

18989/2019

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

No. Labr./ 541. / (LC-IR)

Date : ...1.9.2019

ORDER

WHEREAS an industrial dispute existed between the employee of M/s Prabartak Jute Mills Ltd., B.T. Road, Kamarhati, District-North 24 pgs, Kolkata-700058 (WB) and Sri Biswanath Saha, 63, Teachers' Colony, P.O.- Agarpara, P.S.- Belghoria, Dist.- North 24 PGS, Kolkata-700109, WB regarding the issues, 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 (14 of 1947) to the Judge, First Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 101-IR/IR/12L-14/11, dated 02.02.12.

AND WHEREAS, the Judge of the said First Industrial Tribunal heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947);

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



Deputy Secretary
to the Government of West Bengal

2019

: 2 :

No. Labn. 541/1(5)/(LE-IR)

Date1.9.2019

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

1. M/s Prabartak Jute Mills Ltd., B.T. Road, Kamarhati, District-North 24 pgs, Kolkata-700058 (WB).
2. Sri Biswanath Saha, 63, Teachers' Colony, P.O.- Agarpara, P.S.- Belghoria, Dist.- North 24 PGS, Kolkata-700109, WB.
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. Labn. 541/2(2)/(LE-IR)

Date1.9.2019

Copy forwarded for information to :-

1. The Judge, First Industrial Tribunal, Durgapur, with respect to his Memo No. 668-LT, dated 30.05.19.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the matter of an industrial dispute between M/s. Prabartak Jute Mills Ltd., B. T. Road, Kamarhati, District-North 24 Parganas, Kolkata-700 058 and it's workman Sri Biswanath Saha, 63, Teachers' Colony, P.O. Agarpara, P.S. Belghoria, Dist. North 24 Parganas, Kolkata-700109.

(Case No. 02/2015 u/s 10(1B)(d) of Industrial Dispute Act, 1947.

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

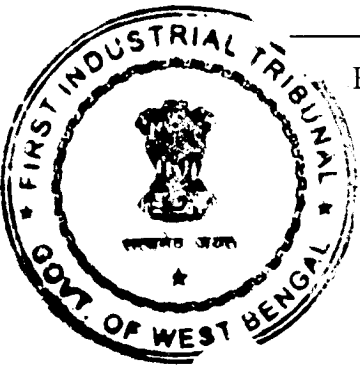
PRESENT

SHRI TANMOY GUPTA, JUDGE,
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

The instant proceeding arose on an application dated 05.06.2015 filed by workman as named above u/s. 10(1B) (d) of the Industrial Dispute Act, 1947 as amended against the opposite party M/s. Prabartak Jute Mills Ltd.

The case as put forward by the applicant/workman in the claim statement is that he was appointed by the company in the month of November 1988. During tenure of his service there was no complain/allegation against him by the management after the result of the Assembly election of 2011 in West Bengal the workman was obstructed to enter into the premises of the company Jute Mill on and from 24th May 2011 only because he was belonging to rival union. On repeated occasions the workman requested the management both orally and writing to allow him to resume his duties but all were in vain. The workman also made representation to the local police station over the matter. The union on behalf of the workman also made representation on 14.06.2012 to the company with request to permit the workman to enter into the premises of the Jute Mill and to allow him to join the service but there was no effect. The present workman along with two other workmen who are also terminated from service made representation on 18.06.2013 separately to the Chief Executive (Works) of the management of the Jute Mill for allowing them to enter into the premises of the Jute Mill but there was no effect to such request. The workman made representation to the Managing Director of the company with a request to look into the matter sympathetically and to allow him to resume his duties. Thereafter the present workman along with other workmen made representation before the Officer in Charge of Belghoria Police Station on 18.06.2013 separately with a copy to the Commissioner of Police, Barrackpore as well as Additional Deputy Commissioner of Police, Belghoria Division. When all such representation of the workman went in vein, he along with two other workmen filed a writ petition before the Hon'ble High Court for an order and/or direction so that the workmen



