

I/106317/2020

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

No. Labst/1661/(LE-IR)

Date : 25/11/2020

ORDER

WHEREAS an industrial dispute existed between M/S. Ginnie Road Lines, 11, Vivekananda Road, Kolkata-700007 and their workman Shri Sunil Singh, 11, Burtolla Street, Kolkata-700007 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 (14of 1947) to the Judge, Seventh Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 101-IR/12L-14/11 dated 02.02.2012.

AND WHEREAS, the Judge of the said Seventh Industrial Tribunal heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

ISSUE

1. **Whether the termination of service of the applicant by the OP/ Company is justified or not?**
2. **To what relief, the applicant is entitled to?**

AND WHEREAS the said Judge Seventh Industrial Tribunal has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 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


I/106317/2020

: 2 :

No. Labr/1661/1(5) (LE-12)Date 25/11/2020

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

1. M/s .Ginnie Road Lines, 11, Vivekananda Road, Kolkata-700007.
2. Shri Sunil Singh, 11, Burtolla Street, Kolkata-700007.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Buildings, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Deputy Secretary

No. Labr/1661/2(2) (LE-12)Date 25/11/2020

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal, West Bengal, with respect to his Memo No. 259-LT dated . 26/02/2020 .
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata

Present: Shri Ashis Kumar Das, Judge,
Seventh Industrial Tribunal,
Kolkata.

CASE NO. 21 of 2016

Under Section 10(1B)(d) of the Industrial Disputes Act, 1947

Shri Sunil Singh,
11, Burtolla Street, Kolkata-700 007.

...Applicant

-Versus-

M/s. Ginnie Roadlines,
11, Vivekananda Road, Kolkata – 700 007.

...OP/Company

A W A R D

Dated : 25-02-2020

The applicant namely, Shri Sunil Singh, after obtaining a certificate in prescribed Form "S" under Rule 12A(3) of the West Bengal Industrial dispute Rules, 1958 filed the present petition on 06.06.2016 before this Tribunal under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (West Bengal Amendment) against his employer viz. M/s. Ginnie Roadlines challenging the termination of his service with a prayer for reinstatement with full back wages along with all consequential benefits accrued thereto.

The applicant's case, in short, is that - he is/was an employee/workman and worked under the OP/Company for more than nineteen years continuously till his termination of service w.e.f. 04.11.2015. The OP/Company is engaged in transport business earning huge profit and growing day-by-day mainly because of skillful performance and hard labour of the workmen / employees working under them. Though the opposite party is well profit earner, but very much exploitative and unfair to its labourers / workmen ; that the opposite party has little regards to observe the provisions of industrial laws, particularly those are enacted for the welfare of the workmen. The applicant is also a victim of the aforesaid unfair labour practice of the opposite party. At the first stage of the tenure of his employment, he was appointed under Ginnie Roadways, owned by the instant employer without any appointment letter, without enrolling his name in the muster roll, because said opposite party did not issue any appointment letter to its employees and did not maintain any muster roll for its employees. The applicant have to work hard, even beyond the scheduled duty hours so prescribed under law, without any overtime wages and extra

