

8986/2019

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

No. Labr./ 543 / (LC-IR)

Date : 1.9.2019 - 19

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 Pradip Biswas, 12/B/17, Upendra Pally, P.O. Belghoria, Dist.-North 24 PGS, Kolkata-700056, 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);

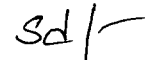
AND WHEREAS the said Judge, First Industrial Tribunal has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute.

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/543/1(5) (LC-IR)

Date ...10-06-19

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 Pradip Biswas, 12/B/17, Upendra Pally, P.O. Belghoria, Dist.-North 24 PGS, Kolkata-700056, 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/543/2(2) (LC-IR)

Date ...10-06-19

Copy forwarded for information to :-

1. The Judge, First Industrial Tribunal, Durgapur, with respect to his Memo No. 669-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 Pradip Biswas, 12/B/17, Upendra Pally, P.O. Belghoria, Dist. North 24 Parganas, Kolkata-700056.

(Case No. 03/2015 u/s 10(1B) (d) of Industrial Dispute Act, 1947.

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

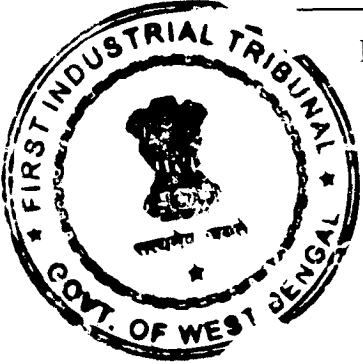
PRESENT

SHRI TANMOY GUPTA, JUDGE,
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

The instant proceeding arose on a Claim Petition filed by the applicant/workman, Sri Pradip Biswas against his employer namely, M/s. Prabartak Jute Mills Ltd. u/s. 10(1B) (d) of the Industrial Dispute Act, 1947 as amended.

The case as put forward by the applicant/workman in the claim petition is that he was appointed by the company in the month of September 1983 and since then he had served the company with entire satisfaction of the management. On and from 24th May, 2011 when the workman had been to the premises of the Jute Mill in order to join his duties he was obstructed to enter since he belongs to rival union. After the termination of service by way of refusal of employment the applicant/ workman on repeated occasions requested the management both oral and in writing to allow him to resume his duties but all were in vain. The applicant/ workman along with two other co-workmen who were also terminated from service in the same way made representation on 18.06.2013 separately before the Chief Executive (Works), Prabartak Jute Mill for allowing them to enter into the premises of the Mill to perform their duties but there was no effect. The concerned workman made further representation to the Managing Director of the company with a request to look into the matter sympathetically and to pass order so that he can resume his duties. The applicant along with two other workmen then made representation before the Officer in Charge of Belghoria Police Station on 18.06.2013 separately with a copy to the higher authority of the police. Such termination of service of the workman has been made by way of refusal of employment by the management of the company illegally and without any fault on the part of the workman. The workman along with his two other co-workmen filed a writ petition to the Hon'ble High Court for a direction so that they can resume their duties. On hearing the Hon'ble High Court directed the concerned police authority to arrange for safe entry of the three workmen in their respective service. The Hon'ble High Court further directed the police authority to submit a report. In spite of such direction the workmen could not join and to that effect the Police authority submitted a report



to the Hon'ble High Court, Calcutta. Since the dismissal of service by such way by the management of the company the workman till date is unemployed and suffering from financial crunch without any source of income and has been maintained his family with the help of friends and well-wishers. The termination of such service of the workman has been made without following provisions of natural justice. Before such termination no compensation has been offered to the workman by the company. No show cause/chargesheet was issued against the workman and no domestic enquiry has been held against him. While disposing the said writ petition filed by the workman vide WP No. 21423 (W) of 2013 on 07.11.2014, the Hon'ble Court was pleased to state inter alia that it would however, be opened to the petitioners to take steps in appropriate forum in respect of the private respondents. The workman raised industrial dispute before the Labour Commissioner, Barrackpore, North 24 Parganas on 05.11.2014. Within 60 days no notice was received by the workman from the office of the Labour Commissioner about the conciliation proceedings. Therefore, the workman submitted an application under the provision of Industrial Disputes Act, 1947 for issuance of pendency certificate. No such certificate was issued by the Deputy Labour Commissioner within the stipulated time. Under the compelling circumstances the workman has filed the instant application without any certificate. Such act of the opposite party/company in terminating the service of the workman is highly illegal, unjustified and malafide by way of refusal of employment violating the provisions of industrial laws and principles of natural justice. On that score, the applicant has prayed for an award holding the termination of service of the applicant/ workman void, illegal and unjustified and to direct the company to reinstate the applicant/workman with full back wages along with other consequential benefits.

