

I/78223/2020

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

No Labr/34/LE-IRDate 20/1/2020

ORDER

WHEREAS an industrial dispute existed between M/S. Shyam Metalics and Energy Limited, Viswakarma Building, 86C, Topsia Road, Kolkata-700046 and their workman Mr. Sunil Sharma, 86, Shambhu Halder Lane, Salkia, Kolkata-711106 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14of 1947) to the Judge, Seventh Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the Judge of the said Industrial Tribunal heard the Parties and framed the following issues as the "Issue" of the said dispute;

ISSUES

1. Whether the Appropriate Government would be the State of Orissa or State of West Bengal?
2. Whether the applicant was a workman within the meaning of Sec. 2(s) of the I.D. Act?
3. Whether the applicant did work preceding 240 days from the date of alleged termination?
4. Whether the alleged termination of his service w.e.f. 11.09.2011 by the company is justified?
5. To what relief, if any, is entitled?

AND WHEREAS the said Judge, Seventh Industrial Tribunal has submitted to the State Government its Award on the said 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

I/78228/2020

No. Labr/36/1(2) - IR

Dated 20/1/2020

Copy forwarded for information to :

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No. 1642-LT dated 20/12/2019 .
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.



Deputy Secretary

No. Labr/34/2(5) - IR

Dated 20/1/2020

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

1. M/s Shyam Metalics and Energy Limited, Viswakarma Building, 86C, Topsia Road, Kolkata-700046 .
2. Mr. Sunil Sharma, 86, Shambhu Halder Lane, Salkia, Kolkata-711106 .
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



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. 50 of 2014

Under Section 2A (2) of the Industrial Disputes Act, 1947

Mr. Sunil Sharma
86, Shambhu Halder Lane, Salkia,
Kolkata-711 106.

...Applicant

-Versus-

M/s. Shyam Metalics and Energy Limited,
Viswakarma Building, 86C, Topsia Road,
Kolkata – 700 046;
Registered Office at Trinity Tower, 7th floor,
Q3, Topsia Road, Kolkata-46.

...OP/Company

A W A R D

Dated : 19-12-2019.

This case has been initiated on receiving of an application dated 05.12.2014 under Section 2A(2) of the Industrial Disputes Act, 1947, as amended, from the applicant Sri Sunil Sharma against his employer M/s. Shyam Metalics and Energy Limited in connection with termination of his service by the management / employer w.e.f. 11.09.2011, with a prayer for passing an Award directing his employer to reinstate him in his service with full back wages, with interest at the rate of 12 per cent till realisation and/or to pass such any other order/orders as this Tribunal deems fit and proper.

The case of the applicant / workman, as made out in his written statement / statement of claim, in brief, is that he was appointed vide company's letter dated 04.07.2011 being No. SG/COR-HR/APP as Manager (Rolling Mill) with effect from the same date i.e. from 04.07.2011. He was assigned to work at the Rolling Mill / Plant of the company. His service was confirmed by ignoring the stipulated probation period of six months and to that effect the company conveyed its decision to raise his salary upon due consideration of his competence and performance and thus, admitted his confirmation in service even before completion of his initial probation period. In effect, his initial probation period of six months was waived by the company. The company by its e-mail dated 30.08.2011 confirmed him that his salary was being revised to Rs.59,000/- per month, with retrospective effect from the date of joining, thus, giving complete waiver to the requirement of probation. At the time of joining his service, his salary was Rs.55,000/- per