may resume his duties. After hearing the Hon'ble Court directed the concerned police authority to arrange safe entry of the workman in their respective service and also directed the police authority to submit a report. Even thereafter the workman could not join and a report was submitted before the Hon'ble High Court by the concerned police authority. At the time of disposing of the writ petition filed by the workman vide WP No. 21423 (W) of 2013 the Hon'ble Court on 07.11.2014 was pleased to state inter alia that it would be open to the petitioners to take steps in appropriate forum. Such termination of service of the workman has been made by way of refusal of employment by the management of the company illegally and also without following the principles of natural justice. Before such termination of service, no compensation has been offered to the workman and no-show cause/ chargesheet has been issued. The workman since the termination of such service till date is unemployed and suffering from financial crunch without any source of income. The workman raised industrial dispute before the office of the Labour Commissioner, Barrackpore, North 24 Parganas on 05.11.2014 in connections with the said illegal termination. Within 60 days from the date of submission of raising such dispute no result has come out and as such the workman submitted an application to the Deputy Labour Commissioner for issuance of a certificate but same was not issued within the stipulated time. Under such circumstances the workman has come up and file the instant application before this tribunal with a prayer for passing an award holding that the termination of service of the workman is void, illegal and not justified and for his reinstatement with full back wages and other consequential relief.

The opposite party/company has contested the case by filing a written statement denying all the materials, allegations and statements made by the applicant in his claim petition contending inter alia that the instant claim application is misconceived and not maintainable as nothing could be shown as to whether the workman raised any Industrial dispute before the Conciliation Officer before filing the instant proceeding before this tribunal. It is contended that the applicant was a 'badli' worker in the company and he was offered job on leave vacancy as and when required in the company. So, the question of termination of 'badli' does not arise. The workman did not turn up in the company for his job after May 2011 at is own and he was not obstructed and refused for said job.

On that score the opposite party/company has prayed for dismissal of the claim petition.



On the basis of such pleadings of the parties the following issues have been framed.

ISSU(S)

1. Is the application maintainable in Law?
2. Whether the termination of service of the workman Biswanath Saha by the company is illegal and unjustified?
3. To what relief is the workman entitled?



Decision with Reasons

In support of his case the applicant/workman examined himself as WW1 and also relied on some documentary evidences which have been marked as exhibit-1 to exhibit -3. The witness was duly cross examined by the other side. The opposite party/company, on the other hand examined two witnesses namely, CW1, Sri Ranjan Mukhopadhyay and CW2 Sri Tapan Kumar Basak. Besides such oral evidence the company has relied on some documentary evidences which have been marked as exhibit- A, B, C & D. The witness for company were also cross examined by the other side.

The applicant/workman while examining himself as WW1 in his evidence-in-chief has stated that he joined in Prabartak Jute Mill in the month of November 1988 in twisting Department as Labour and he worked there as permanent workman in the said jute mill and he had no break in work since his joining and he worked there till 24.05.2011. Such statement of WW1 has not specifically been challenged during his cross examination. In the claim petition also, the workman has stated that he was appointed by the company in the month of November 1988 and since then he had served the company with entire satisfaction of the management. Such statement has not categorically been denied in the written statement filed by the company. However, it is claimed by the company that the petitioner was a 'badli' worker and he was provided job on leave vacancy as and when required and not on regular basis. CW1 has stated that he is attached with the Mill since 10th September 2017. He has stated that he does not personally acquainted with any person named Biswanath Saha. However, he has got the name of Biswanath Saha from the office record and said Sri Saha is not attached with the Mill since the year 2011. During his cross examination he has stated that he cannot say anything about the workman who worked earlier in the Mill prior to his joining. From the statement of CW1 it is clear that he joined the Mill long after the alleged date of termination of service

of the applicant. CW1 during cross examination has further stated that whatever he is disposing about the matter of Biswanath Saha he saying so from his memory since he has not produced any papers relating to the service matter of said Sri Saha. CW2 has stated in his evidence-in-chief that he knows Biswanath Saha who used to work as 'badli'. During his cross examination he has stated that he has not filed any document to show that Biswanath Saha was a 'Badly'.