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 the 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 prior to filing of 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 his own and he was not obstructed and refused for his job by the management of the company.

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.

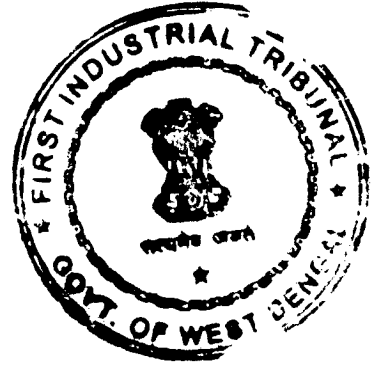
ISSU(S)

1. Whether the termination of service of the workman, Shri Pradip Biswas by the company is illegal and unjustified?
2. To what relief, is the workman entitled?

“Decision with Reasons”

In support of his case the applicant/ workman examined himself as WW1. He has duly been cross examined by the other side. Besides such oral evidences he has relied on some documentary evidences which have been marked as exhibit-1 to 4.

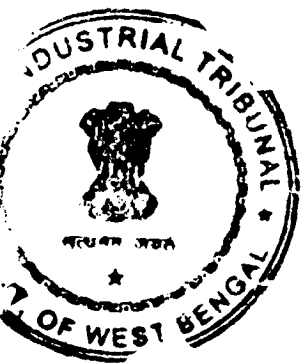
The opposite party/company, on the other hand, examined two witnesses namely, CW1, Sri Ranjan Mukhopadhyay and CW2, Sri Tapan Basak. The applicant/workman while examining himself as WW1 has stated that he was employed with Prabartak Jute Mill and joined in service in the said Mill in the month of September, 1983 as workman and he worked continuously in the said Mill till 24.05.2011. He has further stated that during tenure of his work there was no complain or allegation against him by the management. He has then stated that on 24.05.2011 when he himself along with two other colleagues namely, Biswanath Saha and Tanmoy Mitra had been to the gate of the company to join their duties the security personnel did not allow them to join. Such specific statement made by the witness during his evidence-in-chief has not been challenged during his cross examination. The witness then stated that inspite of their best efforts they could not join their duties as they were not allowed to join. He then stated that the union namely, Bengal Chatkal Mazdoor Union made a representation in writing to the management of the Jute Mill on 14.06.2012 on their behalf demanding to allow them to join their duties. The said letter has been marked as exhibit-1. He then stated he personally also wrote a letter to the company for allowing him to join his duty. The said letter has been marked as exhibit-2. The witness then stated further that thereafter he submitted a complaint to the local police station. Those complaint dated 16.07.2014, 19.07.2014, 25.07. 2014 and 16.10.2014 submitted jointly by the witness and his two other workmen to the Officer-in-Charge of Belghoria Police Station have been marked as exhibit-3 series. The witness then stated that they moved the Hon’ble High Court by filing a writ petition seeking relief and redress and the said writ petition was disposed of by the Hon’ble High Court directing Belghoria Police Station to take necessary step so that they can join their duties and inspite



of such direction they were not allowed to join their duties by the company. He then stated that he and his two other colleagues jointly raised their dispute to the Labour Commissioner by submitting a written representation on 05.11.2014 which was received by the office of the Labour Commissioner by affixing a seal thereon. The said representation has been marked as exhibit-4. All such statements which have come out during evidence-in-chief of WW1 has not been challenged during cross examination. The witness denied the suggestion put to him during cross examination that the document filed by him are all manufactured.