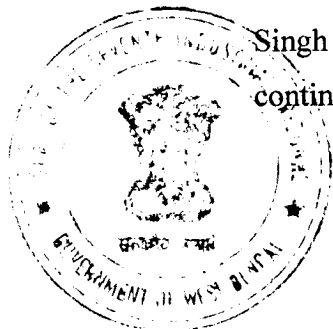
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remuneration in a very meagre wages. Thereafter, when couple of years was passed, he was shifted to the instant concern namely, Ginnie Road Lines, owned by the said employer with the oral assurance to maintain the service continuity without any break of service. The applicant requested his employer to give him in writing regarding the service continuity in view of the change of the name of the firm and also to redress his aforesaid grievances, i.e. issuance of appointment letter, enrolling the name in muster roll, to pay the proper wages / emoluments and other legitimate entitlements and facilities etc., but all have fallen into deaf ears. Even, under the aforesaid circumstances, the applicant could not proceed further towards his above mentioned grievances with the fear of loss of employment and continued to work under the said opposite party with full diligence and sincerity and left no stone unturned to satisfy the opposite party, by rendering the best of his services, all through his tenure of employment with the hope that the opposite party will be guided by good sense and considered all his grievances. But, unfortunately enough, the opposite party did not at all consider the genuine grievances of the applicant in no point of time. On the contrary the O.P. terminated the service of the applicant w.e.f. 04.11.2015 being annoyed with his just request to redress the aforesaid grievances. The applicant was issued no charge-sheet, no domestic enquiry was proceeded against him, neither he was given any notice and/or notice pay, nor he was offered any compensation and/or any monetary benefit by the opposite party to terminate his service. He was simply asked verbally not to come any more in his duty by his employer as he insisted for the aforesaid grievances. His monthly salary was Rs.12,000/- at that point of time. Having been highly aggrieved by the said wrongful termination order, the applicant vehemently protested to the said illegal order of the opposite party and demanded his reinstatement in service with full back wages and other benefits inter alia sending demand justice to the opposite party dated 30.01.2015. The opposite party though received the said letter in due course, but did not make any proper response towards the said demand of the applicant. Under the said circumstances, the applicant referred the dispute before the Labour Directorate, West Bengal, vide his representation dated 22.12.2015, addressed to the Labour Commissioner, Government of West Bengal, seeking intervention of the said authority into this matter and said office was pleased to take up the matter for conciliation. Sri S. Roychowdhury, Assistant Labour Commissioner, exerted his acumen efforts to settle the dispute in triplicate level inter alia convening joint conference between the parties, but nothing could be achieved due to non-compromising, unreasonable and adamant attitude of the opposite party. Finding no ray of hope of any solution before the conciliating authority, the applicant made an application before the Conciliation Officer in prescribed Form P-4 dated 09.05.2016 praying for issuance of a certificate regarding the pendency of the conciliation proceedings and the Conciliation Officer was pleased to issue the same in a prescribed Form-S under Section

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10(1B) of the Industrial Disputes Act, 1947. According to the applicant, the opposite party had acted in highly illegal, unjustified and arbitrarily manner to terminate his service violating the principles of social and natural justice as well as provisions of industrial law. It is further stated that the applicant is fully unemployed since his termination of service and failed to obtain any sorts of job and no other source of earning as yet and passing hard days. Hence this case for reinstatement of the applicant in his service maintaining previous continuity without any break, with full back wages along with all consequential benefits, accrued thereto, declaring the order of termination of his service void ab initio.

OP/Company viz. M/s. Ginnie Road Lines, after service of notice, entered appearance and filed written statement on 30.06.2016, wherein they have denied each and every allegations brought against them. According to the OP/Company, the instant case is not maintainable either in law or in its present form. The opposite party is a proprietorship firm, have been carrying out **business** as road transport contractors and commission agent under the name and style of Ginnie Road Lines, does not fall under the term 'Industry'. Moreover, there are only two permanent staff, who are duly employed by the employer according to the Rules & Regulations and one temporary worker, working as supervisor of loading 'on-call basis' as casual staff. The said casual staff is working as per loading commission basis under 'no work, no pay' system and not entitled to get the benefits of the said two permanent workers. It is the case of the O.P. that the applicant was working under them as supervisor of loading 'on-call basis' as casual staff, on temporary basis and so, he cannot be treated as an employee / worker / workman as per law. The applicant rendered his services not exceeding four years for the opposite party and the story of his nineteen years working under the OP/Company is a manufactured claim and there is no such strict proof thereof. It is further stated that the OP/Company has neither any transport vehicle nor in the name of its proprietor. So, the company carries a small business. It is further case of the OP/Company that the applicant is aggressive, rude and violent by nature and never loyal to the opposite party during his duties. There is no record and/or complaint registered to any Authority / Body, governed by Indian Law against the opposite party. No other employee, client, agent of the opposite party ever lodged any complaint against the opposite party till date. It is the specific case of the OP/Company that one Yadav Singh was the then employee of Ginnie Roadways and later he became the employee of Ginnie Roadlines. The said Yadav Singh was also a temporary worker working as a supervisor of loading 'on call basis' as casual staff. Said casual staff was working as per loading commission basis under 'no work, no pay' system. Around four years ago, said Yadav Singh got better opportunity and left the job. On and from that time, the applicant was continuing at the place of said Yadav Singh. The applicant was earning Rs.300/- to Rs.500/-



