

File No. LABR-22015(13)/6/2018-IR SEC-Dept. of LABOUR  
1/24838/2018

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

No. Labr./621/(LC-IR)  
IR/8L-04/11

Dated, Kolkata, 23.8.18.

**ORDER**

WHEREAS an industrial dispute existed between M/S. Annapurna Cotton Mills & Industries, Shyamnagar, District -24 Parganas(N) and their workman Sri Kanai Lal Manna, Sri Annapurna Cotton Mills Line, Feeder Road, P.O.: Shyamnagar, Dist. 24 Pgs(N) Pin : 743127 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(14 of 1947) to the Judge, Second Labour Court, specified for this purpose under this Deptt.'s Notification No.1085-IR/12L-9/95 dated.25.07.1997;

AND WHEREAS the said Judge, Second Labour Court has submitted to the State Government its Award under section 10(1B)(d) of the I.D.Act, 1947(14 of 1947) 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

*Sd/-*

Deputy Secretary to the  
Government of West Bengal.

No. Labr./621/1(5)/(LC-IR)

Dated, Kolkata, 23.8.18.

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

1. M/s. Annapurna Cotton Mills & Industries, Shyamnagar, Dist.-24 Parganas(N), Pin-743127
2. Sri Kanai Lal Manna, Sri Annapurna Cotton Mills Line, Feeder Road, P.O.: Shyamnagar, Dist. 24 Pgs(N) Pin : 743127
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Buildings, (11<sup>th</sup> floor), 1, K.S.Roy Road, Kol-1.
- ✓ 5. The O.S.D., IT Cell, Labour Deptt., with the request to cast the Award in the Department's website.

*[Signature]*  
Deputy Secretary

File No. LABR-22015(13)/6/2018-IR SEC-Dept. of LABOUR

1/24838/2018

No.Labr./621/2(2)/(LC-IR)

Dated, Kolkata, 23.8.18

Copy forwarded for information to :-

1. The Judge, Second Labour Court, West Bengal, with respect to his Memo No.964-LT dtd.21.05.2018.
2. The Joint Labour Commissioner(Statistics), W.B., 6, Church Lane, Kol-1.

Deputy Secretary

Jnt/IR/order

23/8/18

In the matter of an application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 filed by **Sri Kanai Lal Manna**, Sri Annapurna Cotton Mills Line, Feeder Road, P.O.- Shyamnagar, Dist. 24 Pgs.(North), Pin- 743127 against **M/s. Annapurna Cotton Mills & Industries**, Shyamnagar, District – 24-Parganas (North).

(Case No. 27 of 2011 u/s. 10(1B)(d))

**Sri Kanai Lal Manna**  
-vs-  
**M/s. Annapurna Cotton Mill & Industries**

---

BEFORE THE SECOND LABOUR COURT, WEST BENGAL, KOLKATA.

PRESENT : SRI ARABINDA PANTI,  
JUDGE, SECOND LABOUR COURT,  
KOLKATA.

Date : 18<sup>th</sup> Day of May, 2018

**A W A R D**

The instant case is taken up for passing Ex-parte Award. This case has a checkered history. The applicant filed this case U/s. 10(1B)(d) of the Industrial Disputes Act, on 22.09.2011. Notice was served upon the O.P. company. But the O.P. company did not take steps for which this case was heard Ex-parte and Ex-parte Award was passed on 02.04.2011.

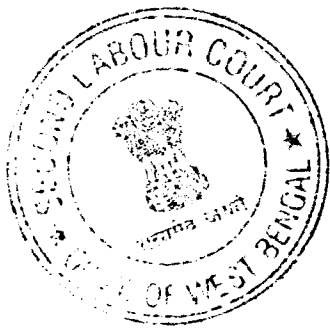
Thereafter, the O.P. company filed a petition for vacating the ex-parte award. After a contested hearing, the prayer was allowed by vacating the Ex-parte order on 14.03.2014. Accordingly, both parties were taking steps. Issues were framed on 24.07.2015. Date was fixed for taking evidence of the applicant. During adducing evidence by the applicant (P.W.1), the O.P. again started remaining absent. Thereafter, show cause notice was sent and served upon the O.P. which the O.P. company received on 09.08.2017. But the O.P. company did not take steps and for that reason, the case was taken up again for ex-parte hearing.

The case of the applicant in brief is that, the applicant was a permanent employee under M/s. Annapurna Cotton Mills. He used to reside in the quarter allotted to him by the opposite party which is situated upon the vested land and during his employment he was asked to vacate said quarter. He refused to vacate. Thereafter, suddenly the management on false and frivolous ground issued a



charge-sheet on 18.03.2008 without annexing the report on the basis of which the show-cause notice was issued. But the person who issued show cause notice had no authority to issue the same and moreover he was far below the rank of appointing authority. So, according to the applicant such show-cause notice is not tenable in the eye of law. The petitioner was suspended though at the time of the incident he was not present in the mill premises.

