

File No. LABR-22015(16)/548/2018-IR SEC-Dept. of LABOUR
1/39070/2019

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

No.Labr/202/(LC-IR)/
IR/11L-92/13

Dated, Kolkata, 20.02.19.

ORDER

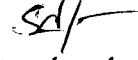
WHEREAS under the Government of West Bengal, Labour Department Order No. 789-IR/11L-92/13 dated 13.08.13 the Industrial Dispute between M/s Artee Overseas Pvt. Ltd., Baganagar, P.O.-Falta, South 24 Parganas, Pin-743513 and their workman Sri Tarak Naskar, 40/1, Beltala Road, P.S.-Ballygunj, Kolkata-700 025 regarding the issues 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, Eighth Industrial Tribunal, West Bengal;

AND WHEREAS, the Judge of the said 8th 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 Disputes 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/202/1(5)/(LC-IR)

Dated, Kolkata, 20.02.19.

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

1. M/s Artee Overseas Pvt. Ltd., Baganagar, P.O.-Falta, South 24 Parganas, Pin-743513.
2. Sri Tarak Naskar, 40/1, Beltala Road, P.S.-Ballygunj, Kolkata-700 025.
3. The Assistant Labour Commissioner, West Bengal In-Charge, Labour Gazette.
4. The Labour Commissioner, West Bengal, New Secretariat Buildings, 1, K.S. Roy Road, 11th floor, Kolkata-700 001.
- ✓ 5. The OSD, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Deputy Secretary

No.Labr/202/2(2)/(LC-IR)

Dated, Kolkata, 20.02.19.

Copy forwarded for information to :-

1. The Judge, 8th Industrial Tribunal, West Bengal with reference to his Memo No.90-L.T., dated 11.01.2019.
2. The Joint Labour Commissioner(Statistics), West Bengal, 6, Church Lane, Kolkata-700 001.

Deputy Secretary

Jnt/IR/order

In the matter of an Industrial Dispute between Messrs. Artee Overseas Pvt. Ltd. Banganagar, P.O. Falta, South 24 Parganas, Pin – 743513 and its applicant Sri Tarak Naaskar, 40/1, Beltala Road, Calcutta – 700025, referred to this Tribunal vide G.O. No. 789-I.R./11L-92/13 dated 13.08.2013.

(Case No. VIII-50/13)

BEFORE THE EIGHTH INDUSTRIAL TRIBUNAL: WEST BENGAL

P R E S E N T

SRI MADHU SUDAN DUTTA, JUDGE

EIGHTH INDUSTRIAL TRIBUNAL, KOLKATA.

A W A R D

This industrial dispute between Messrs. Artee Overseas Pvt. Ltd. Banganagar, P.O. Falta, South 24 Parganas, Pin – 743513 and its applicant Sri Tarak Naaskar, 40/1, Beltala Road, Calcutta – 700025, has been referred by the Govt. of West Bengal, Labour Department vide Order No. 789-I.R./11L-92/13 dated 13.08.2013, to this Tribunal for adjudication of the following issues: -

I S S U E S(S)

1. Whether the Refusal of Employment of Shri Tarak Naskar with effect from 18-02-2012 by the management of M/s. Artee Overseas (P) Ltd. is justified?
2. If not, to what relief he is entitled?

The facts of the case as made out by the applicant giving rise to the instant reference, may be capsulated in the following manner: -

The applicant Shri Tarak Naskar was employed under the O. P. Company M/s. Artee Overseas (P) Ltd. in the year 2001 in their workshop then situated at Jangalpur Howrah, to work as Machine operator and worked continuously under the said company till his termination of service by the way of refusal of employment w.e.f. 18.02.2012 by the said Company.

The O.P. Company is a well reputed concern engaged in the work of embodying in various type of cloths and thereafter export the said embodied goods.

The Company is well profit earner and flourishing one, but very much unfair and exploitative to its workmen. The Company has little regard to follow the provisions of Industrial Laws, specially those are enacted for the welfare of the workmen.

The applicant is also a victim of the said unfair labour practice followed by the said Company, he was issued no appointment letter, his name was not enrolled in the muster roll of the company only with the mal-intention to deprive the applicant from his legitimate entitlements, he was paid very meager wages and had to work 12 hours in day without any extra remuneration.