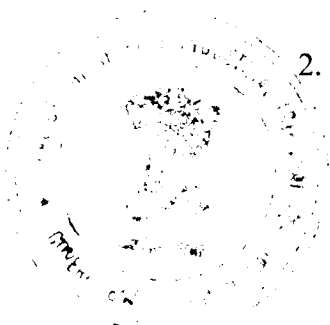
per vehicles per day and not less than Rs.1200-1500/- per day and not less than twenty working days per month, as a supervisor of loading. So, he is not entitled to get the benefit of overtime wages, extra remuneration from the opposite party. Moreover, he was earning 'jal-pani', not less than Rs.100/- from the owners of the goods per vehicle. The applicant at his last year of working days used to visit the opposite party in a drunken condition, used slang language towards office staff, even towards owners also. On several occasion, by the complaint of the office staff, the opposite party bound to warn him and sometimes bound to pay him without any work for his indecent, intolerable behavior. Sometimes, clients of the opposite party made complaint against the applicant for his arrogant and unbearable behaviour at their work place too. For his such behaviour the OP/Company suffered huge loss, which is not less than Rs.3,20,000/- along with harassments from the side of Police and clients. The opposite party issued a notice 'by hand' to the applicant and he was terminated in the year late 2014 (04.11.2014). It is also stated that presently the applicant was working under a trade union situated at 11, Burtolla Street, Kolkata-700007 hiding his actual address recorded at the office of the opposite party and clearly mentioned in the cause title of his application, which came to the knowledge of the opposite party at the time of hearing before the Assistant Labour Commissioner. It is also fact that the applicant made a complaint against the opposite party and a G.D.E. dated 30.11.2015 was lodged with the Girish Park P.S. hiding all his faults against his termination and mal-practice. Police investigated the same and found no faults against the opposite party. The opposite party appeared before the Assistant Labour Commissioner as per notice through its Ld. Advocate and showed all the causes of termination of the applicant. Simultaneously, the Assistant Labour Commissioner referred the instant case before the Court. It is further stated that the applicant was working as a supervisor of loading and unloading of goods of different client, companies of opposite party and had been earning around Rs.25,000-30,000/- per month, but he shall not be treated as 'workman' under the purview of Industrial Disputes Act, 1947 and having two employees of its own shall not be treated as 'industry' as per law. So, the case is not maintainable. In view of the facts and circumstances, the opposite party has prayed for rejection of the prayer of the applicant.

Considering the pleadings of both the parties, the following issues are framed for proper adjudication of this case :-

I S S U E S

1. Whether the termination of service of the applicant by the OP/Company is justified or not ?
2. To what relief, the applicant is entitled to ?

