

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

No. Labr/429/(LC-IR)/.....

Date.....29/04/2019

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. 08-IR/IR/7L-3/12 dated 03.01.2013 the Industrial Dispute between M/s. Reliance Jute Mill ( International ) Pvt. Ltd, Bhatpara, North 24- Parganas and their workman Shri Amit Kumar Shaw, S/o. Shri Bhola Shaw, 190/4, Sthirpara, Jagannath Colony, Jagaddal, North 24 Parganas, Pin-743127 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, 1st Industrial Tribunal, West Bengal.

AND WHEREAS the Judge of the said 1st 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 Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

**ANNEXURE**

(Attached herewith)

By order of the Governor,

*sd/*

Deputy Secretary  
to the Government of West Bengal

No. Labr/429/(5)/(LC-IR)

Date.....29/04/2019

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

1. M/s Reliance Jute Mill ( International ) Pvt. Ltd, Bhatpara, North 24- Parganas .
2. Shri Amit Kumar Shaw, S/o. Shri Bhola Shaw, 190/4, Sthirpara, Jagannath Colony, Jagaddal, North 24 Parganas, Pin-743127 .
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's Website.

*[Signature]*

Deputy Secretary

No. *Labr./429/2(2)/(LC-IR)*

Date...*29/04/2019*

Copy forwarded for information to :

1. The Judge, 1st. Industrial Tribunal, West Bengal with reference to his Memo No. 441-L.T. dated 08/04/2019 .
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary *to the*  
Government of West Bengal

In the matter of an Industrial Dispute between M/s. Reliance Jute Mills (International) Pvt. Ltd., Bhatpara, North 24-Parganas and their workman Sri Amit Kumar Shaw, S/o Shri Bhola Shaw, 190/4, Sthirpara, Jagannath Colony, P.O. Mandalpara, P.S. Jagaddal, District- North 24-Parganas, Pin-743127.

(Case No. VIII-05/2013)

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BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

SHRI TANMOY GUPTA, JUDGE

FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

The instant case arose out of an order of reference vide G.O. No.08-IR/IR/7L-3/12, dated 03.01.2013 from the Labour Department, Government of West Bengal by it an industrial dispute between M/s. Reliance Jute Mills (International) Pvt. Ltd. Bhatpara, North 24-Parganas and their workman Sri Amit Kumar Shaw, 190/4, Sthirpara, Jagannath Colony, P.O. Mandalpara, P.S. Jagaddal, District- North 24-Parganas, Pin-743127 as mentioned above directing this tribunal to adjudicate the following issues:-

- i) Whether the retrenchment of service of Sri Amit Kumar Shaw by management of M/s. Reliance Jute Mill (International) Pvt. Ltd., Bhatpara, North 24-Parganas is justified?
- ii) To what relief, if any, is he entitled?

On receipt of the aforesaid order of reference from the appropriate Government notice was issued to the parties for appearance and to submit written statement. In the claim statement filed by the workman it is contended that the company does the business as an Exporter and Importer, manufacturing various types of bags and thus earns huge profits but towards the benefit of its workers the company is not fair and resorted to various unfair labour practices. The company is a defaulter in respect of the statutory benefits such as Provident Fund and ESI etc. The workman entered into the service under the company on 29.08.2007 as driver and rendered continuous spot less service till 24.11.2011 when he was retrenched from service by the company. The said order of retrenchment



is illegal and unjustified since no written order of retrenchment was issued and no reasons were assigned. Necessary compliances of the provisions of Section 25F, 25H and 25N of the Industrial Disputes Act 1947 have not been complied with. Moreover, the golden rule of principles of natural justice has been violated. The workman wrote several letters to the management of the company praying justice, and requested for consideration of his case but with no effect. The workman then raised industrial dispute before the Labour Department but the conciliation proceedings failed due to adamant and uncompromising attitude of the management. Consequentially, the appropriate government has made the instant reference. The concerned workman since the date of such retrenchment remained unemployed and in spite of its sincere efforts could not get any employment and passing days under acute hardship. On that score, the workman has prayed for an award holding such order of retrenchment as illegal and unjust and also prayed for directing the company to reinstate him in the service with full back wages and consequential relief.