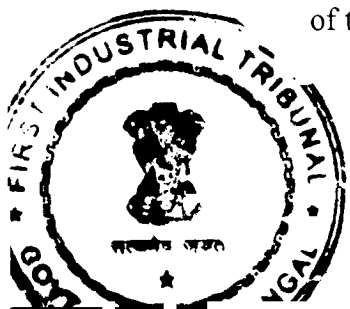
From the testimony of the witnesses examined by the company it is clear that the applicant Biswanath Saha used to work in the Mill of the opposite party. From the statement of CW1 and CW2 which have come out during their evidence-in-chief nothing could be gathered as to the period the applicant worked in the said Mill. The CW1 has stated in his evidence-in-chief that the applicant is not attending duties since 2011 due to the protest of the rival union. During cross examination the said CW1 has stated that he has not produced any paper to substantiate his statement that rival union did not allow the applicant to join his duties. The WW1 both in his claim statement as well as in his evidence-in-chief has stated that he joined the Mill in the month of November 1988. Such statement has not been challenged during cross examination. So, it has practically become an admitted position that the applicant started performing his duty in the Mill from the month of November 1988.

Now according to the case as put forward by the applicant/workman which has come out in his evidence-in-chief that on 24.05.2011 he had been to the working place and he was not allowed to join his duties by the security staff disclosing that he belonged to rival union. During his cross examination on a specific question put to him the witness answered that when they went to join their duties on that date, they were prevented by the security staff at the instant of the rival union namely, INTUC.

It is argued by the Ld. Advocate for the company that from the documents produced by the applicant which have been marked as exhibit in this case it would be evident that the company never caused any hindrances or obstructed the applicant to join his duties as 'badli' and on the other hand, the applicant himself did not turn up to join his duties after May 2011 because of the resistance of the rival union for which the company had nothing to do. The Ld. Advocate for the applicant/workman on the other hand, argued that all the exhibited documents clearly suggest that the management of the company did not allow the applicant and his two other co-workmen to join the duties.

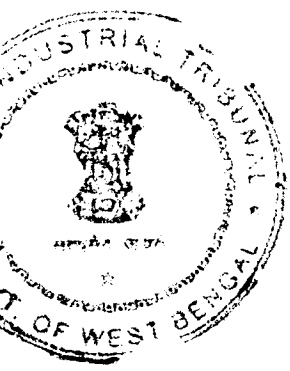


Considered the submissions of both sides. Amongst the exhibited documents relied upon by the applicant it appears that exhibit-1 is a representation dated 14.06.2012 submitted to the General Manager of the Mill by the Joint Secretary of a registered Trade Union requesting the Mill authority to allow the applicant and his two other co-workmen to join their duties. Exhibit-2 series are the written representation of the applicant and his two other co-workmen before the Officer in Charge of Belghoria Police Station. From the contents of those documents it is seen that both the union and the workmen themselves made such representation to the authorities stating that they are not being permitted to join their duties by the Mill management being instigated by some other union. WW1 has stated in his evidence-in-chief that he and two others filed a writ petition before the Hon'ble High Court, Calcutta seeking assistance of the local administration so that they can join their duties and the Hon'ble High Court directed the local police administration to assist them so that they can join their duties and the local police administration went with them to the mill so that they can join their duties. But the management did not allow them to join in their respective duties and thereafter the Inspector in Charge of Belghoria Police Station submitted a report to the Hon'ble High Court. The said statement made by the witness has not been challenged during cross examination. From exhibit-2/1 and 2/2 it appears that by those two letters the applicant and two other workmen intimated the officer in charge of Belghoria Police Station that they would go to the Mill for joining their duties and sought for assistance of the police personnel in the matter in view of the direction of the Hon'ble High Court. From the averments made in exhibit-2/2 it appears that therein it has categorically been stated that the police personnel of Belghoria Police station took the applicant and his two other co-workmen to the Mill and arrange for their entering inside the Mill and they waited for considerable hours inside the mill but management of the Mill did not allow them to join their duties. On the said document (exhibit-2/2) there is mention about GDE No. 738 dated 16.10.2014 of Belghoria Police Station affixing there on a seal of the police station. From the contents of the said of the Police report it appears that in the concluding portion of the same it has been stated that for the non-cooperation of the managing authority of the said Mill the three petitioners could not join to their work. It would be pertinent to mention that on 22.06.2017 the applicant files some document before this tribunal along with a list with a copy to the other side. From those documents it is seen that one such document is the xerox copy of the report submitted by the Officer in Charge of Belghoria Police Station on



