon'ble Court regarding the mode and method of payment as indicated in the said judgement of the Hon'ble Court to the workman, this tribunal shall hear the hotel management on merit of the matter, failing which the tribunal can proceed as if the hotel management has no defence on merit of the matter. In such situation, I find no reason to disbelieve the statement of WW1 which has come out in her evidence-in-chief. I also find no reason to disbelieve the documentary evidences as none has come forward for the respondent to controvert the same. It would be appropriate to mention in this connection that those documents were on earlier occasion marked as exhibit by this tribunal as the formal proof of the same was waived.

Considered the submission as made by the Ld. Counsel of the workman. Perused the oral and documentary evidence as adduced by the workman. As



mentioned in the order of reference, this tribunal has to adjudicate whether the termination of service of the workman from 02.05.1994 is justified or not and also to consider other reliefs, if any, the workman is entitled to.

The said letter of termination has been marked as exhibit-6, wherein it is alleged that the workman remained absent w.e.f. 28th February 1994 and did not resume her duties thereafter. But from the unchallenged testimony of WW1 it appears that therein she has categorically stated that after the expiry of ESI sick leave, she went to join her duties but the security guard did not allow her to join the duty. From exhibit-7 it appears that the workman in writing intimated the hotel management that she wants to join her duties after expiry of her ESI sick leave but she was not allowed to join. From the materials, I find that on earlier occasion the hotel management filed some document out of which there is a medical certificate issued by ESI mentioning therein that the workman was under treatment from 12.02.1994 to 28.02.1994. The said document clearly corroborate the case as put forward by the workman that she was lying sick and due to such sickness, she had to remain absent.

In the instant case no chargesheet was issued against the workman. From the materials on record and from the statement of WW1 it is abundantly clear that the termination letter (exhibit-6) issued by the company to the workman without framing any charge against her and without holding any domestic enquiry. I fail to understand as to why the hotel management did not verify the medical certificate issued by the ESI authority in respect of the treatment of the workman had there been any doubt in the mind of the hotel management regarding authenticity of the said document. It is a settled principles of law that no person should be condemned unheard and no decision should be taken behind his/her back. The materials on record amply suggest that the management issued such letter of termination (exhibit-6), terminating the service of the workman violating all principles of natural justice. The conduct of the opposite party/hotel management suggest that they acted with some malice and wanted to victimise the workman without any rhyme or reasons. I am of the view further that had there been any bonafide of the management, it certainly would have issued chargesheet to the workman asking her to show-cause and if not satisfied with such reply of the workman, then to hold a domestic enquiry in respect of the allegation, if any, against the workmen. Such malafide intention of the hotel management will be manifested from its conduct even before this tribunal. As discussed earlier that inspite of specific direction given by the Division Bench of the Hon'ble High Court, the management did not comply with the order of the Hon'ble Court regarding the payment to the workman. This is a strong circumstance to suggest the malafide intention and attitude of the company. Considering the unchallenged testimony of the workman (WW1) and also the documentary evidences as relied upon by the workman there can not be any manner of doubt to come to a definite conclusion that the hotel management most illegally and arbitrarily took a decision to terminate the service of the workman without



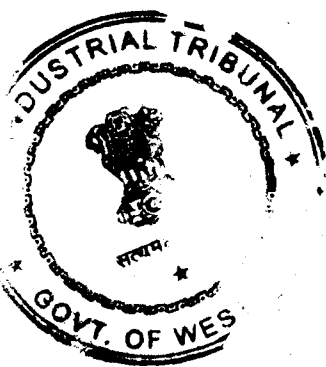
giving her any chance of hearing and thereby the hotel management has violated the golden principles of natural justice.

Be that as it may, in view of the non-compliance of the direction of the Hon'ble Court by the hotel management regarding the payment to the workman as stated earlier, the hotel management has no defence on merit of the matter. Furthermore, the hotel management has not even come forward to participate in the hearing of argument of the instant proceedings to raise anything as to the jurisdictional issue if any. In the present case it is an admitted position that the workman was a permanent employee and she had worked under the opposite party hotel for several years. The WW1 has stated that no compensation was paid to her following provisions of the Industrial Dispute Act. That being so, it is held the termination of service of workman is illegal and void for non-compliance of the mandatory provisions of law as lays down in section 25 F of the Industrial Disputes Act, 1947.

Though the company has not come forward to raise any points as to the jurisdiction of the instant proceeding, I have carefully gone through the materials on record and I do not find any jurisdictional error in the reference as made by the government. Section 2(k) of the Industrial Disputes Act, 1947 provides that "Industrial Dispute" means any dispute or difference between employers and employees, or between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. Materials suggest that the workman raised dispute to the management regarding such letter of termination and also the cause of the workman was ventilated to the Labour Department, Govt. of West Bengal by raising a dispute by the union. On careful consideration of the totality of the matter I am of the view that the appropriate Government is absolutely justified for making the instant reference since there is/was existence of an Industrial Dispute.

In view of the above findings and on the basis of the evidences and materials on record I am convinced to hold that there was no sufficient ground for dismissal of the present workman from her service and that the dismissal order (exhibit-6) issued by the management of the hotel in respect of the service of present workman is absolutely unjust and illegal and as such management of the hotel is not permitted to act on such dismissal order (exhibit-6).

In view of forgoing discussions and the reasons stated there on it is ordered that the termination of service of the workman Mrs. Mary Mendes w.e.f. 02.05.1994 was not justified. The workman do get an award for reinstatement of her service w.e.f. 02.05.1994 under M/s. Lytton Hotel with full back wages and other consequential reliefs.



The issues mentioned in the order of reference are thus decided and disposed of accordingly in favour of the workman.

This is my A W A R D.

Dictated & corrected by me.

Sd/- T. Gupta

Judge.

Sd/- T. Gupta

Judge,
First Industrial Tribunal
04.06.2018

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