The company witness namely, CW1 has stated in his evidence-in-chief that he joined the Mill on 10th September, 2017 i.e. long after date when the workman was allegedly refused to join his duties. However, the witness has stated that he is not acquainted with said workman Pradip Biswas but he has seen his name in the official record and he was a 'Badly' worker. He has further admitted in his evidence-in-chief that the workman Pradip Biswas lodged a complaint to the local police station and he heard that Sri Biswas moved the Hon'ble High Court by filing a writ petition for not allowing him to perform his duties. During his cross examination he has stated that the company has not filed any document to show that Sri Biswas was a 'badli' workman. CW2, Sri Tapan Basak has stated that he is working in the Mill since 1975 and he knows the applicant Sri Pradip Biswas who used to work in the Mill. He stated that Sri Biswas used to work as 'badli'. During his cross examination he has stated that the Mill management-maintained attendance register relating to the staff, workers including 'badli' of different types.

It is the case of the applicant/workman as put forward in the claim petition that he was appointed by the company in the month of September, 1983 and since then he served the company with entire satisfaction of the management. The WW1 has categorically stated as discussed earlier that he worked continuously in the said Jute Mill till 24.05.2011 when he along with two other colleagues, Biswanath Saha and Tanmoy Mitra went to join their duties the security personnel did not allow them to join. As already stated, that such positive statement of CW1 has not been challenged during cross examination. In the written statement filed by the opposite party it is claimed that the applicant was a 'Badly' worker and he was offered job on leave vacancy as and when required by the company. Further the case of the opposite party/company is that the applicant/workman did not turn up to join his job as 'Badly' at his own after May, 2011. Curiously it is not denied by the company that the workman did not join the service of the Mill in the month of September, 1983 and he worked continuously till 24.05.2011. So, considering such aspect



of the materials on record it can safely be concluded that the workman/applicant continuously performed his job in the Mill from the month of September, 1983 as workman till 24.05.2011.

The only case as put forward by the company is that the workman was 'Badly' which has stoutly been challenged by the applicant/workman. As discussed, earlier CW1 has stated that he is not acquainted with the present applicant but he has seen his name in the official record. CW2 during his cross examination has admitted that the Mill management-maintained attendance register relating to the staff/workers including 'badli' of different types. It is argued by the Ld. Advocate for the workman as to what prompted the management of the company to produce such attendance register of the staff. It is argued further that such document has not been produced by the management of the company purposefully as if such document is produced the same will falsify the case setup by the management of the company. The Ld. Advocate for the opposite party/company could not explain any reason for non-production of such document. In my considered view that for non-production of any such document by the company an adverse presumption should be drawn against the company.

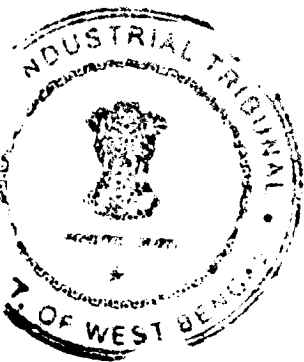
It is argued by the Ld. Advocate for the company that from the documents produced by the applicant which have been marked as exhibit in this case it would be evident that the company never caused any hindrance or obstructed the applicant to join his duty and on the other hand, the applicant himself did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

Considered the submissions of both sides. Perused the documents which have been marked as exhibits for the applicant/workman. 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 is a representation submitted by the concerned workman to the Managing Director of the Mill. Exhibit-3 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. The WW1 has stated in