03.10.2014 to the Hon'ble High Court, Calcutta in connection with WP no. 21423 (W) 2013 (Pradip Biswas & others Vs. State of West Bengal and Others). It would be relevant to mention that the other two colleagues of the instant applicant namely Tanmoy Mitra & Pradip Biswas have also file to separate proceedings before this tribunal u/s 10(1B) (d) of Industrial Dispute Act, 1947 as amended. All the aforesaid aspects of the evidences and materials on record do not support the argument as advanced by the Ld. Advocate for the company that the present applicant/workman did not turn up to join his duties after the month of May 2011 because of the resistance of the rival union.

It is the specific case of the applicant/workman that on 24th May 2011 when he and his two other co-workmen went to join their duties, they were not allowed to join by the security staff disclosing that they belong to the rival union. Such statement as made by the WW1 gets corroboration from the averments made in the exhibited documents as relied upon by the workman. The opposite party/company has relied upon a document (exhibit-B) said to be a letter issued to the workman on 11.01.2012 issued by the Chief Executive (Works) of the company. By issuing such letter the company informed to the workman that the allegations made by the workman in his letter dated 29.12. 2011 are baseless. It has been stated further in the said letter that the workman himself was not reporting for duty at his own accord. The CW1 has produced the xerox copy of the said letter dated 11.01.2012 issued to Biswanath Saha by the Mill authority. Accordingly, the same has been marked as exhibit-B. During cross examination said CW1 has stated that he has not produced any paper to substantiate his statement that rival union did not allow the workman to join his duty. He has admitted during cross examination that he has not filed the original of the said letter (exhibit-B) and the original is lying with the company. It is argued by the Ld. Advocate for the workman that the management of the company has intentionally withheld the said letter dated 29.12.2011 written by the workman to the management as the same would support the case of the workman. Nothing could be explained by the company as to why said letter dated 29.12.2011 written by the workman the reference of which find place in exhibit-B has been kept withheld and not produced. In my considered view when in exhibit-B it has been claimed that the allegations made by the workman in his said letter dated 29.12. 2011 are baseless then it was the duty of the company to produce the said letter written by the workman to the company. Had such letter written by the workman to the company been produced, the tribunal could ascertain what was



the allegations made by the workman in the said letter. In my considered opinion the company has purposely withheld the said letter as the same would have corroborate the case of the workman. For non-production of the said letter dated 29.12.2011, I am of the view that an adverse presumption should be drawn against the company.

As per the case put forward by the workman both in his claim statement as well as in his evidence-in-chief that he joined the concern Mill of the opposite party in the month of November 1988 and he had no break in work since his joining there till 24.05.2011 when he was not allowed to join the duty by the management of the company. The company has not denied in the written statement that the workman did not work in the company since the month of November 1988 without any break till 24.05.2011. The case set up by the opposite party/company in the written statement that the applicant was a 'badli' worker and he was offered job on leave vacancy as and when required. It is further claimed in the written statement by the opposite party/ company that the applicant at his own did not turn up in the company after May 2011 and he was not obstructed and refused for the job by the company as claimed by the applicant. So, from the evidences and materials it has practically become an admitted fact that the applicant used to perform his job in the company. Such conclusion can safely be drawn in view of the statement made by WW1 in his evidence-in-chief that he joined the Mill in the month of November 1988 in twisting department as labour which has remained unchallenged during his cross examination. The WW1 has further stated in his evidence-in-chief that he had no break in work since his joining there and he worked there till 24.05.2011. Such statement has also been remained unchallenged during his cross examination. The CW1 has also stated in his evidence-in-chief that he is not personally acquainted with any person named Biswanath Saha. However, he has got his name from the office record. He has further stated that said Biswanath Saha i.e. applicant is not attending the duties in the mill since 2011 due to protest of the rival union. CW2 has stated in his evidence-in-chief that the applicant used to work in the Mill as 'badli' labour. In view of such evidences on record there can not be any manner of doubt to come to a conclusion that the applicant Sri Biswanath Saha started performing his duties in the Mill of the opposite party since the month of November 1988 and he continued to work there till 24.05.2011. Nothing could be produced by the opposite party/company that there had been any break in such service of the applicant in the said Mill. The