Further case is that in spite of diligent and sincere service so rendered, the company paid no return to the applicant, on the contrary the applicant concerned was terminated from his service illegally and unjustifiably by the way of refusal of employment w.e.f. 18.02.2012 by the management of the said company. The applicant was issued no charge-sheet, no domestic enquiry was conducted against the applicant, neither he was given any notice nor he was offered any compensation by the management of the said company prior to his termination. He was prevented by the company to enter into the working premises in the above-mentioned workshop of the company without assigning any reason and prior notice. His monthly salary was Rs. 6,500/- per month at that point of time.

Having been refused employment the applicant made a representation dated 18.02.2012 (admittedly due to typographical mistake it has been written as 13.02.2012 instead of 18.02.2012) addressed to the management of the company protesting to the aforesaid illegal act of the said company simultaneously demanding withdrawal of the said termination order and delivered the said representation to the said company by hand delivery. The Management of the Company though received the said letter, declined to give any endorsement of receiving, the applicant also reported the said matter in local Police Station. In spite of receiving the said letter the Management of the said Company neither took any step towards withdrawal of the illegal refusal of employment, nor gave any reply to the applicant concerned.

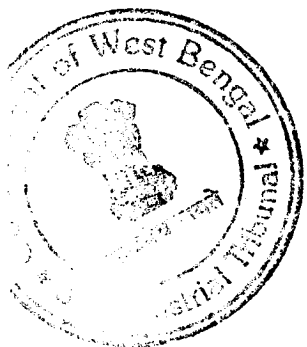
Under the said circumstances the applicant referred the matter before the Labour Commissioner seeking intervention of the said office and the said authority took up the matter for conciliation. The Conciliation Officer exerted his acumen efforts to settle the dispute in tripartite level inter alia convening joint conference between the applicant and the company, but nothing could be achieved due to the noncompromising, adamant and unreasonable attitude of the Company and subsequently the Conciliation Officer submitted his failure report u/s. 12(4) of I.D. Act 1947 before the Govt. and the matter thus came up before this Tribunal, by the Order of reference of the said Governmental Authority to adjudicate the Issues so framed in the said Order of reference.

It has been alleged that the Company abovenamed has acted in highly illegal, unjustified and arbitrary manner, to terminate the service of the applicant not observing any of sine qua non so laid down in the industrial law and rampantly violating the minimum principles of social and natural justice as well.

The applicant is fully unemployed since his termination of service and failed to obtain any job and/or any other source of earning as yet and passing hard days.

The O.P. contested the case by filing written statement contending inter alia that the petition of the alleged employee Tarak Naskar is not maintainable in law as well as on facts.

In the absence of any actual relationship of the employer and employee, the order of reference being "whether the Refusal of employment of Tarak Naskar w.e.f. 18.02.2012 by



the management of M/s. Artee Overseas (P) Ltd. is justified”, the authority here has openly sided with the alleged applicant unlawfully. The above fact is an open unlawful partiality of the authority in favour of the alleged workman by shifting the liability of Sri Tarak Naskar by pre-supplying the existing relationship of the employer and employee but factually it did not exist. Nowhere the company admitted relationship of employer and employee but the authority how could jump over the actual issue (alleged relationship of employer and employee / applicant) when the company nowhere admitted the relationship of employer and employee, the favour of authority knows no limit. Admission of relationship on part of the Govt. authority can not be shifted to and against the Company, and that should be decided first. Then if that vital issue is proved against the Company then and then only in question of justification of refusal of work. Nothing can be proved in the negative way.

The Company did not admit the relationship between them at no point of time. So, it is an admission on behalf of Govt. authority and not on behalf of the company. The second question, comes only after the above question is decided in favour of the applicant Tarak Naskar.

At the conciliation stage the said Naskar could not produce any paper into support the present case of thrown out employment.

The above issue as framed points to the fact that the above named Tarak Naskar was in employment of the company prior to 18.02.2012, the company stated that Tarak Naskar was not in direct employment of the Company any time during February 2012 and so the question of retrenchment from service w.e.f. 18.02.2012 does not arises at all.