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month. Sri Anil Singh of Shyam Group of Industries, Viswakarma Building, 86C, Topsia Road, Kolkata-700046 sent mail dated 30.08.2011 to Sri Anil Singh, Milan Pattanayak, Kishor Chandra Das, Kamal Lodha and Sri Anil Sharma, all of Shyam Group of Industries and subsequently hard copy of said e-mail dated 30.08.2011 has been provided to him for his knowledge and information. The management's communication dated 30.08.2011 by e-mail had the effect of giving substantive and confirmed appointment to him ab initio without the stipulation of any probation period in as much as such confirmation and upward revision of salary was given to him with retrospective effect from the date of his joining. Although he was designated as Manager-Rolling Mill, he had no power or authority to appoint or discharge any subordinate or any other disciplinary control or power over any subordinate. He did not have financial or administrative powers. He had no power to issue any show-cause/charge-sheet to any employee of the company and / or to take disciplinary action against any employee of the company. He used to do purely clerical job as per instruction of his superiors in the hierarchy. On 09.09.2011 the management of the company asked him over telephone to discontinue his duty from the plant on and from 11.09.2011 with the assurance that he would be re-assigned to another duty. No other reason was assigned or given. On 11.09.2011 he was advised to discontinue his service at the plant / mill and advised him be on wait for re-assignment of duties. The next day he reported for being assigned his duties. However, he was not permitted to enter into the mill/plant premises. In the evening of that very day, he was forced by the company's hired men and agents to vacate the company's quarters where he was living. He was able to retrieve his belongings and personal effects after much persuasion and requests. On 28.09.2011 the company sent a mail stating the various vague and frivolous grounds of discontinuation of his service. However, such communication failed to disclose any reason at all for not assigning any further or other duties to him, although the company was yet to terminate his service, despite frantic representations by him in this regard. His prayer for release of his outstanding dues were also ignored without assigning any reason. He replied to the company by his letter of reply dated 02.05.2013, with copies of the same marked to the five principal officers of the said company by speed post with A.D. in reply to the said mail dated 28.09.2011, which was duly received by the company. The corresponding acknowledge due card has returned to him indicating the service and delivery thereof. Thereafter, he on various occasions personally visited the office of the company requesting them to settle and pay the outstanding dues on A/C of his salary, bonus, etc. and also requested to assign him new duties in continuing reference to their letter dated 28.09.2011, apart from reiterating his requests and prayers regarding the same over telephone. He by his letter dated 13.03.2012 submitted the dispute to the Labour Directorate, West Bengal, before the Learned Labour Commissioner. Government of West Bengal, and pursuant thereto the company was requested to send its competent representative for a separate

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discussion. However, the conciliation failed and the matter remained pending. The company also did not offer any formal comments on his representation to the Labour Commissioner. Lastly, on 30.04.2013 he sent mail to the company regarding settlement of the outstanding dues on A/C of salary, bonus, etc. and also requested to assign him new duties in continuing reference to their letter dated 28.09.2011, which was also ignored and disregarded by the company without assigning any reason. Restraining him from joining his service, non-payment of salary and other dues and also failure to assigning him duty, even without terminating his service is nothing but refusal of employment by the company and constitutes unfair labour practices on the part of the company. According to him, non-payment of such dues and non-assignment of new duties by the company is nothing but refusal of employment, constitutes unfair labour practices and is aimed at harassing and victimising him. Without termination of his service and formal release, he is also unable to find any alternative work or employment and is thus living in extreme hardship with intermittent financial help from friends and relatives.

Hence, this case with a prayer to pass an Award directing the OP/Company to reinstate him with full back wages, with interest at the rate of 12 per cent, till realisation and to pass any other order/orders as this Tribunal deems fit and proper.

OP/Company appeared and filed written statement-in reply on 24.03.2015, wherein OP/Company has denied each and every material allegation brought by the applicant.