The opposite party/company has filed written statement containing two parts. **In Part -1:** It is contended that the reference is not maintainable either in fact or in law and that the applicant Sri Amit Kumar Shaw was not an employee of the company but his service has been hired by the company as and when required. **In Part-2:** The company has denied the claim and statements made in the claim petition/written statement filed by the workman. It is contended that the company hired the service of the applicant Sri Amit Kumar Shaw as a driver for the company's work as well as of the staff members of the mill as and when required and he was never employed as an employee of the company. It is further contended that issuance of any order of retrenchment and compliances of the provisions of Section 25 and 25N does not arise. On that score, the company has prayed for passing an award in favour of the management of the company holding that the order of reference is not maintainable and dismissing the claim of the applicant.

In support of his case the workman Amit Kumar Shaw examined himself as WW1 besides such oral evidences he has relied on some documentary evidences which have been marked as exhibit-1 to exhibit-12. The opposite party/company, on the other hand, examined one Mr.

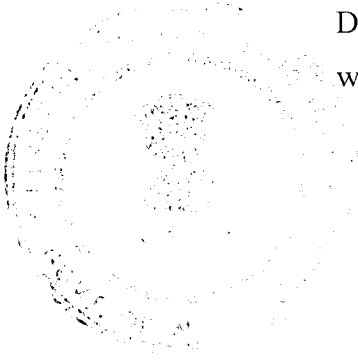
Alok Kumar Sen, the Assistant Personnel Manager of the company as CW1. Besides such oral evidence company has relied on some documents which have been marked as exhibit-A to D. The witness examined by the parties as above were cross examined by the respective parties.

“Decision with Reasons”

On the basis of the aforesaid evidences both oral and documentary as produced by the parties, let us decide the issue as mentioned in the order of reference.

The workman while examining himself as WW1 has stated in his evidence-in-chief that he was employed by the opposite party/company w.e.f. 20.08.2007 as a driver and he rendered spot less continuous service till 24.11.2011 and thereafter he was retrenched verbally by the management on the ground of surplus of man power without complying the acts and laws. During his cross examination he has stated that he has filed documents to show that he had been working as driver of the company on and from 20.08.2007. He denied the suggestion during cross examination that he was a casual employee of the company. He has further stated during cross examination that he used to work daily but cannot say under what status he was engaged there. The witness denied a suggestion put to him during cross examination that he was a casual employee so he used to get Rs. 4000/- as salary in October 2011. He has admitted during cross examination that he was authorised to drive the vehicle as per letter dated 28.01.2008. It appears from the said letter (exhibit-1) issued by the management of the company thereby authorising the workman to drive the company's car description of which has been given therein for the purpose of company's work. From the cross examination of said WW1 I find that the statement made by him in his evidence-in-chief that he was employed by the opposite party/company w.e.f. 20.08.2007 has not been specifically denied.

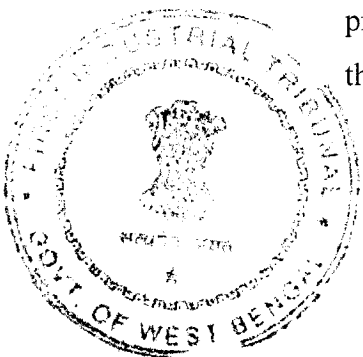
Amongst other documents filed by the workman exhibit-2 is the pay sheet for the month of October 2011 for 8 employees issued by the company. Exhibit-8 is the copy of statement issued by the Provident Fund Department relating to the liabilities of two drivers of the company out of which the concerned workman is one such driver. Exhibit-8/1 are the



salary statements of the concerned workman for the period from 2007 to 2010. The authenticity and genuinity of those documents have not been challenged.