opposite party/company has claimed that the applicant voluntarily did not turn up to perform his duties and to substantiate such contention the company has placed reliance on exhibit-B. It has already been observed that the company has failed to produce the letter dated 29.12.2011 written by the applicant to the management of the company, reference of which find place in the said exhibit-B and it has also been observed earlier that the company purposely withheld the said letter dated 29.12.2011 as the same would have corroborate the case of the applicant. Be that as it may, the applicant has failed to produce any document to show that he used to work in the company as a permanent workman. The company has claimed that the applicant was a 'badli'. It is further claimed by the opposite party/company that it is because of the obstruction/resistance of the rival union, the applicant did not turn up to join his duties after May 2011. The argument as advanced by the Ld. Advocate for the company to that effect has been discussed earlier and it has clearly been observed considering the materials on record that such argument is not tenable.

It is argued by the Ld. Advocate for the company that the rights of the 'badli' workers are not absolute nature. So long as a worker remains a 'badli' worker he does not enjoy a status. In support of his contention Ld. Advocate for the company has placed reliance on a case law as reported in 2005(1)LLJ at page 441 (Karnataka State Road Transport Corporation- Vs – S. G. Kottrappa) and another case law as reported in 986(53) FLR at page 3110 (Prakash Cotton (P) Ltd. – Vs- Rashtriya Mills Mazdoor Sangh.

The Ld. Advocate for the workman, on the other hand argued that from the evidences and materials on record it has become an admitted position that the applicant worked in the company since the month of November 1988 till 24.05.2011 when he was prevented to join his duties in the Mill of the opposite party/company. The Ld. Advocate argued further that the applicant was a permanent employee of the company and the case set up by the opposite party that he was a 'badli' has been made with some oblique motive. It is then contended that as per provision of Clause no. 10 of the 5th Schedule of the Industrial Dispute Act, 1947 such contention of the opposite party can surely be considered as unfair labour practice. The Clause no. 10 of the 5th Schedule runs as follows:--" To employ workman as 'badli', casual or temporary and to continue them as such for years, with the object of depriving them of the status an privilege of permanent workman".



It is then argued by the Ld. Advocate for the workman that whatever might be the stand taken by the opposite party/company, there cannot be any manner of doubt to come to a conclusion that the workman worked for a continuous period of more than 240 days prior to the date when his service was terminated by the opposite party. According to him that while such termination the management of the company has not complied with the mandatory provision of Section 25F of the Industrial Disputes Act, 1947. It is argued that the opposite party/company has neither given one month's notice in writing to the applicant stating the reasons for retrenchment nor he has been paid with compensation which is equivalent to 15 days average pay for every completed year of continuous service in strict compliance of the provisions of said Section 25F of the Industrial Disputes Act, 1947. In support of his contention the Ld. Advocate for the workman has placed reliance on case law as reported in 2010 (125) FLR 629; 2014(5) Supreme-To-Day 617; 1991(63) FLR 679 and AIR 1988 Supreme Court 344.