After receiving the said charge-sheet on 18.03.2008, the applicant immediately replied on the same vide his reply letter dated 22.03.2008 denying the charges levelled against him. After receiving said reply from the applicant, the O.P. Management vide letter dated 25.03.2008 communicated him as regards their decision of holding of domestic enquiry. But, after issuance of the letter the O.P. Management did not intimate the applicant about the date, time and venue of the enquiry. Thereafter, the applicant sent a legal notice by his Advocate to the management and prayed for reinstatement. After receiving the letter, the O.P. Management issued another charge-sheet dated 19.06.08 on the self cause of action which is based upon the previous charge-sheet dated 18.03.08. In the second charge-sheet dated 19.06.08 the management raised additional charges against the applicant. Though the charges are different from each other, but the management did not give any opportunity to the applicant to submit written application in respect to the charge-sheet dated 19.06.08. Thereafter, the applicant sent another legal notice through his Advocate on 08.07.08. After receiving the legal notice, the O.P. Management appointed one Mr. Sourav Dubey as Enquiry Officer. Thereafter, the applicant received one letter dated 07.08.08 from the Enquiry Officer wherefrom the Enquiry Officer asked the applicant to attend the enquiry proceeding on 22.08.08. Then the applicant wrote a letter on 20.08.08 to the Enquiry Officer and also sent another letter to the Enquiry Officer for the direction to the management to supply the documents on which the management is relying upon and also requested him to hold the enquiry in the local area. But no reply has been received from the Enquiry Officer. In the enquiry proceeding, the applicant raised strong objection regarding the appointment of the Enquiry Officer, but the management did not bother the request of the applicant. In ignoring the objection of the applicant, the enquiry proceeding was started on 22.08.08, when the representative of the management adduced evidence in the enquiry proceeding to substantiate the charges. The Enquiry Officer recorded the proceeding in English. The applicant requested the Enquiry Officer to record the same in Bengali. But the Enquiry Officer without



giving any opportunity to cross-examine the witness of the management and without giving opportunity to the applicant to produce his witness continued the enquiry proceeding. During the enquiry proceedings, neither the copies of the documents nor list of documents supplied by the management to the applicant. The applicant raised objection regarding the biasness of the Enquiry Officer and as a matter of protest the applicant did not put his signature on the enquiry proceeding. Yet the Enquiry Officer did not honour his protest. During the illegal suspension period, the company did not pay him the subsistence allowance in spite of repeated requests. Thereafter, the Enquiry Officer as per the instruction of the management submitted his reports in a biased manner and the management forwarded the copies of the reports and findings to the applicant vide their letter dated 15.05.09. It is further alleged that the report and findings of the Enquiry Officer is absolute illegal and there is suppression of materials of facts and distortion of truth.

After receiving the letter, the applicant replied the same denying and disputing the report vide letter dated 27.11.2007. The management with a pre-settled mind without considering the reply of the applicant dismissed the applicant from his service illegally. After receiving the dismissal order on 11.05.2010 the applicant raised a formal dispute before the management of the company and also requested the O.P. to reinstate him in his permanent service with full back wages. As the management did not bother to the request of the applicant, the applicant duly raised an industrial dispute before the office of the Deputy Labour Commissioner, Barrackpore, vide his letter dated 01.06.10. As the dispute could not be settled, so the applicant prays for issuance of the pendency certificate. After obtaining the certificate, he filed the instant application before this Court, by filing written statement under Section 10(1B)(d) of the Industrial Disputes Act, 1947, challenging his termination of service and prayed for reinstatement with back wages.

In support of the case of the applicant, himself adduced evidence as P.W.-

1. He deposed that he was a permanent employee of the company. Suddenly, the management issued two charge-sheets against him on 18.03.08 and 19.06.08. But the management without considering the reply of the applicant to the charge-sheet, fixed the date for domestic enquiry. Thereafter the applicant raised strong objection as regards the appointment of the Enquiry Officer, but to no effect. During the pendency of the enquiry proceeding the Enquiry Officer recorded the



proceeding in English, although the applicant requested him to record the same in Bengali. The Enquiry Officer did not explain the proceeding in Bengali to the applicant. No opportunity was given to the applicant to cross-examine the witness of the management and also did not give any permission to the applicant to produce his witness. So, according to the applicant there was a grave injustice against the applicant. No opportunity of self-defence was given to the applicant. No copy of documents or list of documents were supplied by the management to the applicant before commencing the enquiry proceeding. As a mark of protest the applicant did not put his signature in the enquiry proceeding. But, in spite of that the Enquiry Officer continued the proceeding. On each and every occasion the Enquiry Officer attached a piece of paper typed by the management as his order. During the illegal suspension period the company did not pay him the subsistence allowance in spite of repeated requests. Thereafter, the Enquiry Officer submitted his report in a biased manner and the management thereafter without considering the representation of the applicant dismissed him.

In support of the case of the applicant, he produced several documents and those marked as exhibits :-

Ext.-1 shows that the B.L. & L.R.O. North 24-Parganas, wrote a letter to the President of the Committee for Protection of Democratic Right, West Bengal, mentioning that the area where the staff quarter is situated is a vested land.