The CW1 has said in his evidence-in-chief that he is the Chief Personnel Officer of the company though in the affidavit in chief his designation has wrongly been typed as Assistant Personnel Manager. He has stated that the workman Amit Kumar Shaw has been hired by the company for driving the car as and when required and there was no employer employee relationship between said Amit Kumar Shaw and the company. He has then stated that said Sri Shaw not being the employee of the company was never issued with pay slip which has been issued to all of the employees including the Badlis, but he was issued with a salary statement for actual work done by him as hired driver. Then the witness stated further that as per the request of the Provident Fund authority the company had to pay Provident Fund contribution on account of said Sri Shaw and Sri Shaw has already been received full and final provident fund dues after the period of hired service i.e. October 2011. During his cross examination the CW1 has stated that at the relevant period there was only one driver in the company whose name was Sri Ram Chandra Sahani and during the period from 1999 to 2000 practically there was no driver. He stated further that said Ram Chandra Sahani was attached to security department and as he knew driving, in case of necessity he used to drive the vehicle of the company. During his further cross examination, he has stated that he has no paper to show that there was only one driver in the company. During the course of such cross examination of CW1 attention of the witness was drawn on two documents namely, Provident Fund Statement in respect of the workman Sri Shaw and letter submitted by Sri Shaw on 04.10.2003 to the Provident Fund Secretary and those two documents have been marked as exhibit-C & C/1. The witness has admitted further during his cross examination that in the written statement filed by the company there is no averment in connection with provident fund settlement. He has then stated that Provident Fund and ESI are not deducted unless the connected person is an employee of the company.

From the case as put forward by the parties and the evidences as produced it appears that the applicant/workman has claimed that he joined the company on 20.08.2007 as a driver and he served continuously in such

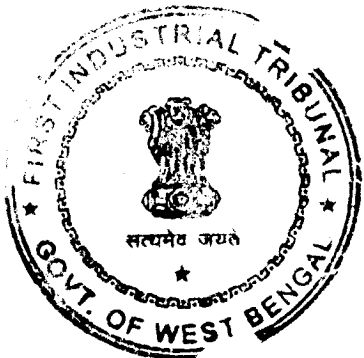


capacity till 24.11.2011 when he was retrenched. The company on the other hand has taken a plea that said applicant/workman Sri Shaw was not a regular employee of the company and he hired by the company for driving company's car as and when required. In view of such plea and counter plea taken by the parties we have to decide the issue involved in the order of reference on the basis of the evidences produced by the parties.

It is argued for the workman that the evidences as produced by the applicant/workman it has well been established that he served the company for a considerable years as regular driver of the company and he has illegally been retrenched from his service by the management of the company violating the mandatory provisions of Section 25F, 25H & 25N. In support of his contention the Ld. Advocate has placed reliance on a case law as reported in 2007 (1) SC cases (L & S)750 (**Uttaranchal Forest Development Corporation and Another – Vs- Jabbar Singh and Ors.**). He has placed reliance on another case law as reported in AIR 1986 SC 485 (**Workman of American Express ...Vs ... Management of American Express ....**).

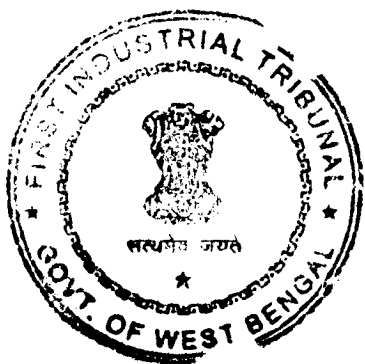
The Ld. Advocate for the company, on the other hand, argued that the workman has not been able to establish that he is a workman within the meaning of Section 2 (s) of the Industrial Dispute Act 1947 and that he worked as regular driver of the company.

Considered the submissions of both sides. From the testimony of WW1, it appears that he claimed to be employed by the opposite party w.e.f. 20.08.2007 as a driver and rendered continuous service in the company till 24.11.2011 when he was retrenched by the management of the company. The company on the other hand claimed that the applicant Sri Amit Kumar Shaw was hired by the company for driving the company car as and when required and said Sri Shaw was not an employee of the company. During his cross examination the WW1 has denied the suggestion put to him by the Ld. Advocate for the company that he was a casual employee of the company. This suggestion put to the WW1 suggest that the company virtually admitted that said Shri Shaw was at least a casual employee of the company. During his further cross examination WW1 has stated that he used to work daily but he cannot say under what status he was engaged there as permanent or casual. The witness has