DECISION WITH REASONS

This industrial dispute between Messrs. Artee Overseas Pvt. Ltd. Banaganagar P.O. Falta, South 24 Parganas, Pin – 743513 and its applicant Sri Tarak Naaskar, 40/1, Beltala Road, Calcutta – 700025, has been referred by the Govt. of West Bengal, Labour Department vide Order No. 789/1(1)-I.R., dated 13.08.2013, to this Tribunal for adjudication of the following issues: -

ISSUES

1. Whether the Refusal of Employment of Shri Tarak Naskar with effect from 18-02-2012 by the management of M/s. Artee Overseas (P) Ltd. is justified?
2. If not, to what relief he is entitled?

Issue No. 1

Both the parties have filed their written statements and documents on which they relied upon and they also adduced their oral evidences and on the basis of the evidences documents of the respective parties have been marked as Exhibits.



The applicant examined himself as PW1 and proved the documents relied by him as Ext. 1 to Ext. 5. On the other hand, the O.P. examined one witness namely Sri Sunil Kumar Choudhari as O.P.W.1 and proved the documents as Ext. A to Ext. I.

This issue relates to refusal of employment of the applicant Sri Tarak Naskar w.e.f. 18.02.2012 by the O.P. Management of M/s. Arttee Overseas Pvt. Ltd. I have gone through the materials on record including the pleadings of the parties and the Exhibited documents.

At the very outset Ld. Lawyer for the O.P. Company challenged the relation between the applicant and the O.P. Company as Employee and Employer and emphasized that the applicant was employed in the O.P. Company by a Contractor. Therefore, the applicant being employed by the contractor cannot be the workman of third party, who engaged contractor to accomplish a particular result.

Now let me consider as to how far the applicant has been able to prove his case. The applicant on being examined as P.W.1 corroborated his written statement and contended that he was working continuously with the O.P. as workman, in support he proved his E.S.I Card (Ext. 4) and P.F. Slips (Ext. 5, collectively).

Ld. Lawyer for the O.P. Company drew my attention towards cross examination of P.W.1 dated 03.05.2018 wherein he has stated that he filed Exhibit 1 for the first time before the Labour Commissioner. But that would not cut any ice as pointed out by the Ld. Representative for the applicant that there is nothing in cross examination, even in the form of suggestion that no grievance / dispute was raised before the O.P. Management by the applicant, rather Exhibit 1 was marked on 02.04.2018 without any objection. It is true that there is no reflection in Exhibit 1 that it was received by the O.P. Management but as it has been marked Exhibited as Exhibit 1 without any objection, there is nothing to disbelieve it. It can be presumed that it was sent and received by the O.P. Management. Obviously P.W.1 has said that he filed the copy of Exhibit 1 for the first time before the Labour Commissioner. But in my view that statement would not affect the credibility of P.W.1 adversely. It cannot be disputed that to raise any dispute before the Labour Commissioner, the applicant should file the copy of the letter showing that he raised the dispute before the Management prior to considering intervention of the Labour Commissioner. It is the case of the O.P. that the applicant was a Contract labour and not a direct employee of the O.P. Company, and there was no relationship of employee and employer between the parties. Admission of relationship on the part of the Government authority cannot be shifted to and against the Company and that point should be decided first and only thereafter the question of justification of refusal work will arise. It is the specific case of the O.P. Company that the applicant Tarak Naskar was not in direct employment of the O.P. Company. On close scrutiny of the written statement filed on behalf of O.P. I find no whisper to the effect that the present applicant was contract labour. On behalf of the O.P. Company Sri Sunil Kumar Choudhury, one of the Director of the Company, has been examined as O.P.W.1 by filing written statement on affidavit and introduced a new case for the first time that the applicant was the contracts worker as per contract with the contractor namely Sri Ram Anuj Singh