Considered the submissions as made by the Ld. Advocates of both sides. Considered also the evidences on record. As discussed earlier it appears from the testimony of the applicant/WW1 that he has categorically stated in his evidence-in-chief that he joined Prabartak Jute Mill in the month of November 1988 in Twisting Department as labour and he worked there as permanent workman in the said jute mill and he had no break in work since his joining there. Such statement has not been challenged during his cross examination. According to the applicant he was obstructed to join his duty on 24th May 2011 by the security staff disclosing that he belongs to rival union. The company namely, opposite party, on the contrary has come up with the case on that date he was not obstructed by the security staff but by the rival union. To substantiate such contention no tangible evidences could be produced by the company. The evidences which have already been discussed clearly suggest that the management of the company did not allow the applicant to join his duties and thereby terminated the service of the applicant. Section 2(00) of Industrial Dispute Act 1947 provides that --- "2(00) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever otherwise than a punishment inflicted by way of disciplinary action and it is not included --

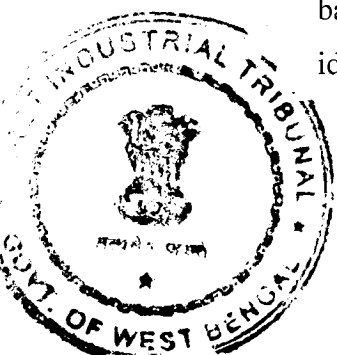
(a) Voluntary retirement of the workman; or



- (b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or”.

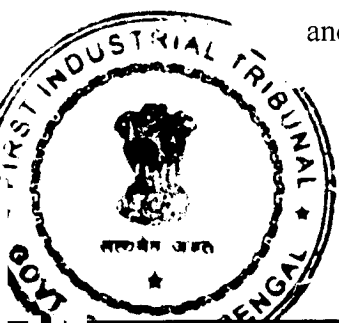
As already discussed, the management of the company has claimed that the applicant/workman was a ‘badli’ but no document could be produced by the management of the company to that effect. CW1 has stated that he joined in service of the company on 10th September 2017. During his cross examination CW1 has stated that he cannot say anything about the workman who worked earlier in the Mill prior to his joining. The said witness during his evidence-in-chief has stated that Biswanath Saha was not known to him and he got the name of Biswanath Saha from the office record. The witness has not clarified the nature of such office record. From such statement of the witness it is clear that the company used to maintain records relating to the service of the present workman. In my considered opinion had such record been produced, this tribunal could ascertain under what capacity the applicant used to work there. The opposite party has relied upon exhibit-B which is a reply made by the opposite party in connection with a letter dated 29.12.2011 submitted by the present applicant to the company. Therein it has been stated by the company that the applicant is not reporting his duty at his own accord. I fail to understand what necessitated the company to issue such letter to the applicant when it is claimed by the company that the applicant was a ‘badli’ worker. Such conduct of the opposite party/company appears to me very much fishy and it suggest that company is trying to suppress some material facts relating to the matter.

Admittedly nothing has been paid to the workman by the company in terms of Section 25F of the Industrial Disputes Act, 1947. From the case law as relied upon by the Ld. Advocate for the applicant it appears that the Hon’ble Court pleased to observe that Section 25F (a) and (b) of the Industrial Disputes Act, 1947 is mandatory and non-compliance thereof renders the retrenchment of an employee a nullity. It has been held by the Hon’ble Apex Court in the case has reported in 2014(5) Supreme-To-Day at page 617 in para 3 relying upon the observations made by the Hon’ble Apex Court as reported in (2013) 10 SCC 324, relevant portion of which runs as follows:-----“..... Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. Any other view would be a premium on the



unwarranted litigative activity of the employer.....". In another case as reported in 1991(63) FLR at page 679 it has been held by the Hon'ble High Court, Bombay as appearing in paragraph no. 9 that --- "..... The story of the employer that the petitioner abandoned his service cannot be accepted. Even if we assume, for a moment, that there was such voluntary abandonment of service on the part of the petitioner, as held by this court in Gouri Shankar Vishwakarma Vs. Eagle Spring Industries Pvt. Ltd. and others, it was incumbent upon the first respondent to hold an inquiry before treating the service as terminated on this ground. The first respondent did not do so. The termination of service of the petitioner, must, therefore, be held to be illegal and void".