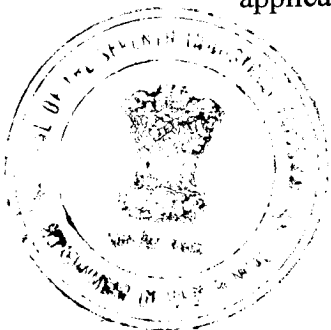
According to the OP/Company, after considering the application for the post of Manager together with curriculum vita as placed by the applicant and subsequent interview had with the applicant a letter of intent dated 01.06.2011 followed by appointment letter dated 04.07.2011, was issued by the then Senior Manager of the OP/Company with various terms and conditions as mentioned therein along with assignment and Annexure-1 by appointing him as a Manager (Rolling Mill) in Shyam Group at company's plant situated at Village-Pandloi, Post-Lapanga, Dist.-Sambalpur, Orissa, PIN-766212 on probation for a period of six months from the date of commencement of his duties at a monthly pay of Rs.55,000/-. In said letter of appointment, the applicant was given a power of command and responsibilities with a view to comply the principle "*you grow our Business, our business spurs your growth, And we grow Together*". Accordingly, the applicant joined at Sambalpur Plant on 04.07.2011 as Manager on probation by accepting the terms and conditions as made in said appointment letter. As a part of service conditions, as agreed during selection process, the applicant was provided with the company's owned accommodation on the day of his joining the company and as per company's policy, amount of rent in his category was deducted from his first salary, but he objected to the same and asked for rent-free accommodation. Keeping his position in view the management decided to add deductible amount to his gross salary from the first salary bill,

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and for this reason, the agreed gross amount came to Rs.59,000/-. Hence, no salary increase was awarded during the applicant's probation period and his claim for waiving probation period is rootless. Within one month from the date of joining, it was observed with deep regret that the applicant's functioning his duties was not at all satisfactory to the management and his performance was very poor and not upto the mark. In spite of repeated alert, no improvement was noticed. However, to give further opportunity to develop himself, the management held a meeting with the applicant among the other officials of the company on 16.08.2011 and in that meeting the management set some norms to be executed by the applicant for improvement of his Mill's productivity, but unfortunately, the applicant did not pay any heed. Being dissatisfied, the management called the applicant on 09.09.2011 for a meeting to discuss about the causes of mismanagement in his Mill during the period of his service of more or less two months, but he avoided to attend the meeting intentionally in spite of repeated follow-up. The management viewed his such irresponsible attitude very seriously. Before taking any action against his such irresponsible attitude, the applicant left from the company's place w.e.f. 11.09.2011 without giving any information either in writing or by verbal intimation. The dues of the applicant in respect of his service was calculated in full and final settlement and the same was credited in the applicant's Bank Account on 07.12.2011. It is also stated that the instant application under Section 2A(2) of the Industrial Disputes Act, 1947 has been filed by the applicant with bad intention and to extort money from the Opposite Party/Company and so, the same should be rejected.

According to the OP/Company, the said application under Section 2A(2) of the Act is not maintainable and/or also not tenable on the following grounds :- (i) that the applicant was not a workman at any point of time in terms of Section 2(s) of the Industrial Disputes Act, 1947. Actually, the nature of job of the applicant was a Manager, as admitted ; (ii) that the instant case is barred by limitation ; (iii) that the Appropriate Government would be the State of Orissa, not the state of West Bengal in terms of Section 2A of the Industrial Disputes Act, 1947 and as per settled law in as much as the applicant used to work as Manager at Sambalpur within the territorial jurisdiction of Orissa. As such, this Tribunal has no jurisdiction to decide the dispute ; (iv) that the instant case is not an industrial dispute in as much as the applicant did never work 240 days in terms of Section 25F of the Industrial Disputes Act, 1947 ; (v) that the instant case is not an industrial dispute in as much as there is / was no master and servant relation in terms of Section 2(k) of the Industrial Disputes Act, 1947 ; (vi) that before raising the so-called dispute, no dispute was raised before the Manager of OP/Company in terms of settled law ; (vii) that it is not an industrial dispute in as much as the OP/Company did never terminate the service of the applicant, as alleged.



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It is further stated that there was no communication towards confirmation of his service from the side of the management.