denied the suggestion put to him during cross examination that he was a casual employee so he used to get Rs. 4000/- as salary in the month of October 2011. CW1 during his cross examination has stated that at the relevant period there was only one driver in the company whose name was Sri Ramchandra Sahani who actually attached with the security department and as he knew driving and in case of necessity, he used to drive the vehicle of the company. Exhibit-2 is the pay sheet for the month of October 2011 in respect of 8 employees of the company. In serial no. 5,6, & 7 of the said document the names of three (3) persons, namely, Sri J. P. Singh, Sri Amit Kumar Shaw and Sri Parsuram Shaw respectively appears therein as driver. Said Amit Kumar Shaw is the present applicant and his salary for the said month was noted as Rs. 4000/- for working 31 days. Exhibit-1 is the authorisation letter issued by the management of the company on 28.01.2008 authorising the applicant Sri Amit Kumar Shaw to drive the company's car, the particular of which have been mentioned therein in respect of 5 vehicles including one ambulance. During his evidence-in-chief WW1 has stated that he knows Jyoti Prokash Singh and he himself and said Sri Singh used to work in the company. Such statement get support from exhibit-2 wherein the name of said Jyoti Prokash Singh and Amit Kumar Shaw find place. The witness has relied upon a copy of the order dated 16.12.2011/19.12.2011 issued by the Assistant Director of ESI addressed to said Jyoti Prokash Singh which has been marked as exhibit-12. Said exhibit-12 is a copy of the order issued by the Assistant Director of ESI under Section 45A of the ESI Act 1948 (Amended). As it appears therefrom that the said order was passed in respect 2 complaints regarding non-compliance in respect to coverable but not covered employees namely, Mr. Jyoti Prokash Singh and Mr. Amit Kumar Shaw by the company.

Perused the contents of said exhibit-12. It appears that said order was passed on hearing both sides namely, the management of the company and present applicant Amit Kumar Shaw and said Jyoti Prokash Singh. It has categorically been mentioned in the said order passed by the Assistant Director of ESI that the representative of the company submitted before the said authority; the wages statement in respect of the said Amit Kumar Shaw and Jyoti Prokash Singh for the period 4/10 to 10/11 and it was stated by the said representative that the records of the earlier period were

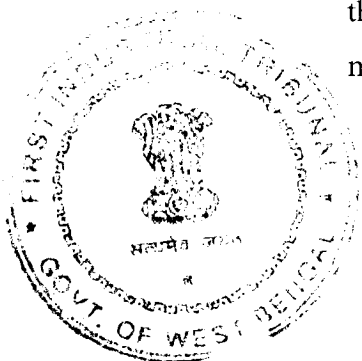




not available. On due consideration of all aspect to the matter and on hearing both sides the said authority, namely, Assistant Director, ESI came to a finding that the employer had engaged both complainants as employees on regular basis against whom the employer did not comply as per the act. Accordingly, the said authority determined the contribution towards ESI totally Rs. 16,290/- and ordered the principle employer to pay the said amount within 60 days from the date of order.

The CW1 has stated in his evidence-in-chief that as per request of PF Authority the company had to pay Provident Fund contribution on account of Amit Kumar Shaw and said Sri Shaw had already been received full and final Provident Fund dues up to the period last hired services i.e. October 2011. In support of such statement the management of the company has placed reliance on exhibit-A, B, C & C/1. During cross examination the CW1 has stated that in his written statement filed by the company there is no averment in connection with Provident Fund settlement. He has admitted further that provident fund and ESI are not deducted unless connected person is the employee of the company. Curiously, thereafter the witness stated that in this case ESI and PF of this employee i.e. the applicant Sri Shaw have been deducted as per instruction of ESI and PF authority. Nothing has been explained by the witness as to what prompted by the said two authorities to instruct the management of the company to deduct an amount under ESI and PF in respect of Sri Shaw. All such aspect of the evidence on record has made the case as put forward by the company in the written statement fishy and it is clear that the management of the company intentionally tried to suppress the material fact with a view to frustrate the claim of the applicant. From exhibit-12 it is clear that the appropriate authority under said Employees Insurance Corporation made a definite finding on hearing both sides that the employer i.e. the management of the company had engaged both complainants as employees on regular basis. Amongst those two complainants one is the present applicant namely Amit Kumr Shaw. Nothing could be produced by the company to show that any appeal has been preferred by it against such order.

Considering the statement of the witnesses and also considering the documentary evidences particularly; exhibit-12 there cannot be any manner of doubt to come to a conclusion that the present applicant Sri



Shaw worked as driver in the company on regular basis for a considerable year.