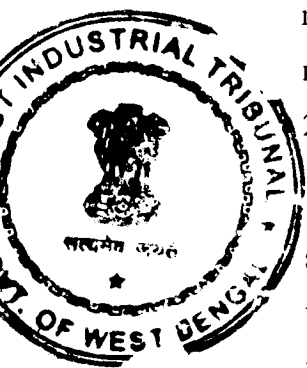


his evidence-in-chief that he along with two other co-workmen namely, Biswanath Saha and Tanmoy Mitra filed a writ petition before the Hon'ble High Court, Calcutta seeking relief and redress. He has further stated that the said WP was disposed of and the Hon'ble High Court directed the Belghoria Police Station to take necessary steps so that they can join their duties in the Mil. He has further stated inspite of the direction of the Hon'ble Court they were not allowed to join their duties by the company. All such statements made by the WW1 have not been challenged during cross examination. From the materials on record I find that the applicant/workman on 09.01.2017 filed a list of documents with a copy to the other side. Amongst those documents I find that there is a xerox copy of report submitted by Officer-in-Charge, Belghoria Police Station on 03.10.2014 in connection with WP no. 21423(W) 2013 (Pradip Biswas and others Vs. State of West Bengal and others). In the claim petition I find that identical case no. has been mentioned. From the said reports submitted by the Officer-in-Charge, Belghoria Police Station it appears that in the concluding portion of the report it is stated that for the non-cooperation of the Managing Authority of the Mill the three petitioners could not join their work. From the averments made in exhibit-3/3 it appears that therein it has categorically been stated that the police personnel of Belghoria Police Station took the applicant and two other co-workmen to the Mill and arrange for their entry inside and they waited for a considerable hours inside the Mill but the management of the Mill did not allow them to join their duties. In said exhibit-3/3 there is mention about the GD No. 738 dated 16.10.2014 of Belghoria Police Station affixing thereon a seal of the Police Station.

The opposite party/company has relied upon a document (marked 'X' for identification) said to be a letter issued to the workman on 11.01.2012 issued by the Chief Executive (Works) of the Company. As it appears that by issuing such letter the company informed 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. On perusal of the said document it appears that the same was issued on 11.01.2011 by the Mill management to the applicant/workman stating that the allegations made by the workman in his letter dated 29.12.2011 are baseless and far from truth. The witness for the company while producing the said document (marked 'X' for identification) did not clarify anything about the allegations made by the workman in his letter dated 29.12.2011. No such letter dated 29.12.2011 said to be written by the applicant, the reference of which find place in said document has been produced by the opposite party/company. It is argued by the Ld. Advocate for the workman that the management of the company has



intentionally withheld the same as the same would have support the case of the workman as put forward in their claim petition. Nothing could be explained by the opposite party/company as to why the said letter dated 29.12.2011 has been kept withheld and not produced. In my considered view to bring out the truth of the case of the company that the workman voluntarily did not turn up to join their duties, the company should have produced before this tribunal the said letter dated 29.12.2011. Had any such letter written by the workman been produced, the tribunal could ascertain what were the allegations made by the workman in the said letter. That being so, I have every reason to believe that the company has purposely withheld the said letter as the same would corroborate the case of the workman and as such I am of the view further that it would be appropriate to draw an adverse presumption against the opposite party in that regard. All the aforesaid aspects of the evidences and materials on record do not support the argument of the Ld. Advocate for the company and the case as put forward by the company in the written statement 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 cannot be accepted. On the contrary, the materials on record suggest that it is due to the obstruction by the Mill management the applicant/workman could not join their duties on and from 24.05.2011.