who used to supply the man powers and Sri Tarak Naskar the applicant, one of the said contract's worker engaged by them. I would like to observe herein that no such contract / agreement / license is forthcoming to show that actually the O.P. entered into contract with one Ram Anuj Singh to supply manpower. I also did not find any scrap of paper to show that the said contractor agreed to supply manpower and supply man powers to the O.P. Company including the applicant. Rather O.P.W.1 who claimed himself as one of the Director of the Company, in his cross examined dated 26.06.2018 as admitted that they did not issue any letter to the said contractor Ram Anuj Singh and on the same breath he has stated that he (Sri Ram Anuj Singh) communicated the matter in writing to the Management. Therefore, even it is presumed for the sake of argument, though not conceding, that one Ram Anuj Singh was the contractor of the O.P. Company, it cannot be said that he supplied the applicant to the O.P. Company as labour of the contractor. Apart from that no scrap of paper is forthcoming to show that Ram Anuj Singh was given any license by the O.P. Company or the Government as Labour contractor or the O.P. Company entered into any agreement with him for supplying workers/labourer to the O.P. Company.

O.P.W.1 in his evidence in chief on affidavit has stated that both the permanent workers and the contractor workers were very much in disciplined, and deliberately refused the instructions of the higher Management and refused to perform their normal duties. It has been further contended that on 10.02.2012 the contractor Ram Anuj Singh wrote to the Management of the Company that he wishes to pull out his team from the factory due to unavoidable circumstances and lack of working environment and Sri Tarak Naskar had threatening his labour to join the Union. The said purported letter has been marked as Exhibit B. On close scrutiny of the said letter i.e. Exhibit B, I find that he intended to withdraw his full team from the factory of the O.P. Company from 14.02.2012 due to some unavoidable circumstances and lack of working environment by the other workers of this factory and as they always threatened his team with dire consequences, which is clearly contradictory to the statement of O.P.W.1 that Tarak Naskar had threatened his labourer to join the Union. It can be seen from Exhibit B that the name of Tarak Naskar transpires with the names of other workers. I would like to mention herein that Exhibit B is not hand written, it is a computer written letter. Let us pause moment here and let me consider Exhibit C. According to the O.P. Exhibit C was written by one Jay Raj Singh on behalf of Ram Anuj Singh. It transpires from Exhibit C that it is hand written in hindi script dated 16.02.2012. Vide Exhibit C addressed to the O.P. Company it has been stated that one Ram Anuj Singh voluntarily withdrawn his full team after receiving the full and final settlement. But is evident from Exhibit C that only 7 workers were withdrawn by the said Ram Anuj Singh to be more specific the name of the applicant Sri Tarak Naskar does not find mention in Exhibit C. If the case of the O.P. as made out by the O.P.W.1 for the first time, is considered then what prevented Ram Anuj Singh to mention the name of the applicant in Exhibit C? Rather it is evident from Exhibit C that the applicant Sri Tarak Naskar was not included in his team. Therefore, probability factor reinforced in favour of the applicant that Exhibit B is a manufactured document to incorporate the name of the applicant Tarak Naskar.

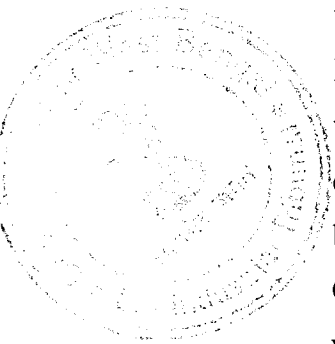


Exhibit D is bill for labour charges for doing stiches of emblem paid to one Ram Anuj Singh, received by one Joy Raj Singh with a specific direction that the cheque should be issued in favour of Ram Anuj Singh. Therefore, if the cheque was actually issued in favour of Sri Ram Anuj Singh, what prevented to mention the number and date of the cheque and on which bank it was drawn in Exhibit D. No satisfactory explanation is forthcoming to that effect. Exhibit D is a document showing payment of Rs. 32,069/- towards labour charges which alleged to have been received by one Jay Raj Singh and I have already stated that there is specific note in Exhibit D that the cheque should be issued in favour of Ram Anuj Singh. Now let me consider Exhibit E which is a payment voucher of Rs. 32,069/- paid to one Jay Raj Singh as full and final settlement of Ram Anuj Singh and his team. There is no reflection either in Exhibit D or Exhibit E that any cheque was issued to the said Ram Anuj Singh as mentioned in Exhibit D. That apart this Tribunal is in complete dark as to under what authority Jay Raj Singh acted on behalf of said Ram Anuj Singh.