The case law as relied upon by the Ld. Advocate for the opposite party/ company as reported in 2005(1) S.C. Service Law Judgement at page 441 (Karnataka State Road Transport Corporation and another Vs. S G Kotturappa and another). It has been held by the Hon'ble Apex Court in paragraph no. 15 of the said judgement that -----"..... It is not a case where the respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25F read with Section 25B of the Industrial Dispute Act 1947. The badli workers, thus, did not acquire any legal right to continue in service. They were not even entitled to the protection under the Industrial Disputes Act, 1947 nor the mandatory requirement of Section 25F of the Industrial Disputes Act, 1947 were required to be complied with before terminating his service, unless they complete 240 days service within a period of 12 months preceding the date of termination". The facts of the case before the Hon'ble Apex Court in the said reported case is clearly distinguishable, from the case before us. Admittedly in the instant case before us, the applicant was in service of the opposite party/mill from November 1988 till 24.05.2011. That being so, the compliance of mandatory provision as Section 25F of Industrial Dispute Act is very much applicable to the applicant and non-compliance of such provision by the management of the company obviously rendered the termination of service of the applicant void and illegal. Curiously the management did not bother to issue any show cause to the applicant and issue any charge sheet followed by any departmental enquiry. In my considered view such conduct of the management of the opposite party is absolutely violative of principles of natural justice. The management by issuing a letter to the applicant/workman on 11.01.2012 (exhibit-B) tried to avoid its responsibility and made a futile attempt to justify its action. In my considered view had there



been any positive case of the opposite party/management of the company, it could very well take necessary action against the applicant/workman by issuing show cause, chargesheet followed by departmental proceedings.

Now, it is claimed by the opposite party/Mill management that instant proceeding is not maintainable. It is argued that there is nothing to show that before instituting the instant proceeding the applicant raised any industrial dispute before the conciliation officer which is a sine qua non to institute the instant proceeding. The Ld. Advocate for the applicant argued, on the other hand that in the claim petition it has specifically been contended that the workman raised industrial dispute before the office of the Labour Commissioner, North 24-Parganas on 05.11.2014 in connection with the said termination of his service and no result having come out within sixty days from the date of raising such dispute, the workman submitted an application to the Deputy Labour Commissioner for issuance of a pendency certificate but the same not having issued by the commissioner within stipulated time, the workman/applicant has instituted the instant proceeding. It has further been contended that the applicant has filed document to show that he raised dispute before the appropriate authority in connection with such illegal termination prior to the institution of the instant proceeding and the copy of such application are lying with the record.

Considered the submissions of both sides. Perused the claim statement and I find corroboration of such argument as advanced by the Ld. Advocate for the applicant/workman. Furthermore, on perusal of the record I find that the applicant has produced materials to justify such contention. Considering that view of the matter I am unable to accept the argument as advanced by Ld. Advocate for the opposite party. Consequently, I am unable to hold that instant proceeding is not maintainable.

Then it appears that both in the claim petition as well as in his evidence-in-chief WW1 has stated that since 24.05.2011 he is totally unemployed and not working anywhere for gain and he is passing his days with his family on the charity of his relations and friends. Such statement has remained unchallenged during cross examination of WW1. So, in absence of any contrary materials I find no reason to disbelieve such statement made by WW1.



Therefore on due consideration of all aspect of the evidences and materials on record and in view of foregoing discussions and the reasons stated therein and also following the observations made by the Hon'ble Court in the aforesaid reported cases I am of the view that retrenchment/termination of service of the applicant/workman Biswanath Saha by the management of the opposite party/company w.e.f. 24.05.2011 is absolutely unjustified and illegal. That being so, the case of the workman Sri Biswanath Saha, the applicant must succeed and he is entitled to have an order of reinstatement.

The management of the opposite party/company, namely, Prabartak Jute Mills Ltd. is directed to reinstate the applicant/workman in service with full back wages forthwith.

The issues taken up for consideration are decided accordingly.

This is my A W A R D.

Dictated & corrected by me.

Sd/ —
Judge



Sd/ - TANMOY GUPTA .

Judge
First Industrial Tribunal
Kolkata
28.05.2019