In view of the facts and circumstances, OP/Company has prayed for an order of rejection of the application under Section 2A(2) of the Industrial Disputes Act, 1947 by holding that the instant case is not maintainable in law as well as in facts and also to pass an award in favour of the OP/Company.

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

ISSUES :

1. Whether the Appropriate Government would be the State of Orissa or State of West Bengal ?
2. Whether the applicant was a workman within the meaning of Sec. 2(s) of the I.D. Act ?
3. Whether the applicant did work preceding 240 days from the date of alleged termination ?
4. Whether the alleged termination of his service w.e.f. 11.09.2011 by the company is justified ?
5. To what relief, if any, is entitled ?

In order to establish his case, applicant / workman has examined himself as PW-1 and proved documents, marked as Exhibits - 1 to 1/16. On the other hand, no evidence either oral or documentary has been adduced by the OP/Company in support of their case.

Ld. Advocates for both the parties have advanced their respective arguments and they have also filed written notes of arguments.

DECISION WITH REASONS

Issue No. 1 :

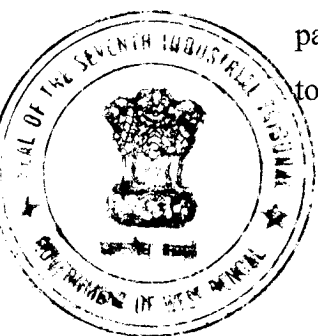
In course of argument, Ld. Advocate for the applicant submitted that as per clause (8) of Annexure-1 of Exhibit-1/1 (letter of appointment dated 04.07.2011), in case of any dispute or differences regarding the terms and conditions of appointment of the applicant, the cause of action would be deemed to have been arisen within the jurisdiction of the territory of Kolkata only and so, as per said clause (8), Appropriate Government will be the State of West Bengal, not the State of Orissa. In support of his such contention, he has also cited a decision of the Hon'ble High Court, Calcutta, vide Judgment dated 02.05.2012, passed in W.P. No.9532(W) of 2010.

In reply, Ld. Advocate for the OP/Company submitted that the parties by agreement cannot confer jurisdiction on a Court. Relying upon the decision of the Hon'ble Delhi High Court, reported in 2007 LAB. I.C. 3544 (Delhi High Court), he submitted that State of Orissa will be the Appropriate Government to adjudicate the dispute of the present case, as the cause of action of the alleged dispute arose at Sambalpur, Orissa.

It is not disputed that the applicant Sri Sunil Sharma was appointed on probation for a period of six months as Manager at the Rolling Plant / Mill of the OP/Company situated at Sambalpur in the State of Orissa w.e.f. 04.07.2011, which also appears from the letter of appointment dated 04.07.2011 (Exhibit-1/1), and accordingly, he joined there and worked there till 10.09.2011. According to clause (8) of Annexure-1 of said appointment letter (Exhibit-1/1), *"This contract shall be deemed to be executed in the territory of Kolkata and you will be under the administrative control of the Corporate as well as Head Office at Kolkata, even though you may be servicing at any place in India or abroad. In case of any dispute or differences regarding the terms and conditions of the appointments, the cause of action would be deemed to have risen within the jurisdiction of the territory of Kolkata only."* It is the case of the applicant that he was terminated from his service by way of refusal of employment w.e.f. 11.09.2011, when he was working in a Plant / Mill of the OP/Company situated at Sambalpur, Orissa. Therefore, it is clear that the cause of action of the present dispute arose at Sambalpur in the State of Orissa. According to above referred clause (8), in case of any dispute or differences regarding the terms and conditions of the appointments, the cause of action would be deemed to have risen within the jurisdiction of the territory of Kolkata only i.e. in the State of West Bengal. From the decision, as cited by the Ld. Advocate for the OP/Company, which is reported in 2007 LAB I.C. 3544, I find that in that case the employment of the petitioner workman at the time of termination of his service was at Neemrana, Rajasthan and the subject matter of the dispute substantially arose in the state of Rajasthan but as the Head Office of the Respondent management was in Delhi, the petitioner workman filed the case in a Court in Delhi, but the Hon'ble Court observed that the Court in Delhi cannot be vested with territorial jurisdiction though the Head Office of the Respondent management is in Delhi, because the immediate occasion which resulted in the alleged infraction of the rights of the petitioner workman occurred in the state of Rajasthan.