It is the specific case of the applicant that he was employed under the O.P. Company in the year 2001 and worked continuously under the O.P. Company till his termination of service by way of refusal of employment w.e.f. 18.02.2012. The applicant Sri Tarak Naskar in support of his case relied upon the documents Exhibited as Exhibits 1 to 5. Exhibit 1 is the letter dated 18.02.2012 issued by the applicant to the O.P. Company raising dispute. Exhibit 2 is the letter of the applicant dated 29.02.2012 by which the applicant raised dispute before the D.L.C (South 24 Parganas). Exhibit 3 is the notice issued by Assistant Labour Commissioner West Bengal regarding alleged illegal termination of the applicant. Exhibit 4 and Exhibit 5 are the E.S.I. card and contribution card of the E.P.F. Fund of the applicant. It is evident from Exhibit 4 that the applicant had E.S.I enrolment vide employers card No. 41-31-549-90 and date of entry was 01.04.2006. Regarding his inclusion in E.S.I. Corporation is not denied or disputed by the O.P. Admittedly every month, the eligible employees who fall under the ceiling will contribute the certain percentage of their salary and employers will contribute a certain percentage to the E.S.I. Corporation. Therefore, to come under the purview of E.S.I. the person has to be an employee in respect of whom contribution are payable. In the instant case the applicant has been identified in the records.

It is evident from the Exhibit 5(collectively) that the applicant is an employee of the O.P. Company namely M/s. Artee Overseas Pvt. Ltd and statutory rate of contribution was 12% from 1st April to 31 March 2011. It is also evident from the Exhibit 5 (collectively) that those were issued by the O.P. Company showing contribution of E.P.F of the workers share and employers share. I would like to mention herein that neither Exhibit 4 nor Exhibit 5 has been challenged or denied by the O.P. Company. During trial / adjudication the O.P. tried to frustrate the claim of the applicant that he was an employee of O.P. Company by introducing evidence that the applicant was a contract labour under one Ram Anuj Singh. I am already stated that in the written statement of the O.P. I find no whisper that the applicant was a contract labour. The instant adjudication is pending since the year 2013 and during this long span of time no attempt was made from the end of the O.P. Company to amend their written statement to that effect. Therefore, the conclusion is irresistible that the case of

contract labourer introduced by the O.P. Company for the first time during evidence. It is well settled principal of law that the fact disclosed for the first time before the Court / Tribunal the probative value of such incorporated evidence becomes minimal and unsafe to rely on such a piece of evidence. It is evident from Exhibit 5 (collectively) that those are E.P.F. Contribution sheets in the name of the applicant Tarak Naskar from the year 2006 issued by the O.P. Company. The object of the Employee Provident Fund Act 1952 and the schemes framed therein is to bring into existence of Compulsory Provident Fund to which the Act applies from the date with the scheme has been declared applicable to it and that the principal duty is laid upon the employer to put this scheme in the operation for them and to make contributions of both employers and employees share to be funding then and there deducting from the salary of the employees to the extend of their respective shares. Contract labour normally refers to workers who are hired for a specific task and a finite period to. In the instant case it is evident from Exhibit 5 (collectively) that the applicant came under this scheme of E.P.F. at least from the year 2006 if not earlier, which cannot be considered as a finite period. It is seen from Exhibit C that one Jay Raj Singh on behalf of one Ram Anuj Singh given an undertaking to the management of O.P. Company that he will extend his service with his team as and when will be required. As no document is forthcoming from the end of the O.P. to show that actually said Ram Anuj Singh was appointed as contractor to supply the labourer to the O.P. Company, it is to foreign to enquire as to what prevented the O.P. Management to produce and examine said Ram Anuj Singh to unearth the truth, if any. That apart it is seen from Exhibit D that Rs. 32069/- was paid vide bill No. 02-2012 dated 16.02.2012 to one Jay Raj Singh. Worthy to note here that the said bill was for labour charges raised by one Jay Raj Singh and not by Ram Anuj Singh. Be that as it may, it is evident from Exhibit E that said Jay Raj Singh received Rs. 32,069/- from the O.P. Company by cash towards full and final settlement of Ram Anuj Singh and his team. Though in Exhibit D there was specific stipulation that "cheque should be issued in favour of Ram Anuj Singh". More so, Exhibit D dated 16.02.2012 was a bill for labour charges but Exhibit E is an amount for full and final settlement of Ram Anuj Singh and his team as claimed by the O.P., which throws a great deal of suspicion on the truth of the new case of the O.P. as introduced during evidence of O.P.W.1. If Exhibit E is the payment of full and final settlement of Ram Anuj Singh and his team dated 16.02.2012 then what was the necessity of Exhibit A/1 which is also payment of only Rs. 5000/- towards full and final settlement on account of Ram Anuj Singh. Exhibit A on Exhibit A/1 to show that applicant Tarak Naskar put his signature thereon. But during his cross examination dated 03.05.2018 the applicant volunteers that at the time of his signature (Exhibit A) this document (Exhibit A/1) was blank save and except the amount. He has further stated that the contents of document have been written subsequently. In view of the facts and circumstances as discussed above I find nothing to disbelieve the voluntary statement of the applicant.