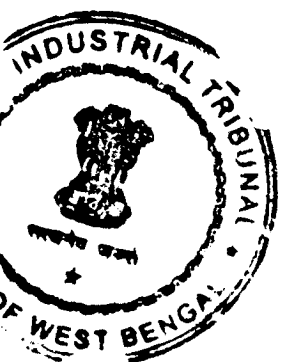


Then as per the case set up by the opposite party/company in the written statement the applicant was a 'badli' worker and was offered job on leave vacancy as and when required. On the contrary as per case put forward by the workman both in the claim statement as well as in his evidence-in-chief that he joined the mill of the opposite party in the month of September 1983 as workman and he worked continuously in the said Mill till 24.05.2011 and during his tenure of work there was no complain or allegation against him by the management. The applicant (WW1) has stated that on 24.05.2011 when he along with two other colleagues namely, Biswanath Saha and Tanmoy Mitra had been to the gate of the company to join their duties the security personnel did not allow them to join. In this connection it would be appropriate to mention that said Biswanath Saha and Tonmoy Mitra have also made two separate claim statement before this tribunal u/s 10(1B) (d) and those have been registered as case no. 02/2015 and 04/2015. The company has not claimed in the written statement that the instant workman did not work in the company since the month of September 1983 and he worked there continuously without any break till 24.05.2011. Nothing could be produced by the opposite party/company that there had been any break in service of the applicant in the Mill since such date of joining in service in the Mill. No document could be produced by the management of the

company to show that the applicant/workman used to work as 'badli'. No cross examination was done to that effect to the WW1. From the evidences of CW1 it is seen that during his cross examination he has stated that he is not acquainted with Sri Pradip Biswas but he has seen his name in the official record. He has further stated that save and except the official record he has no other personal knowledge in the matter of Pradip Biswas. So, it clear that the management maintains official record relating to the workman including the present applicant as to their nature of job etc. But no materials/documents have been produced by the company to substantiate the actual nature of job the concerned workman used to perform. On due consideration of all such aspects of the materials on record there cannot be any manner of doubt to come to a definite conclusion that the applicant/workman work the company since the month of September 1983 and till 24.05.2011 when he was refused to join his duties.

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 as 'badli' worker he does not enjoy a status. In support of his contention Ld. Advocate for the company has placed reliance on a case laws as reported in 2005 (1) LLJ at page 441 (Karnataka State Road Transport 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 September, 1983 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 'badlis', 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 for 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 WW1 that he has categorically stated in his evidence-in-chief that he joined in service of the Mill in the month of September 1983 as workman and since then he worked continuously in the Jute Mill till 20.05.2011 with the entire satisfaction of the management. He has further stated that he along with two other colleagues had been to the gate of the company to join his duties on 24.05.2011 when the security personnel did not allow him/them to join. In fact, all such statement made by WW1 in his evidence-in-chief has remain unchallenged during cross examination. The opposite party/company on the other hand, has come up with the case that on the said date the workman 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. In this connection it would be relevant to quote 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 that --

- (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 contents 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. The opposite party has relied upon a document marked 'X' for identification which is the reply made by opposite party in connection with the letter dated 29.12.2011 submitted by the present



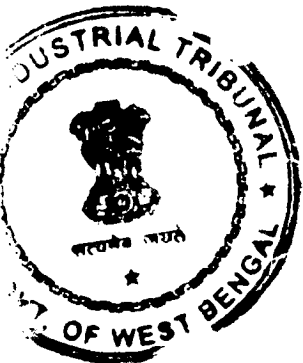
applicant to the company. Therein it has been stated by the company that the applicant is not reporting his duty at his own accord. I fail to understand what necessitated the company to issue such letter to the applicant when it is claimed by the company that the applicant was a 'badli' worker. Such conduct of the opposite party/company appears to me very much fishy and it suggest that the 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 encroached 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. SG 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 Badly 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 1983 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 ('X' for identification) made a futile attempt to avoid its responsibility and made an 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 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 present proceeding and the copy of such application/document 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 Pradip Biswas 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 Pradip Biswas, the applicant must succeed and he is entitled to have an order of reinstatement.

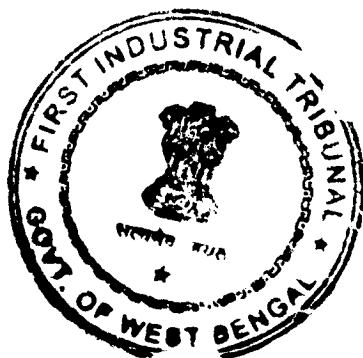
The management of the opposite party/company, namely, Prabartak Jute Mills Ltd. is directed to reinstate the applicant/workman in service with full back wages forthwith.

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