On the other hand, in the case of New Moga Transport Company versus United India Insurance, reported in 2004 SC 2154, the Hon'ble Supreme Court held that where two Courts or more have jurisdiction to try the suit, the parties by their consent may limit the jurisdiction to one of the Two Courts. The broader principle of this decision is that parties by agreement cannot confer jurisdiction on a Court which otherwise will not have to deal with the matter. There is no change in the position that the parties agreed to the

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jurisdiction of the Court of competent jurisdiction and they are bound by the said terms. In another case of Harshad Chiman Lal Modi versus DLF Universal Limited & Anr., reported in (2005) 7 SCC 791, the Hon'ble Apex Court upheld the clause in the agreement which conferred jurisdiction on Delhi High Court, thereby making it clear that if the Court had jurisdiction, the agreement between the parties is binding.

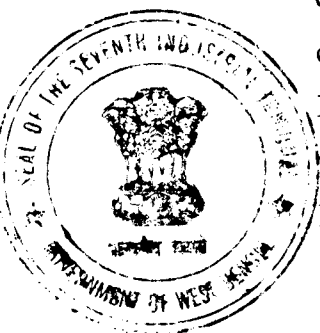
Now, let us see as to whether this Tribunal has jurisdiction to adjudicate the matter or not. It is not disputed that the Head Office of the OP/Company is at Kolkata, West Bengal. Therefore, I must say that this Tribunal has jurisdiction to adjudicate the matter in dispute. At the same time, I have no hesitation to say that since the cause of action of the matter in dispute arose at Sambalpur, Orissa, Tribunal under the state of Orissa has also jurisdiction to adjudicate the matter in dispute. But, I find from the clause (8) of Annexure-1 of Exhibit-1/1 (letter of appointment dated 04.07.2011) that in case of any dispute or differences regarding the terms and conditions of appointment of the applicant, the cause of action would be deemed to have been arisen within the jurisdiction of the territory of Kolkata. Therefore, from the above clause, it is clear that the parties by their consent have agreed with regard to the jurisdiction of this Tribunal and so, they are bound by said terms and conditions of said agreement and/or such agreement is binding upon them.

In view of my aforesaid discussion and findings and also relying upon the above referred observation of the Apex Court, I am of the view that this Tribunal has ample jurisdiction to adjudicate the matter in dispute and also hold that the Appropriate Government will be the state of West Bengal with regard to the alleged dispute of the instant case, not the state of Orissa.

This issue is, thus, disposed of in favour of the applicant.

Issue No. 2 :

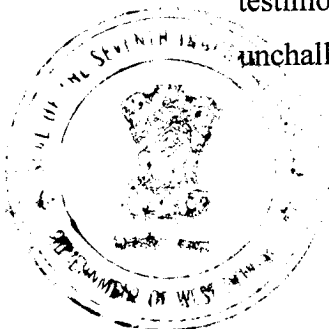
In course of argument, Ld. Advocate for the OP/Company submitted that it is admitted position that the applicant joined in the OP/Company as Manager. He further submitted that according to the applicant, although he was designated as Manager, Rolling Mill, but he had no power or authority to appoint or discharge any subordinate or any other disciplinary control or power over any subordinate and he did not have also financial or administrative powers or he had no power to issue any show-cause or charge-sheet to any employee of the company and / or to take disciplinary action against any employee of the company, but in support of such contentions, he has not produced / proved any document. In absence of any such document, it cannot be held that he was a 'workman' especially when letter of appointment shows that he was appointed as Manager, Rolling Mill. Moreover, during cross-examination, the applicant (PW-1) has also admitted that he was