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DECISION WITH REASONS

Before going to discuss the evidence, I would like to mention here that the opposite party stopped taking steps on and from 14.09.2018. It further appears from the record that cross-examination of the applicant (PW-1) was deferred on the prayer of the OP/Company on 15.01.2018 and cross-examination of said witness (PW-1) was closed on 03.06.2019 in view of Order No.27 dated 03.04.2019 and thereafter, date was fixed on 31.07.2019 for evidence of OP/Company and as the OP/Company did not take any steps on 31.07.2019, 05.09.2019 and 22.11.2019, evidence on the side of the OP/Company was closed on 22.11.2019 in view of Order No.30 dated 05.09.2019 and thereafter, date was fixed on 15.01.2020 for hearing argument and the OP/Company was directed to remain present through its Ld. Advocate/Representative on the date fixed i.e. on 15.01.2020 at 11 a.m., failing which the case record would be taken up for hearing of argument on the side of the applicant in their absence and the case would be disposed of accordingly. On 15.01.2020 the OP/Company took no steps and so, in view of Order No.31 dated 22.11.2019, case record was taken up for hearing argument of the applicant's side in absence of the OP/Company and this Tribunal heard argument on the side of the applicant in part on that date and adjourned the hearing for want of time and fixed 22.01.2020 for hearing argument of applicant's side and on 22.01.2020, both the parties did not take any steps and so, hearing was adjourned fixing 27.01.2020 for hearing argument of applicant's side and on 27.01.2020 OP/Company did not take any steps and argument on the side of the applicant was heard in full fixing 10.02.2020 for passing Award, but Award was not passed on that date as this Tribunal was on leave.

In order to establish his case, the applicant has examined himself as PW-1 and proved some documents, marked as Exhibits-1 to 1/5.

Issue Nos. 1 & 2 :

Both the issues being interlinked character are taken up together for the sake of brevity and convenience of consideration.

In course of argument, Ld. Representative of the applicant submitted that it is admitted position that the applicant was an employee under the OP/Company. He further submitted that the applicant during his cross-examination has clearly stated that he is serving in this company since nineteen years. So, it is also proved that the applicant worked under the OP/Company for nineteen years. He also submitted that during cross-examination, the applicant has also clearly stated that he used to prepare and issue bills of the OP/Company with regard to consignment and there was no accountant in the

OP/Company. Therefore, it is also proved that the applicant used to perform clerical job under the OP/Company and so, he is a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947. He further submitted that it is also admitted position that the applicant was terminated from his service by the OP/Company w.e.f. 04.11.2015 (mistakenly written the date of termination in the written statement of the OP/Company as 04.11.2014 instead of 04.11.2015). He also submitted that at the relevant point of time, the monthly salary of the applicant was of Rs.12,000/- only. Though in his cross-examination, he has stated that he has no document to show that he used to get salary from the company, but he clearly stated that Kusum Kumar Khedwal used to pay him salary by cash. OP/Company in his written statement has clearly stated that the applicant had been earning around Rs.25,000/- to Rs.30,000/- per month. Therefore, it is proved that the applicant at least earned Rs.12,000/- per month as salary from the OP/Company. He further submitted that OP/Company did not issue one month's notice in writing to the applicant and/or did not pay any wages for the period of such notice and/or did not issue any charge-sheet and/or did not conduct any domestic enquiry against the applicant complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. He also submitted that the OP/Company in his written statement though stated that they issued a notice by hand to the applicant two months before his termination, but did not think it necessary to prove such fact. OP/Company brought some allegations against the applicant in their written statement viz. (1) that the applicant used to visit the office of the OP/Company in a drunken condition, used slang languages towards office staff and owners during last year of service, (2) that the OP/Company warned him and bound to pay him without any work for his indecent and intolerable behaviour, (3) that sometimes, clients of the opposite party made complaints against the applicant for his arrogant and unbearable behaviour at their work-place too, (4) that OP/Company suffered loss of Rs.3,20,000/- along with harassment from the side of Police and clients for the behaviour of the applicant, (5) that the applicant is presently working under a trade union, situated at 11, Burtolla Street, Kolkata-700007, but the OP/Company also did not think it necessary to prove such allegations by adducing cogent and reliable evidence before this Tribunal. Therefore, all the allegations brought by the OP/Company against the applicant are not proved. Lastly, he submitted that the applicant has adduced evidence in support of his case, which has been duly corroborated by the exhibited documents and therefore, the applicant is entitled to get relief, as prayed for.