As stated earlier that the WW1 has stated in his evidence-in-chief that he rendered spot less service to the company till 24.11.2011 on which date he was retrenched from service by the management of the company verbally without complying the provisions of relevant Act and laws. Nothing has been claimed even by the management of the company that any retrenchment compensation was paid to the applicant/workman as per provisions of Section 25F. In the instant case before us for the reasons discussed earlier it is amply proved that the present workman/applicant rendered continuous service to the company for a considerable year. Section 25B(2) of the Industrial Disputes Act, 1947 provides as follows:-  
“(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

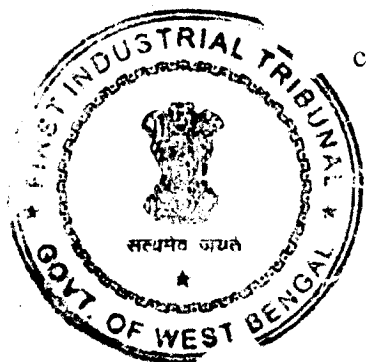
(ii) two hundred and forty days, in any other case”.

Section 25F of the Industrial Disputes Act 1947 runs as follows: -

**“Conditions precedent to retrenchment of workmen** – No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay [for



every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [for such authority as may be specified by the appropriate Government by notification in the Official Gazette].”

Relying on those two case laws as quoted earlier it is argued for the applicant/workman that the management of the company not having complied with the provisions of Section 25F and 25N of the Industrial Disputes Act, the retrenchment of the service of the workman/applicant by the management is clearly illegal and as such the workman is entitled to be reinstated in the service. Ld. Advocate for the company on the other hand argued that the case law as reported in (2007)1 SCC (L&S) 750 is not applicable in the instant case as the observations made by the Hon'ble Apex Court in the said case relates to the provisions of Section 25N which is applicable in case of 'Industrial establishment'.

In the case before the Hon'ble Apex Court as reported in AIR-1986 SC 485 (**Workman of American Express ..... Vs ..... Management of American Express...**) the management took a plea that it was not necessary to comply with the provisions of Section 25F as the workman concerned was not in continuous service for less than one year as prescribed by Section 25F read with Section 25B of the Industrial Dispute Act. In the said case before the Hon'ble Court a question arose as to whether Sundays and other holidays for which wages are paid under the law, by contract or statute, should be treated as days on which the employee 'actually worked under the employer' for the purpose of Section 25F read with Section 25B of the Industrial Dispute Act. On due consideration of the matter the Hon'ble Apex Court observed that- "Section 25F of the Industrial Disputes Act, 1947 is plainly intended to give relief to retrenched workmen. The qualification for relief u/s 25F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer." It has further been observed by the Hon'ble Apex Court that- "on our interpretation of Section 25F read with Section 25B, the workman must succeed. The workman Sri B. Ravichandran is therefore directed to be requested in service with full back wages."



The case as projected by the applicant/workman in the instant case before us stands on a better footing than the case of the workman before Hon'ble Apex Court in the said reported case. Admittedly, in the instant case no retrenchment compensation has been given to the applicant/workman by the management though it is abundantly clear from the materials as discussed earlier the applicant/ workman worked under the company for few years. That being so, it is clear that the management has clearly violated the provisions of Section 25F of the Industrial Dispute Act 1947.

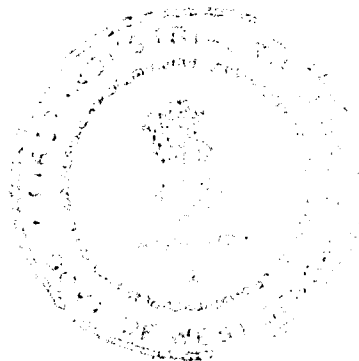
Therefore, on due consideration of all aspects of the evidences and materials on record and in view of forgoing discussions and the reasons stated therein and also following the observations made by Hon'ble Apex Court in the aforesaid reported case, I am of the view that the retrenchment of service of the applicant/ workman, Amit Kumar Shaw by the management of M/s. Reliance Jute Mill (International) Pvt. Ltd., Vatpara, North 24 Parganas w.e.f. 24.11.2011 is absolutely unjustified. That being so, the case of the workman Sri Amit Kumar Shaw, the applicant must succeed and he is entitled to have an order of reinstatement. The management of the company is directed to reinstate the said workman in service with full back wages.

The issues mentioned in the order of reference are thus decided accordingly.

This is my A W A R D.

Dictated & corrected by me.

Sd/-  
Judge.



Sd/- T. GUPTA  
Judge  
First Industrial Tribunal  
Kolkata  
02.04.2019