posted as Senior Manager in the Rolling Mill situated at Sambalpur, Orissa. So, it is proved that he was appointed as Manager and subsequently designated as Senior Manager and worked as Senior Manger till the date of alleged termination. As per Section 2(s) of the Industrial Disputes Act, 1947, 'workman' does not include any such person who is employed mainly in a **managerial** or administrative capacity and also who, being employed in a supervisory capacity, draws wages exceeding Rs.10,000/- per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a **managerial** in nature. Therefore, applicant will not come within the meaning of 'workman' as defined in Section 2(s) of the said Act.

In reply, Ld. Advocate for the applicant submitted that although the applicant was designated as Manager, but he had no capacity to discharge any sorts of administrative job and he had also no power to discharge any job at his personal capacity and he used to perform clerical job as per instruction of superior, about which the applicant (PW-1) has deposed during his evidence (para. 2 of his affidavit-in-chief) also. There is no cross-examination, even suggestion, on his above oral testimony. So, his such oral testimony has not been challenged by the OP/Company. Therefore, it is established that the applicant used to perform clerical job, though he was appointed and designated as Manager. He further submitted that "clerical work" comes within the meaning of 'workman' as defined in Section 2(s) of the Industrial Disputes Act, 1947 and so, it is also established that the applicant is a 'workman'.

There is no dispute that the applicant was appointed as Manager (letter of appointment, marked as Exbt.-1/1) and subsequently, he was designated and posted as Senior Manager, Rolling Mill at Sambalpur, Orissa, but the applicant claimed that although he was designated as Manager, Rolling Mill, he had no power or authority to appoint or discharge any subordinate or any other disciplinary control or power over any subordinate. He did not have also financial or administrative powers. He had no power to issue any show-cause/charge-sheet to any employee of the company and/or to take disciplinary action against any employee of the company (para. 4 of the statement of claim). He used to do purely clerical job as per instructions of his superiors in the hierarchy (para. 5 of the statement of claim). Applicant (PW-1) has also deposed that although he was designated as Manager, but he had no capacity to discharge any sorts of administrative job and he had also no power to discharge any job at his personal capacity. He used to do purely clerical job as per instruction of his superior (para. 2 of his affidavit-in-chief). There is no specific cross-examination on his above oral testimony. Even no specific suggestion has been put to him on his such oral testimony during his cross-examination. Therefore, his above oral testimony remained intact and so, I do not find any reason to disbelieve his such unchallenged oral testimony. Consequently, I am inclined to hold that the applicant used



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to perform clerical duties, although he was appointed and designated as Manager. As per Section 2(s) of the Industrial Disputes Act, 1947, 'clerical work' comes within the definition of workman. So, in view of the above referred unchallenged oral testimony of the applicant, I have no other alternative but to hold that the applicant is a workman and he comes within the definition of 'workman', as defined in Section 2(s) of the Industrial Disputes Act, 1947. Accordingly, the argument as advanced by the Ld. Advocate for the OP/Company in this regard is not accepted.

This issue is also disposed of in favour of the applicant.

Issue No. 3 :

Ld. Advocate for the OP/Company submitted that the applicant did not challenge either in his statement of claim or during evidence about non-compliance of mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. So, question as to whether the applicant worked for 240 days in the year preceding his alleged termination does not arise at all. In this regard, he further submitted that the applicant joined in the service on 04.07.2011 and the alleged date of his termination was 11.09.2011. So, according to his case, he worked for two months and eight days only i.e. sixty-eight (68) days in the year preceding his alleged termination.

In reply, Ld. Advocate for the applicant submitted that the applicant did not get any chance to complete the work of 240 days due to unfair labour practice adopted by the OP/Company and so, the applicant had no fault/laches in the matter of completion of work for 240 days. In this regard, he has cited a decision reported in 1980 Lab. I.C. 425.