According to O.P., Ginnie Roadlines is a proprietorship firm, not an 'Industry' and the applicant is also not a 'Workman' as defined under Section 2(j) and Section 2(s) of the Industrial Disputes Act, 1947 respectively.



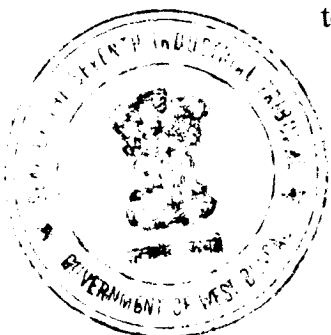
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Now, let us see at first as to whether the OP/Company is an 'Industry' as defined under Section 2(j) of the Industrial Disputes Act, 1947 or not ?

Section 2(j) of the Act runs as follows :-

'Industry' means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) **for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes** (not being wants or wishes which are merely spiritual or religious in nature), whether or not,--

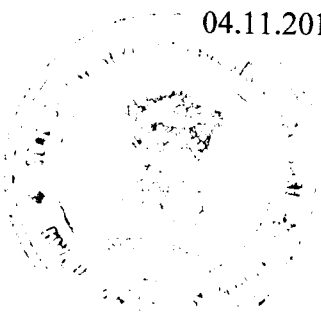
- (i) any capital has been invested for the purpose of carrying on such activity; or
- (ii) such activity is carried on with a motive to make any gain or profit, and includes--
 - (a) any activity of the Dock Labour Board established under section 5A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);
 - (b) any activity relating to the promotion of sales or business or both carried on by an establishment. but does not include--
 - (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one. Explanation.-- For the purposes of this sub- clause," agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951); or
 - (2) hospitals or dispensaries; or
 - (3) educational, scientific, research or training institutions; or
 - (4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service; or
 - (5) khadi or village industries; or
 - (6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or
 - (7) any domestic service; or
 - (8) any activity, being a profession practised by an individual or body or individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or
 - (9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co- operative society, club or other like body of individuals in relation to such activity is less than ten;]



It is admitted position that the OP/Company carried a small business of road transport contractors and commission agent under the name and style of Ginnie Roadways, now carries on said business under the name and style of Ginnie Roadlines. Moreover, Exhibits-1/2 to 1/5 (consignor copies, two letters of authorization dated 15.05.2000 and 16.05.2005, issued by the OP/Ginnie Roadlines in favour of applicant Sunil Kumar Singh) also prove the above fact of business of road transport contractors. Therefore, it is established that OP/Company carries its business of distribution of goods or render services with a view to satisfy human wants or wishes by the co-operation of his employees. So, it can safely be said that the OP/Company is an 'Industry' within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

Now, the next question which comes for consideration as to whether the applicant is/was a 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947, under the OP/Company or not.

According to the applicant, he is/was an employee / workman, worked under the opposite party, during nineteen years continuously till termination of his service w.e.f. 04.11.2015. Applicant (PW-1) has deposed that at the first stage of his tenure of employment, he was appointed under Ginnie Roadways owned by the instant employer without any appointment letter, without enrolling his name in the muster roll, because said opposite party did not issue any appointment letter to its employees and did not maintain any muster roll for its employees. Thereafter, when a couple of years was passed, he was shifted to the instant concern (Ginnie Roadlines) owned by the same employer with the oral assurance to maintain the service continuity without any break of service (para. 4 of his affidavit-in-chief). During cross-examination, he has clearly confirmed his said version by saying that he is serving in this company since nineteen years. He has also stated that when he joined in the service, at that time, it was named and styled as Ginnie Roadways and now it is known as Ginnie Roadlines. There is no dispute on the point that the OP/Company previously carried on its business under the name and style of Ginnie Roadways and now under the name and style of Ginnie Roadlines. OP/Company in para. (X) of its written objection, filed on 30.06.2016, has clearly admitted that the petitioner was terminated in the year late 2014 (04.11.2014). It is also stated in para. (XI) of said written objection that the petitioner of the instant case immediately (after wrongful termination) complained against the opposite party and a G.D.E. dated 30.11.2015 was lodged with the Girish Park P.S., hiding all his faults against his termination and mal-practice (in question). According to the applicant, he was terminated from his service on 04.11.2015. Above G.D.E. was lodged on 30.11.2015, after alleged termination, according