Now let me consider as to whether the refusal of employment of the workman Sri Tarak Naskar w.e.f. 18.02.2012 by the management of M/s. Artee Overseas Pvt. Ltd. is justified or not?

It is specific case of the applicant that the O.P. Company had acted illegal, unjustifiably and arbitrary manner in terminating the service of the applicant workman not observing any *sine qua non* so laid down in the natural law and rampantly violating a principle of social and natural justice as well.

In para 7 of his written statement the applicant has mentioned that he was not issued any charge sheet and no domestic enquiry was conducted against him. Neither he was given any notice nor he was offered any compensation by the Management of the O.P. Company prior to his termination. The applicant on being examined as P.W.1 has corroborated the story of unfair labour practices followed by the O.P. Company by saying that in spite of sincere service, the Company paid no return to him on the contrary he was terminated from his service illegally and unjustifiably by way of refusal of employment w.e.f. 18.02.2012. He has further stated that he was not issued any charge sheet, no domestic enquiry was conducted against him, neither he given any notice /notice pay, nor he was offered any compensation by the Management of the O.P. Company prior to his termination. On close scrutiny of his cross examination I find that this part of his evidence remained unchallenged by the O.P. Company. I also find no scrap of paper or whisper from the end of the O.P. Company to the contrary. So, I have no hesitation to hold that the employment of the applicant was refused by the O.P. Company illegal and unjustifiably.

It is the case of the O.P. that one Ram Anuj Singh was the Labour contractor who sent the applicant along with his team as contract labourer to serve in the Company of the O.P. But as I have already observed that no scrap of paper is forthcoming either in the form of Exhibit or document within the record to show that said Ram Anuj Singh was the Labour contractor and the O.P. Company entered into an agreement with him to supply labourer. Exhibit B, C, D and E were alleged to have been executed by one Jay Raj Singh on behalf of Ram Anuj Singh, but no tangible evidence is forthcoming including any authorization letter to show that said Jay Raj Singh was authorized by said Ram Anuj Singh to act or receive any amount on his behalf. Therefore, those documents must be considered as nominal and merely a camouflage to deny the employment of the applicant. The sole witness of the O.P. namely Sri Sunil Kumar Choudhari as O.P.W.1 made no whisper as to who paid the salary to the applicant, who had power to remove / dismiss him from service or initiate disciplinary action, who can tell the employee the way in which works will be done. There is nothing on record to show that the alleged Contractor used to pay salary to the applicant rather Exhibit 5 collectively, which are computer generated documents, goes to show that the O.P. Management had control over the salary of the applicant since the year April 2006 to March 2011 when the applicant served continuously under the O.P. Company. The Management witness O.P.W.1 not confronted with these documents. From the deposition of the applicant and Exhibit 4 and 5 collectively conclusively prove the employer and employee relationship between the O.P. and the Applicant. In view of the fact and circumstance of the instant adjudication, I am constrained to hold that Exhibit A to D are nothing but camouflage to oust the applicant from his entitlement. I also hold that there was existent an employer and employee relationship between the parties.