On careful perusal of the statement of claim / written statement, filed by the applicant and his evidence, I find that the applicant has not challenged about the fact of non-compliance of the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947. There is no dispute that the applicant joined in the service under the OP/Company on 04.07.2011 as Manager, Rolling Mill situated at Sambalpur, Orissa and the alleged date of his termination by way of refusal of employment was 11.09.2011. Therefore, according to the applicant, he worked for sixty-eight days only. In the aforesaid cited decision, Hon'ble Allahabad High Court has observed that once it has been found that the workman worked for continuous 240 days, it means by fiction of law, he worked for twelve calendar months. In the instant case, I find that the applicant worked for a continuous period of sixty-eight days only in a year. So, it cannot be held under any circumstances that he worked continuously for a period of 240 days in a year or he was in continuous service for not less than one year.



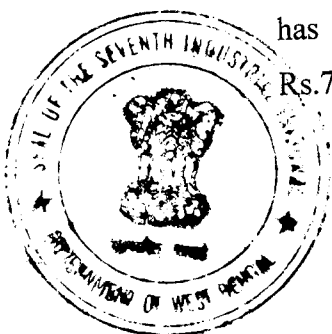
Therefore, this issue, is thus, disposed of against the applicant.

Issue Nos. 4 & 5 :

In this regard, Ld. Advocate for the OP/Company submitted that the OP/Company has clearly stated in para. 4 of sub-para. 7 of its written statement that the company did never terminate the service of the applicant as alleged, which the applicant (PW-1) during his cross-examination has clearly admitted by saying that he was never terminated by the company. He has further stated clearly during his cross-examination that he prays before this Tribunal for getting release order and for his legal dues. Besides that, he has no other prayer. He has also admitted during his cross-examination that he raised dispute before the Labour Commissioner for getting payment of dues and the subject matter of the conciliation was dispute regarding payment of arrear and terminal benefit. In view of his such admission, question of arrival of any decision as to whether the alleged termination of his service w.e.f. 11.09.2011 by the OP/Company is justified or not, does not arise at all.

In reply, Ld. Advocate for the applicant submitted that it is the case of the OP/Company that the applicant had been absenting from his service unauthorizedly on and from 11.09.2011 and so, according to them, it is a case of abandonment, and in that case, as per settled position of law, it is the bounden duty of the employer to issue notice to show-cause or charge-sheet or to hold any disciplinary proceedings against the applicant, but the OP/Company did not think it necessary to comply the same. He further submitted that though the applicant has stated during his cross-examination that he was never terminated by the company or that he prays before this Tribunal for getting release order and for his legal dues or that besides that, he has no other prayer or that he raised dispute before the Labour Commissioner for getting payment of dues and the subject matter of the conciliation was dispute regarding payment of arrear and terminal benefit, yet his such statements should not be taken into consideration because of the fact he has clearly prayed for an order of reinstatement with full back wages with interest in his statement of claim and also considering the fact that he is a mere 'workman', who does not know the technicalities of procedural law. In support of his above contention, he has cited decisions viz. (i) 2016 LLR 899, (ii) 2016 LLR 901, (iii) 2007 LLR 263 and (iv) 2019 LLR 617.

I find from the cross-examination of the applicant (PW-1) that he has admitted that he was never terminated by the company or that he prays before this Tribunal for getting release order and for his legal dues or that besides that, he has no other prayer or that he raised dispute before the Labour Commissioner for getting payment of dues and the subject matter of the conciliation was dispute regarding payment of arrear and terminal benefit. He has further admitted that as regards full and final settlement, the company gave him Rs.72,707/-, but he is not sure whether it was the amount with regard to final settlement or



Contd....