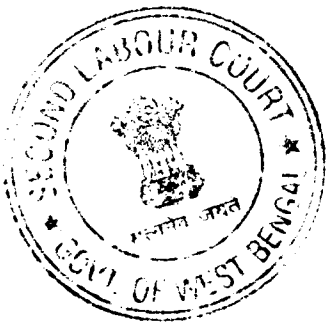
Ext.-2 is a letter issued by the Labour Officer to the applicant asking reply to the show-cause from the applicant as regards his unparliamentarily activities at the time of the demolition of the room of the majdoor quarter.

Ext.-3 shows that the applicant wrote a letter to the Labour Officer stating that at the relevant time of incident he was not present in the spot.

Ext.-4 shows that the Labour Officer wrote a letter to the applicant informing the explanation given by the applicant is unsatisfactory and intimated him as regards the enquiry to be conducted against the charges levelled against the applicant.

Ext.-5 is an Advocate's letter given by the Advocate of the applicant to the Labour Officer.

Ext.-5/1 shows that there was a notice as regards the direction given to the employees who used to reside within the factory premises to vacate their quarter.



Ext.-6 is the charge-sheet dated 19.06.08.

Ext.-7 is another Advocate's letter given to the Labour Welfare Officer.

Ext.-8 is the notice of domestic enquiry.

Ext.-9 is the letter by the applicant to the Enquiry Officer.

Ext.-10 is the copy of the enquiry proceeding.

Ext.-11 is the letter by the Manager of the O.P. Company to the applicant asking heirs for submitting explanation against the enquiry report.

Ext.-12 is the letter by the applicant to the General Manager of the O.P. Company as regards the reply to the report.

Ext.-13 is the order of the President/Disciplinary Authority to the applicant.

Ext.-14 shows that the applicant wrote a letter to the President/Disciplinary Authority as regards the victimization by way of illegal and unjustified dismissal.

Ext.-15 is the letter of the applicant given to the Labour Commissioner as regards the illegal and unjustified dismissal.

Ext.-16 is the Form "P-4" and

Ext.-17 is the Form "S".

In this case, from the evidence of the P.W.-1 it appears that the charge-sheet was issued against the applicant and the domestic enquiry was conducted. But the applicant raised the allegation that any opportunity was not given to the applicant to cross-examine the witness of the company and he was also not given any opportunity to produce his own witness. No document on which the company relied upon was supplied to the applicant. Although the applicant cannot properly understand the language of proceeding which was recorded in English for which he requested the Enquiry Officer to conduct the enquiry proceeding in Bengali, but the Enquiry Officer did not give him opportunity either recording the proceeding in Bengali or reading it over or explaining the same to the applicant. From Ext.-10, it appears that initially the applicant was absent and the date of enquiry proceeding was adjourned. Subsequently, the witness of the company was examined and there is the endorsement of the Enquiry Officer that he asked



the charge-sheeted employee to cross-examine the witness. But, he declined to cross-examine him. But, from the Ext.-10 it appears that there is no signature of the applicant in each pages of the enquiry proceeding. So, it is difficult to presume as to whether any opportunity was given to the applicant to cross-examine the witness or to produce his own witness or not. As the applicant raised the allegation that the document on which the company relied upon, was not supplied to him, there is no document annexed with the enquiry proceeding to show that actually the document was supplied to the applicant.

Considering all aspects and considering the enquiry proceeding it appears to this court that the Enquiry Officer did not follow the proper procedure at the time of conducting the domestic enquiry. Accordingly, the domestic enquiry is not valid and proper.

In this case, from the written statement filed by the applicant it appears that the company raised the allegation of misconduct on the issue of using abusive languages by the applicant when the majdoor quarter was vacating by the management. But from the procedure adopted by the Enquiry Officer, it appears to this court that the enquiry was not properly conducted and from the materials on record it is clear and day light that the applicant was victimized due to unfair labour practice of the O.P. Management.

That apart, the provision of Section 25F of the Industrial Disputes Act, has not been complied. There is no document on record to prove that the conditions precedent to retrenchment of workman were followed by the O.P. company at the time of dismissal. Moreover, there is no forth coming document in support of the O.P. company that the applicant was paid subsistence allowance as per provision of law.

Considering the discussions held in the fore going paragraphs, it is held that the alleged termination dated 21.04.2010 is illegal and it violates the provision of natural justice. Accordingly, the applicant is entitled to get relief as prayed for.

Hence, it is,

Ordered

that the written statement under Section 10(1B)(d) of the Industrial Disputes Act, 1947 filed by the applicant is allowed ex-parte with cost of Rs. 5000/-. The O.P.



Company is directed to reinstate the applicant immediately. The applicant is also entitled to get full back wages along, with other consequential benefits from the date of the dismissal till the date of reinstatement. The O.P. Company is directed to pay the back wages along with other consequential benefits and cost of Rs. 5000/- within a period of 90 days from the date of this award, in default the applicant is at liberty to take the recourse of law for realization of the same and for reinstatement.

This is the Award.

Dictated & Corrected by me,

*sd* / -  
Judge,

*sd* / -  
(Arabinda Panti)  
Judge,  
Second Labour Court,  
Kolkata.  
18.05.2018  
**Judge**  
**Second Labour Court W.B**

