

I/26324/2018

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

No.Labr./683/(LC-IR)/IR/11L-30/09

Date : 10.09. 2018

ORDER

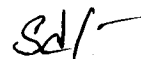
WHEREAS under the Government of West Bengal, Labour Department Order No. 616-IR dated 26.06.2012 the Industrial Dispute between **M/s. Lexus Motors Ltd., Branch Tarakeswar, H.O.209, A.J.C. Bose Road, Kolkata-700017** and their workman Md. Abdul Hafiz, Moinagudi, P.O.- Noapara, Barasat, Dist- North 24 Parganas regarding the issues 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, Seventh Industrial Tribunal, Kolkata.

AND WHEREAS, the Judge of the said Seventh Industrial Tribunal, Kolkata, 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



Deputy Secretary to the
Government of West Bengal.

No.Labr./683/1(5)/(LC-IR)

Date : 10.09.2018

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

1. M/s. Lexus Motors Ltd., Branch Tarakeswar, H.O.209, A.J.C. Bose Road, Kolkata-700017
2. Md. Abdul Hafiz, Moinagudi, P.O.- Noapara, Barasat, Dist- North 24 Parganas.
3. The Assistant Labour Commissioner, West Bengal in-Charge, Labour Gazette,
4. The Labour Commissioner, W.B. New Secretariat Buildings, (11th Floor),1, K.S. Roy Road, Kol-1.
5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Deptt.'s website.



Deputy Secretary to the
Government of West Bengal

No.Labr./683/2(2)/(LC-IR)

Date : 10.09.2018

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal, West Bengal with reference to his Memo No. 1098 -L.T. dated 06.06.18.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kol - 1.

Deputy Secretary to the
Government of West Bengal

10/9/18

In the matter of an Industrial Dispute between M/s. Lexus Motors Limited, Branch Tarakeswar, H.O. 209, A.J.C. Bose Road, Kolkata – 700017 and their workman Md. Abdul Hafiz, Moinagudi, P.O. Noapara, Barasat, Dist. 24-Parganas (North), referred to this Tribunal vide G.O. No. No.616-I.R./11L-30/09 dated 26-06-2012 issued by Deputy Secretary, I.R. Branch, Labour Department, Govt. of West Bengal.

(Case No.VIII-31/2012)

Before The Judge, Seventh Industrial Tribunal, Kolkata.

Present

Shri Avani Pal Singh, Judge,
Seventh Industrial Tribunal,
Kolkata.

A W A R D

Dated : 01-06-2018

This industrial dispute between M/s. Lexus Motors Limited, Branch Tarakeswar, H.O. 209, A.J.C. Bose Road, Kolkata – 700017 and their workman Md. Abdul Hafiz, Moinagudi, P.O. Noapara, Barasat, Dist. 24-Parganas (North) was referred by the Govt. of West Bengal, vide the aforesaid Reference, to this Tribunal for adjudication of the following issues:-

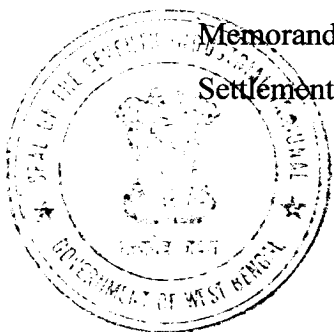
I S S U E S

1. Whether the termination of service of Md. Abdul Hafiz by M/s. Lexus Motors Ltd. w.e.f. 05-04-2009 is justified?
2. What relief, if any, is he entitled to?

* * *

Accordingly, the instant Case No.VIII-31/2012 under Section 10(2A) of the Industrial Disputes Act, 1947 was registered on 13.08.2012. Upon such registration of the case, notices were issued upon the parties. Both parties duly appeared and filed their respective statement(s) of facts and list(s) of documents, upon which the matter went into evidence. The evidence began on 07.07.2014 and was closed on 04.07.2017, whereafter the matter came to be fixed for arguments by the parties. During this stage of arguments, the parties arrived at a mutual settlement of the dispute between them.