to the opposite party. So, it can safely be said that the applicant worked under the OP/Company till 04.11.2015, not 04.11.2014, as stated by opposite party in their written objection. It is also established from the evidence of the applicant that he worked under the OP/Company, at first under Ginnie Roadways and thereafter, under Ginnie Roadlines for nineteen years continuously, prior to the date of termination of his service.

PW-1 during his cross-examination has clearly stated that he used to prepare and issue bills of the company with regard to consignment. There was no accountant in the company. Exhibits-1/2 to 1/5, as referred above, also corroborates the above oral testimony of PW-1. Therefore, it is also established that the applicant used to perform the work of accountant under the OP/Company, which is clerical job in nature. So, it is also established that the applicant is a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 and he worked under the OP/Company till 04.11.2015.

According to the OP/Company, the applicant is aggressive, rude and violent by nature and never loyal to the OP/Company during his duties. He also used to visit the office of the OP/Company in a drunken condition, used slang languages towards office staff, even towards owners also. On several occasions, by the complaint of the office staff, the OP/Company bound to warn him and sometimes bound to pay him without any work for his indecent, intolerable behaviour. Sometimes, clients of the OP/Company complained against the applicant for his arrogant and unbearable behaviour at their work place too and the OP/Company suffered huge losses within the tenure of his services, which is not less than Rs.3,20,000/- along with harassments from the side of Police and clients. It is further case of the OP/Company that the applicant assured the opposite party that as the loss was incurred due to negligence on his part, he would adjust the same from his daily commissions, but he never paid any attention / interest towards it during his tenure. The OP/Company issued a notice by hand to the applicant two months before his termination and lastly, he was terminated in the year late 2014 (04.11.2014).

But, the OP/Company did not think it necessary to prove the above allegations brought against the applicant by adducing cogent and reliable evidence before this Tribunal.

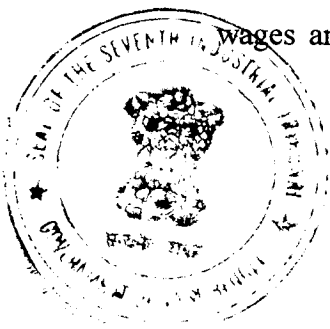
On the other hand, the applicant being PW-1 has clearly deposed that OP/Company terminated his service w.e.f. 04.11.2015. He was issued no charge-sheet, no domestic enquiry was proceeded against him, neither he was given any notice and/or notice pay nor he was offered any compensation and/or any monetary benefit by the OP/Company to terminate his service. He was simply asked verbally not to come any more in his duty by

his employer (para. 6 of his affidavit-in-chief). There is no cross-examination, even suggestion, on his above oral testimony. Therefore, it is established that OP/Company did not comply with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947, before terminating the service of the applicant. Consequently, I have no other alternative but to hold that the action taken against the applicant with regard to termination of his service w.e.f. 04.11.2015 by the OP/Company is illegal, ultra vires and/or against the principles of natural justice.

With regard to the prayer of full back wages, PW-1 has deposed that his monthly salary was Rs.12,000/- at the point of time (para. 6 of his affidavit-in-chief). In cross-examination, he has stated clearly that he has no document to show that he used to get salary from the company, but Kusum Kumar Khedwal, who was the owner of Ginnie Roadways, used to pay him salary by cash. On the other hand, OP/Company, in its written objection (para. xv) has stated that the applicant had been earning around Rs.25,000/- to Rs.30,000/- per month. Therefore, in view of such statement made in the written objection and considering the above oral testimony of the PW-1, it can safely be held that the monthly salary of the applicant was at least Rs.12,000/- per month at the relevant point of time i.e. on the date of his termination from service.