The O.P. Company has challenged the maintainability of the instant adjudication on the ground that no formal dispute has been raised by the applicant with the management of the O.P. challenging his termination but fact remains that the applicant has raised dispute with the employer by sending a demand notice dated 20.03.2015 through his Ld. Lawyer. Ld. Representative of the applicant contended that at present it is not necessary to raise a formal dispute with the employer first. The Hon'ble High Court, Calcutta in a case of *Jagadamba Motors & Anr. Vs. State of West Bengal* reported in *2009 (4) CHN P-67* has been pleased to observe that:

"The very fact that the workman insisted for reinstatement in service through the Conciliation Officer and the employer did not agree to take him back, in course of conciliation proceeding, is sufficient proof of a demand being raised which resulted in refusal.."

Ld. Representative of the applicant further relied upon an unreported decision of our Hon'ble Court passed by the Hon'ble Justice Mr. Sambuddha Chakraborty in Writ Petition no. 23891 (W) of 2016 wherein it has been observed that: –

"The series of judgments ultimately had accepted the position that there is no standard form for raising a dispute with the employer. It varies from case to case. If it is made to an authority and is subsequently sent to the employer and if it is rejected it becomes an industrial dispute. All that is necessary is the requirement of making a demand by the workman to the employer which need not be in writing always and may be in any form and any manner. Such a demand can be an implied one as well."

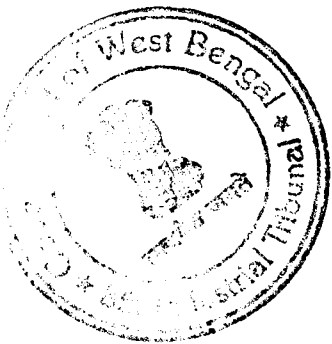
The applicant has categorically stated in his written statement as well as in his examination in chief that his service was refused by the management on and from 18.02.2015 against which he raised protest verbally as well as in writing by sending demand notice dated 20.03.2015, which has been duly received by the O.P. Company but neither they replied to the said demand notice nor they had denied the allegations made therein. Thus, claim of the applicant is established being admitted. In support of his submission Ld. Representative for the applicant relied upon a Judgement of the Hon'ble Delhi High Court reported in *2014 LLR P-920* wherein the Hon'ble Court inter alia held that –

"non-replying the demand notice of the workman would support the claim of the workman"

In view of my above made discussion, the materials on record and the decisions of the Hon'ble Courts as discussed above, I have no hesitation to hold that the applicant Tarak Naskar has been able to prove his case that he was a direct employee of the O.P. Company and his employment was unjustifiably refused by the Management of the O.P. Company on and from 18.02.2012.

Issue no.1 is decided accordingly in favour of the applicant.

Issue No. 2



Now, the question comes for consideration is that if refusal of employment of Shri Tarak Naskar with effect from 18-02-2012 by the management of M/s. Artee Overseas (P) Ltd. is not justified, then what relief he is entitled?

I have already hold that the applicant Tarak Naskar has been able to prove his case that he was a direct employee of the O.P. Company and his employment was unjustifiably refused by the Management of the O.P. Company on and from 18.02.2012. Now let me consider as to what relief he is entitled.

Ld. Representative of the applicant has stated that the applicant is entitled to get full back wages and other consequential benefits arising out of his continuous employment in the O.P. Company. The applicant on being examined as P.W.1 has prayed for reinstatement in service with full back wages and other consequential reliefs and has stated that since his termination of his service he is fully unemployed and failed to obtain any job and/or any other source of earning as yet and passing hard days. He was cross-examined at length and from his cross-examination it is evident that he is unemployed since his termination and maintaining his family by taking loans and at the mercy of his well-wishers.

On close scrutiny of the examination-in-chief of the O.P.W. 1, I find no whisper that the applicant gainfully employed after his termination, even in the form of suggestion. Only suggestion given to the applicant during his cross-examination by the O.P. that he is not entitled to get any relief as prayed for. Ld. Lawyer for the O.P. Company has emphasized that the applicant had ample opportunities for gainful employment and the applicant is availing that opportunity being re-employed. From the un assailed evidence of the applicant on this point, he has been able to discharge the burden of proof that he remained unemployed since he was out of job. There is also nothing on record to show that the applicant derived some income during the period of his termination.