Accordingly, on 27.04.2018 the parties have filed a joint-petition along with a Memorandum of Settlement, with a prayer for passing an Award in terms of their said Settlement. The concerned workman Md. Abdul Hafiz @ Abdul Hafiz and Sri



Goutam Das, Manager (Legal), being the authorized representative / signatory of the O.P./Company M/s. Lexus Motors Ltd., have deposed in respect of their joint petition of compromise and the terms of the Memorandum of Settlement.

In terms of the Settlement, the workman Md. Abdul Hafiz has received a sum of Rs.1,50,000/- only (Rupees one lakh fifty thousand only) by way of 3 (three) Demand Drafts bearing No.666409 of value Rs.57,945/-; No.666408 of value Rs.47,043/- and No.666407 of value Rs.45,012/-, all the Drafts having been issued on 06.02.2018 by New Town Action Area-II Branch of State Bank of India (Br. Code 14532), from the authorized representative of the O.P./Company. Upon receipt of such drafts, the workman Md. Abdul Hafiz has issued a receipt thereof in writing, which is annexed at page-7 of the Memorandum of Settlement and the break-up of the total amount is as shown at Page-6 of the Memorandum of Settlement.

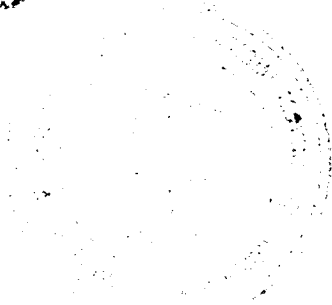
Having examined the Memorandum of Settlement and the joint petition for compromise, as well as the evidence adduced by the parties, this Tribunal finds no impediment in allowing the prayers, made jointly by the parties, for passing of an Award, in terms of the Memorandum of Settlement duly executed by and between the parties. **Let the instant case be disposed of in terms of Memorandum of Settlement dated 27.04.2018 in between the parties filed this day, which do form part of the Award.**

The aforesaid shall **constitute the Award** passed in the instant case.

Dictated & corrected by me.

sdf
Judge.

~~Judge~~
~~Seventh Industrial Tribunal~~



sdf
(Avani Pal Singh)
Judge
Seventh Industrial Tribunal
Kolkata
01-06-2018

~~Seventh Industrial Tribunal~~

Before the Learned Judge-in-Charge, Directorate of Industrial Tribunals,

West Bengal

Case No.VIII-31/2012

In The Matter Of :

Md. Abdul Hafiz

~Vs~

M/s. Lexus Motors Ltd.

The humble application on behalf of
the above-named parties Most

Respectfully

Sheweth:

- 1> The above case is pending adjudication before the Learned Seventh Industrial Tribunal.
- 2> That, the parties have arrived at an amicable settlement of the matter in terms of the Memorandum of Settlement as annexed herewith.
- 3> That the parties submit that the case maybe disposed off in terms as recorded in the Memorandum of Settlement.
- 4> This is bonafide and made for interests of justice.

In the aforesaid premises, it is therefore humbly prayed that Your Honour would graciously be pleased

Filed by
R.D.S.
A. Anand
(for the applicant)
A. Anand
(for the respondent)
27/04/18

to pass appropriate order(s), for the
interests of justice.

And for this act of kindness, the petitioners, as in duty bound, shall ever
pray.

MEMORANDUM OF SETTLEMENT

Under Section 2(p) of the Industrial Disputes Act, 1947
read with Rule 68(3) of the Industrial Dispute Rules, 1958.