According to the applicant (para. 12 of his statement of claim), he is fully unemployed since his termination of service and failed to obtain any source of job and have no other source of earning as yet and passing hard days. On the other hand, according to the OP/Company (para. x of their written objection), presently applicant is working under a trade union situated at 11, Burtolla Street, Kolkata-700007, hiding his actual address recorded at the office of the OP/Company and clearly mentioned in the cause title of the instant petition. But, OP/Company did not think it necessary to prove the said fact by adducing cogent and reliable evidence. There is no cross-examination on the above-referred statement of the applicant. Even, no suggestion was put to the applicant by the OP/Company during his cross-examination to the effect that he is now working under a trade union situated at 11, Burtolla Street, Kolkata-700007. Therefore, I do not find any reason to disbelieve the above statement of the applicant and consequently, hold that the applicant is fully unemployed since his termination of service and failed to obtain any source of job and have no other source of earning as yet and passing hard days.

It is well settled that in order to claim back wages, the employee/workman is required either to plead or at least make a statement before the adjudicating authority / Court of first instance that he / she was not gainfully employed or employed on lesser wages and employer is required to prove that the employee / workman was gainfully



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employed and getting amount equal to wages drawn by him / her prior to termination of service in order to avoid payment of back wages.

In the instant case, the applicant / workman has made a clear statement in his statement of claim that he is fully unemployed since his termination of service and failed to obtain any source of job and have no other source of earning as yet and passing hard days. The OP/Company though made a statement in their written objection that presently applicant is working under a trade union situated at 11, Burtolla Street, Kolkata-700007, but did not think it necessary to prove the said fact. Therefore, in view of above settled principle of law, I am of the view that the applicant is also entitled to get full back wages with effect from the date of his termination i.e. 04.11.2015 at the rate of Rs.12,000/- per month.

Now, let us see as to whether the applicant has complied with the provisions of law with regard to filing the instant case under Section 10(1B)(d) of the Industrial Disputes Act, 1947 or not.

In this regard, applicant (PW-1) has deposed that having been highly aggrieved by the wrongful termination order, he vehemently protested to said illegal order of the OP/Company and demanded his reinstatement in service with full back wages and other benefits inter alia sending demand justice to the said OP dated 30.01.2015. The OP though received said letter in due course, but did not make any proper response towards his said demand (para. 7 of his affidavit-in-chief). There is no cross-examination on his above oral testimony. Even no suggestion was put to him on his such oral testimony. Therefore, his such oral testimony remained intact. Moreover, the applicant has proved said letter dated 30.11.2015 (wrongly typed in affidavit-in-chief the date of said letter as 30.01.2015 instead of 30.11.2015), demanding justice, which has been marked as Exhibit-1. Exhibit-1 corroborates the above oral testimony of PW-1. So, I do not find any reason to disbelieve the above oral testimony of the applicant. Therefore, it is also established that the applicant issued a letter dated 30.11.2015 (Exhibit-1) to the OP/Company demanding justice requesting them to allow him to join the duty and also to pay all legal dues within three days from the date of receipt of the said letter and in spite of receipt of said letter, the OP/Company did not think it necessary to reply to said letter of the applicant.

Applicant (PW-1) has also deposed that under the said circumstances, he referred the dispute before the Labour Directorate, West Bengal vide his representation dated 22.12.2015, addressed to the Labour Commissioner, Government of West Bengal, seeking intervention of the said authority into this matter and the said office was pleased to take up