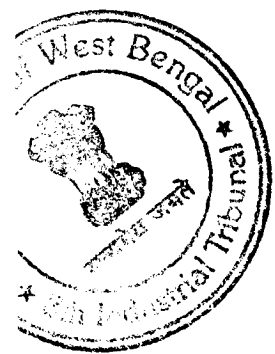
As I have discussed, from the four corners of the materials on record I find nothing to show on behalf of the O.P. Company that the applicant has been gainfully employed during this period since he was out of work from the O.P. Company. Therefore, he is entitled to get the full back wages, as there is no material before this Tribunal that the applicant was gainfully employed during the period he was kept out of work or that job was available to him and he refused to accept the same.

Obviously, the back wages cannot be claimed as a matter of right but back wages are ordinarily to be granted keeping in view the principles of grant of damages in mind and on the basis of last pay drawn and not at the same rate at which wages are being paid to the workmen who are actually working. In the decision of the Hon'ble Apex Court reported in **2013 (139) FLR 541(Deepali Gundu Surwase Vs. Kranti Junior Adhyapak and others)** it has been observed that:

“Employee/workman claiming back wages – Required to either plead or at least make a statement before the adjudicating authority/the Court of first instance that he/she was not gainfully employed or employed on lessor wages – Employer required to prove that employee/workman was gainfully employed and getting amount equal to wages drawn by him/her prior to termination of service in order to avoid payment

Finding of the competent Court/Tribunal that employer acted in gross violation of statutory provisions or principles of natural justice or is guilty of victimizing the employee/workman – Full back wages directed to be paid to the employee/workman would be justified.”

It has been further observed by the Hon'ble Apex Court that:



“Denial of back wages on ground of long lapse of time between termination of service and reinstatement of the employee – Amounts to grave injustice to the employee/workman concerned.”

In the instant case the applicant in his written statement in para 7 has mentioned that his monthly salary was Rs. 6500/- per month and in his evidence, he corroborated the same by saying that his monthly salary was Rs. 6500/-at that point of time, which remained un-assailed during his cross examination.

Before parting with this point, I would also like to lend few lines from the decision of the Hon’ble Apex Court reported in **(2010) 3 S.C.C P – 192 (Harjinder Singh Vs. Punjab State Warehousing Corporation)** wherein it has been observed by the Hon’ble Apex Court that:

“In view of such clear enunciation of the legal principles, I am in clear agreement with Brother Singhvi, J. that this Court has a duty to interpret statutes with social welfare benefits in such a way as to further the statutory goal and not to frustrate it. In doing so this Court should make an effort to protect the rights of the weaker sections of the society in view of the clear constitutional mandate discussed above. Thus, social justice, the very signature tune of our Constitution and being deeply embedded in our constitutional ethos in a way is the arch of the Constitution which ensures rights of the common man to be interpreted in a meaningful way so that life can be lived with human dignity.”

In view of my above made discussion, the materials on record and the authoritative pronouncement of the Hon’ble Apex Court, I have no hesitation to hold that the O.P. Company refused the employment of the applicant Shri Tarak Naskar w.e.f 18.02.2015 arbitrarily and illegally. Thus, he is entitled to be reinstated in his service of the O.P. Company and to get full back wages on and from 18.02.2012.

Accordingly, Issue no.1 is decided in favour of the applicant.

Hence, it is ordered

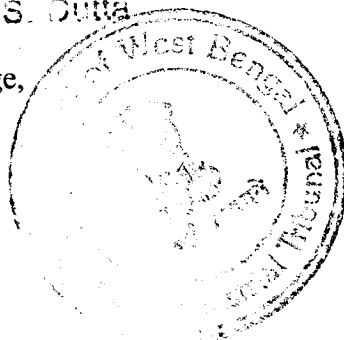
that the O.P. M/s. Artee Overseas Pvt. Limited is directed to reinstate the applicant Sri Tarak Naskar in his service and to pay him full back wages and other consequential benefits arising out of his continued employment in the O.P. Company on and from 18.02.2012.

This is my Award.

Dictated & Correct by me.

Sd/- M. S. Dutta

Judge,



Sd/- M. S. Dutta

(Madhu Sudan Dutta)

Judge,
Eighth Industrial Tribunal
11.01.2019