01. Name and addresses of the parties:
A. M/s. Lexus Motors Limited,
having its office at 209,
A.J.C.Bose Road, Calcutta -
700017

...Employer

B. Md. Abdul Hafiz @ Abdul
Hafij, son of Abdul Wahed,
residing at Moinagudi, P.O. -
Noapara, Barasat, North 24
Parganas - 700125 having
PAN # AWEPH9910L

...Employee

02. Signatories to this Settlement:
A. Representing the Employer:
Shri Gautam Das,
Manager(Legal)

B. Representing the Applicant:
Md. Abdul Hafiz @ Abdul Hafij
himself

03. Short Recital of the case : Md. Abdul Hafiz @ Abdul Hafij was permanently attached and posted at Tarakeshwar Workshop of the employer w.e.f January 01, 2006 whereat his emoluments was increased from time to time . The said workshop of the employer became financially inviable and was incurring significant losses year after year which forced the management of the employer to re-think about continuing with the said Workshop and ultimately at the highest level of management of the employer, it was decided

Gautam Das.

Abdul Hafiz -

that said Workshop will be closed down which decision was taken with great pain and it was done permanently as there was no chances of revival in the near future which decision made the employees of the employer working thereat surplus to the requirement thereat forcing the employer to explore the options for fitting the existing employees to other places of work but no other option was available, the employee was communicated such decision by a letter dated January 05, 2009 wherewith was enclosed all the legal dues as payable upon receipt of which, the employee made a representation before the management dated February 11, 2009 wherein he made various allegations against the employer and followed it up with a representation before the Deputy Labour Commissioner, Chandannagore dated February 12, 2009 over which a conciliation proceedings was initiated by him wherein the employer by written comments dated March 06, 2009 explained the whole situation and requested to drop the matter as no industrial dispute existed and subsequently, the services of the employee stood terminated due to closure of the Tarakeshwar Workshop of the employer w.e.f April 05, 2009 whereafter again the employee submitted a representation dated April 08, 2009 raising various allegations against the employer and thereafter raised an industrial dispute with the Deputy Labour Commissioner, Chandannagore vide representation dated April 13, 2009 which called 2 more conciliation meetings for seeking certain clarifications and thereafter, the employee made a representation before The Labour Commissioner, Government of West Bengal, Labour Department on March 01, 2011 inter-alia making various allegations therein and also making a prayer for settlement of his matter .Thereafter in receipt of a notice dated May 31, 2011 from the office of the Deputy Labour Commissioner, Howrah intimating about the

Gautam Das.

Abdul Hafiz

initiation of a conciliation proceedings and asking the employer to submit its comments in the matter which was done vide letter dated June 27, 2011 narrating therein the whole sequence of events and requesting the Deputy Labour Commissioner, Howrah to close the proceedings whereafter there was no further communication from any of the 2 Conciliation Officers on the matter . Thereafter , the matter was referred before the Learned Seventh Industrial Tribunal for adjudication vide an order of reference being no. 616 dated June 26, 2012 which was registered as Case no. VIII-31/12 and during the pendency of the matter, discussions were held in an atmosphere of cordiality between the parties for an amicable settlement of the matter and accordingly the matter has been settled by and between the parties on following terms:

4. **TERMS AND CONDITIONS:**

- a) Md. Abdul Hafiz @ Abdul Hafij shall accept his termination of service as communicated vide employer's letter dated January 05, 2009 made effective after 90 days from the said date.
- b) It is agreed and accepted by Md. Abdul Hafiz @ Abdul Hafij that he shall not take any step or make an endeavour to challenge his termination of service as communicated vide employer's letter dated January 05, 2009 made effective after 90 days from the said date.
- c) Md. Abdul Hafiz @ Abdul Hafij further confirms that consequent upon such acceptance by him, he shall not claim for reinstatement/reemployment in the employer in any manner what so ever including back wages before any Authority, Labour Court, Tribunal or any Court of Law.

Gautam Das.