the said matter for conciliation (para. 8 of his affidavit-in-chief). He has also deposed that Sri S. Roy Chowdhury, Assistant Labour Commissioner exerted his acumen efforts to settle the dispute in triplicate level inter alia convening joint-conference between the parties, but nothing could be achieved due to non-compromising, unreasonable and adamant attitude of the opposite party (para. 9 of his affidavit-in-chief). There is no cross-examination on his above oral testimony. Even no suggestion was put to him on his such oral testimony. Therefore, his such oral testimony remained intact. Moreover, the applicant has also proved the said letter dated 22.12.2015 addressed to the Labour Commissioner, Government of West Bengal, N. S. Buildings, Kolkata-700001 (Exhibit-1/1), which also corroborates the above oral testimony of PW-1. Therefore, I do not find any reason to disbelieve such unchallenged oral testimony of the applicant (PW-1). So, it is also established that the applicant, finding no other alternative, approached to the Labour Commissioner, Government of West Bengal, N. S. Buildings, to look into his matter, i.e. alleged termination of his service w.e.f. 04.11.2015 and above named Assistant Labour Commissioner tried his level best to settle the dispute, but failed.

PW-1 (applicant) has further deposed that finding no ray of hope of any solution before the conciliating authority, he made an application before the Conciliation Officer in prescribed Form 'P-4' dated 09.05.2016, praying for issuance of a certificate regarding pendency of the conciliation proceedings and the Conciliation Officer was pleased to issue the same in prescribed Form 'S' under Section 10(1B) of the Industrial Disputes Act, 1947 (para. 10 of his affidavit-in-chief). There is no cross-examination, even suggestion on the above oral testimony of the applicant. Moreover, it appears from the record that the applicant has filed the original Memo. No.704/46/16/LC/Kol dated 11.05.2016 in Form-S [Rule 12A(3)], wherefrom it is seen that the conciliation proceedings in respect of dispute in question was started by the Conciliation Officer, but no settlement could be achieved and on the prayer of applicant by petition dated 09.05.2016 for a certificate as per Section 10(1B) of the Industrial Disputes Act, 1947 in the prescribed Form 'P-4', this certificate dated 11.05.2016 regarding pendency of said conciliation proceedings has been issued by the Conciliation Officer, Government of West Bengal, N. S. Buildings, Kolkata. So, I do not find any reason to disbelieve the above unchallenged oral testimony of the applicant (PW-1). Therefore, it is also established that on the prayer of the applicant by petition dated 09.05.2016, the Conciliation Officer issued the pendency certificate in view of provisions of Section 10(1B)(b) of the I. D. Act, 1947 within seven days from the date of receipt of such application. This case has been filed on 06.06.2016. The pendency certificate was issued on 11.05.2016. So, it is also established that the applicant filed the instant application under Section 10(1B)(d) within sixty (60) days from the receipt of the pendency

certificate, in such form and in such manner and with such particulars of demands as may be prescribed, complying with the provisions of Section 10(1B)(c) of the Industrial Disputes Act, 1947.

Therefore, considering all aspects, evidence as well as materials on record, armed with discussions, discussed above, I hold that the applicant has been able to prove his case successfully and therefore, he is entitled to get an order of reinstatement in service under the OP/Company with full back wages and consequential benefits, if any, accrued thereto.

Both the issues are, thus, disposed of in favour of the applicant.

In the result, the case succeeds.

Hence, it is,

ORDERED

that the case being No. 21 of 2016 under Section 10(1B)(d) of the Industrial Disputes Act, 1947 be and the same is allowed on contest without any order as to costs.

The OP/Company namely, M/s. Ginnie Roadlines is hereby directed to reinstate the applicant / workman namely, Sri Sunil Singh immediately and is also directed to pay full back wages to him along with consequential benefits, if any, from the date of termination of service i.e. with effect from 04.11.2015 till today. The OP/Company is further directed to comply with the Award within a period of ninety (90) days from the date of this Award, in default, the OP/Company has to pay interest at the rate of twelve (12) per cent till the realization of the entire due amount, failing which the applicant / workman will be at liberty to put the Award in execution in accordance with law.

This is my Award.

Dictated & corrected by me

sd/-

Judge

sd/-

(ASHIS KUMAR DAS)
Judge
Seventh Industrial Tribunal,
Kolkata

25/02/2020

Judge
Seventh Industrial Tribunal