not, because management did not provide any document with that very amount. In view of his above admission, it is clear that he received a sum of Rs.72,707/- from the OP/Company. According to him, he is not sure as to whether said amount was paid to him with regard to final settlement or not. Then question automatically comes as to for what reason OP/Company offered him such a big amount of money. He could have easily disclosed the reason of such offer or acceptance of such offer of big amount of money by him, because he is the best and competent person to say, but he did not think it necessary to disclose the actual cause / reason of such offer and acceptance. So, for the reason of intentional non-disclosure of actual cause / reason of such offer and making payment of Rs. 72,707/- to him by the OP/Company and as being an educated person, he has clearly admitted that as regard full and final settlement, the company gave him Rs.72,707/-, it can safely be presumed that he received such amount of money from OP/Company as full and final settlement of the dispute with regard to his service and for which knowing it fully well the effect of his evidence, he has clearly deposed that he was never terminated by the OP/Company. Therefore, question of issuance of any show-cause notice or charge-sheet or holding disciplinary proceedings against the applicant by the OP/Company, as argued by the Ld. Advocate for the applicant, does not arise at all and so, his such argument is not acceptable and the above referred decision, as cited by him, will also not be applicable in view of the facts and circumstances of the present case.

As per the provision of Section 2A(2) of the Industrial Disputes Act, 1947, an individual workman may make an application direct to the Labour Court or Tribunal for adjudication of the dispute with regard to discharge, dismissal, retrenchment, refusal of employment or termination, after the expiry of forty-five days from the date he has made an application to the Conciliation Officer of the appropriate Government for conciliation of the dispute and in receipt of such application, the Labour Court or Tribunal shall have the powers or jurisdiction to adjudicate upon the disputes and as per the provision of Section 2A(3) of the said Act, the application under sub-Section 2 shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment, refusal of employment or otherwise termination of service.

In the instant case, according to the applicant, he was terminated from his service by way of refusal of employment on and from 11.09.2011. Case record shows that this case was filed on 05.12.2014. Therefore, this case was filed more than after three years from the date of alleged termination. In other words, this case was not filed before expiry of three years from the alleged date of termination of his service by way of refusal of employment. So, in view of the mandatory provision of Section 2A(3) of the Industrial Disputes Act, 1947, this case is barred by limitation.

As applicant (PW-1) has clearly admitted in his cross-examination that he was never terminated by the OP/Company, this case will not come within the purview of Section 2A(2) of the Industrial Disputes Act, 1947. Therefore, I hold that this case is barred by limitation and also not maintainable both in facts and law.

In view of my above made discussion and findings as well as the above referred admission of the applicant that he was never terminated from his service by the OP/Company, I have no other alternative but to say that question of giving of any findings on the issue as to whether the alleged termination of service of the applicant with effect from 11.09.2011 by the OP/Company is justified or not does not arise at all. Since the case is found barred by limitation and also not maintainable both in facts and law, I need not discuss the other exhibited documents of the applicant unnecessarily to make the judgment lengthy.

With regard to payment of dues, as deposed by PW-1, that can only be adjudicated by the Labour Court in view of provision of Section 33 (C) of the Industrial Disputes Act, 1947, not by this Tribunal.

Therefore, considering the evidence on record and my discussion and findings, as made above, I hold that the applicant has miserably failed to prove his case and so, he is not entitled to get any relief, as prayed for, and thus, the case is liable to be dismissed.

Both the issues, are thus, disposed of against the applicant.

In the result, the case fails.

Hence, it is,

ORDERED

That the case being No. 50 of 2014 under Section 2A (2) of the Industrial Disputes Act, 1947 be and the same is dismissed on contest against OP/Company namely, M/s. Shyam Metalics & Energy Ltd. without any order as to costs.

This is my **Award**.

Dictated & corrected by me

sd/-

Judge

Judge
Seventh Industrial Tribunal



sd/-

(ASHIS KUMAR DAS)
Judge,
Seventh Industrial Tribunal,
Kolkata
19/12/2019
Judge
Seventh Industrial Tribunal