Abdul Hafiz

d) It is agreed and accepted by both the parties to the instant settlement that Md. Abdul Hafiz @ Abdul Hafij shall be paid a sum of Rs. 150,000/- (Rupees One Lakh Fifty Thousand only) by the Employer in full and final settlement of his all dues and claims statutory or otherwise against the employer including the claim for reinstatement, reemployment or fresh employment including back wages including his entitlement for gratuity with interest for 13 years. Accordingly Md. Abdul Hafiz @ Abdul Hafij is getting Rs. 150,000/- (Rupees One Lakh Fifty Thousand only) only in total as per the calculation of payment as would appear from **Annexure - A** to this instant settlement.

e) It is agreed that the sum of Rs. 150,000/- (Rupees One Lakh Fifty Thousand only) as aforesaid is being paid to Md. Abdul Hafiz @ Abdul Hafij vide three drafts as issued by State Bank of India, New Town Action Area - II Branch being:

i. Demand Draft No. 666409 dated February 06, 2018 for Rs. 57,945/-,

ii. Demand Draft No. 666408 dated February 06, 2018 for Rs. 47,043/-, and

iii. Demand Draft No. 666407 dated February 06, 2018 for Rs. 45,012/-,

in full and final settlement of his all dues and claims statutory or otherwise against the employer. Md. Abdul Hafiz @ Abdul Hafij also confirms that consequent upon receipt of Rs. 150,000/- (Rupees One Lakh Fifty Thousand only) only in totality, he has got no claims statutory or otherwise in respect of the employer nor shall he himself or authorise anybody including any union to prefer any claim,

Gautam Das

Abdul Hafiz

statutory or otherwise before any authority, Labour Court, Tribunal or any Court of Law for preferring any claim for any amount against the employer in any manner whatsoever including for reinstatement, reemployment, fresh employment or back wages.

- f) That on and after signing of this settlement, a joint petition on behalf of the parties to the settlement will be filed before Learned Seventh Industrial Tribunal, West Bengal in Case No.. VIII - 31/12 inter-alia requesting the Learned Tribunal to record the settlement and pass the necessary Award in terms of this present settlement.
- g) That after signing of this settlement Md. Abdul Hafiz @ Abdul Hafij shall have no claim whatsoever in nature in connection with Case no. VIII - 31/12 and by virtue of this settlement, the pending dispute before the Learned Seventh Industrial Tribunal, West Bengal is settled fully and finally.

IN WITNESS WHEREOF the parties put their signatures this the 27th day of April, 2018

WITNESSES

1> *Amr Kumar Biswas*
Shankar

For Lexus Motors Ltd.

Goutam Das
 General Manager
 (Goutam Das)

2> *Udolepan Bajaj*
Advocate

Abdul Hafiz
 (Md. Abdul Hafiz @ Abdul Hafij)

Annexure - A

<u>Sl. No.</u>	<u>Heads of account</u>	<u>Amount (Rs.)</u>
01.	Gratuity: Principal Amount = Rs.20,741/- Interests(@9% for 13 years) = Rs. 24,271/- Total =====Rs.45,012/-	Rs.45,012/-
02.	Retrenchment Compensation: Rs.18,005/- Leave Encashment: Rs.5217/- Bonus: Rs.2721/- Interests: Rs.21,051/- Total =====Rs.47,043/-	Rs.47,043/-
03.	Compensation and Litigation Charges	Rs.57,945/-
	Total	Rs.150,000/-

Abdul Haffiz

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RECEIPT

Received from M/s. Lexus Motors Limited, having its office at 209, A.J.C.Bose Road, Calcutta – 700017 a sum of Rs. 150,000/- (Rupees One Lakh Fifty Thousand only) only as per the settlement dated 27/4/18..... in full and final settlement of my dues and claims against my employer in terms of the said settlement. I have no other dues and claims, statutory or otherwise, including any monetary claim against my said employer nor shall I prefer any claim for any amount before any Court of Law, Tribunal or Authority for any amount in any manner what so ever including the claim for re-employed or re-engagement and back wages. I accept the said amounts as aforesaid as settlement of all my dues and claims in full from my said employer.

Abdul Hafiz
(Md. Abdul Hafiz @
Abdul Hafij)