

(2014) 07 CAL CK 0036**Calcutta High Court****Case No:** W.P. 1063(W)/2014

The Society for Comprehensive
Rehabilitation Service

APPELLANT

State of W.B.

Vs**RESPONDENT****Date of Decision:** July 10, 2014**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 17

Citation: (2014) LLR 962**Hon'ble Judges:** Soumen Sen, J**Bench:** Single Bench**Advocate:** Rajarshi Chatterjee and Dhananjoy Banerjee, Advocate for the Appellant;
Narayan Chandra Bhattacharyya, Sujata Das, Jayanta Dasgupta and Balaran Patra,
Advocate for the Respondent**Final Decision:** Partly Allowed

Judgement

Soumen Sen, J.

The subject matter of challenge in this writ petition is an award passed by the 5th Industrial Tribunal arising out of a reference order dated 10th July, 2013.

The order of reference reads as follows:

Whereas under the Government of West Bengal, Labour Deptt. Order No. 479-IR dated 13.4.2010 the industrial dispute between Messrs. The society for Comprehensive Rehabilitation Service (SCRS), Kolkata Municipal Vaccination Institute Buildings, 36, Ballygunge Circular Road, Kolkata-700 019 and their workmen (1) Kamrun Nessa, (2) Smt. Sima Roy, (3) Wasima Khatton, (4) Sumitra Roychowdhury and (5) Sri Milon Das represented by the Union Society for Comprehensive Rehabilitation Service Employees" Union (Regd. No. 24750), 77/2/1, Lenin Sarani, Kolkata-700013 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Disputes Act, 1947 (14 of 1947),

was referred for adjudication to the Judge Fifth Industrial Tribunal, West Bengal.

2. And Whereas the Judge of the said Fifth Industrial Tribunal, West Bengal, has submitted to the state Government its award on the said industrial dispute;

3. Now, Therefore, in pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure thereto.

Annexure

(Attached herewith)

By order of the Governor,

(M. Roy)

Deputy Secretary.

No. 705/1 (4)-IR Dated Kolkata the 10th July, 2013.

4. The Tribunal while deciding the said reference has arrived at a finding that there is refusal of employment amounting to termination of service and accordingly the five workmen named in the said order of reference were directed to be reinstated with back-wages to the extent of 50% without interest from the date of unemployment i.e. termination of service till the date of reinstatement. The learned Advocate appearing for the petitioners submits that five employees have been reinstated pursuant to the award. However, the writ petitioners challenge the award in so far as it relates to payment of back-wages to the extent of 50%. The parties have adduced evidence before the Tribunal. The specific case of the writ petitioners is that due to fire, the Food bar "Amantran " in which they were employed were completely gutted and accordingly they were offered employment at other places where vacancies were available. The learned Advocate appearing for the petitioner has drawn my attention to the evidence of the employees where the said employees had accepted that the Company had given such an offer to join at places other than SSKM but it is submitted that they did not join their work although in the evidence the said employees have stated that they had agreed to the said proposal. It appears from the record that the said employees during their evidence stated that they communicated their decision to join such transferred post but were unable to produce any document to show that they accepted such proposal and agreed to join such transferred post. The employees stated that they were agreeable to join else where other than S.S.K.M., if they were offered job. The materials of record shows that such offer was given to each of the employees and the employees did not dispute that they were given such offer. However, the issue with regard to their willingness to join such post when offered is the crux of the matter. The Tribunal seems to have overlooked this aspect of the evidence where the employees had failed to produce any document to show that they had agreed to the offer given by

the employer and in spite thereof, the petitioners refused to offer employment to them. Had it been the case that in spite of such willingness, the Company had refused employment the direction with regard to payment of back-wages would have been justified. It may be that the employees being handicapped persons would find it difficult to join the places where they were offered employment but no such case has been made out before the Tribunal. Accordingly, the direction for payment of 50% back-wages is set aside. However, the petitioners shall pay full wages last drawn by each of the employees from May, 2013 till December, 2013 within a period of six weeks from date. The aforesaid award stands modified to the above extent.

5. The writ petition succeeds in part. There will, however, be no order as to costs.