

18987/2019

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

No. Labr./5.42/(LC-IR)

Date : 1.0.2019

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 Tanmoy Mitra, 26, Teachers' Colony, P.O.- Agarpura, P.S.-Belghoria, Dist.- North 24 PGS, Kol.- 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

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: 2 :

No. ...Labr. 1542/1(5) (LE-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 Tanmoy Mitra, 26, Teachers' Colony, P.O.- Agarpara, P.S.- Belghoria, Dist.- North 24 PGS, Kol.- 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. ...Labr. 1542/2(2) (LE-IR)

Date ...10.06.19

Copy forwarded for information to :-

1. The Judge, First Industrial Tribunal, Durgapur, with respect to his Memo No. 670-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 Tanmoy Mitra, 26, Teachers' Colony, P.O. Agarpara, P.S. Belghoria, Dist. North 24 Parganas, Kolkata-700109.

(Case No. 04/2015 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 Tanmoy Mitra 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 is 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. 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 in order to join his duties on and from 24th May 2011 only because he was belonging to rival union. By such termination of his service by way of refusal the workman on repeated occasions requested the management----- both orally as well in writing to allow him to resume his duties but all were in vain. The workman also made representation to the local police station. The union on behalf of the workman also made representation on 14.06.2012 to the company with a request to permit the workman to enter into the premises of the Jute Mill and to allow them to join their service but there was no effect. The applicant/workman along with two other workmen who were also terminated from service in the same way made representation on 18.06.2013 separately before the Chief Executive (Works) of the opposite party/Mill for allowing them to join the duties but there was no effect. The workman made representation to the Managing Director of the company with a request to look into the matter sympathetically and to pass an order so that he can resume his duties. The applicant/workman along with other workmen made representation before the Officer in Charge of Belghoria Police Station on 18.06.2013 with a copy to the Commissioner of Police, Barrackpore Police Commissionerate as well as Additional Deputy Commissioner of Police, Belghoria Division. Finding, no other alternative the present applicant along with two other co-workmen who were also not permitted to join their duties filed a writ petition to the Hon'ble High Court seeking a direction so that they may



join their duties. The Hon'ble High Court after hearing the parties directed the concerned police authority to arrange for safe entry of the three petitioners in their respective service. The Hon'ble High Court also directed the police authority to submit a report in the matter. In spite of such direction the workman/workmen could not join their duties and to that effect a report submitted by the concerned police authority to the Hon'ble High Court, Calcutta. By this way the termination of the service of the workman has been made by way of refusal of employment by the management of the company illegally without following provisions of natural justice. Before such termination no compensation has been offered by the company. No show cause/chargesheet was issued against the workman and no domestic enquiry has been made against the workman. While disposing the 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 will be open to the petitioners to take steps in appropriate forum in respect of the private respondents. Thereafter the workman raised industrial dispute before the office of 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 meeting. The workman submitted an application to the authority concerned under the provision of the Industrial Disputes Act, 1947 for a certificate. The Deputy Labour Commissioner had not issued any certificate within the time. In the compelling circumstances workman has filed the application without such certificate. The company has acted in highly illegal, unjustified and malafide manner while terminating the service of the workman by way of refusal of employment. On that score, the workman has prayed for an award holding that the termination of service of the applicant/ workman is void, illegal and unjustified and for direction upon the company to reinstate the applicant/workman in service 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 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 prior to the 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 or 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 said job by the management of the company.

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

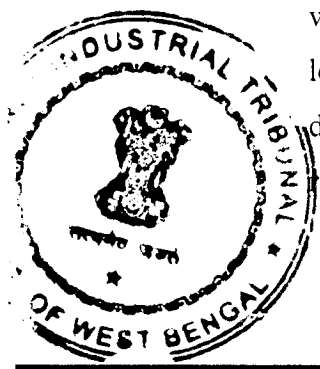
On the basis of such pleadings of the parties the following issues have been framed.

I S S U (S)

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

“Decision with Reasons”

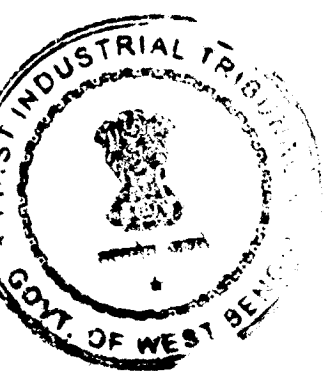
In support of his case the workman/applicant, Shri Tanmoy Mitra examined himself as WW1 by tendering his evidence-in-chief supported by affidavit. He has also placed reliance upon some documents which has been marked as exhibit-1, exhibit-2 series and exhibit-3 collectively. The witness was cross examined by the other side. The opposite party/company on the other hand examined three witnesses namely, CW1, Sri Tapan Kumar Basak, CW2, Sri Vivekananda Sarkhel and CW3, Sri Ranjan Mokhopadhyay. They were cross examined by the other side. Besides such oral evidence the company has relied on three documents, namely, two letters of authority issued by the General Manager of the company authorising CW1 and CW2 to depose in this case and those have been marked as exhibit- A & C. Exhibit-B is a letter dated 11.01.2012 issued by the Chief Executive (Works) to the applicant/workman. Exhibit-D is the xerox copy of a certified standing order of the company and exhibit-E is a xerox copy of the resolution dated 20.07.2014. The WW1 in support of his case has stated that he was appointed by the company in the month of November, 1988 and since then he served the company with entire satisfaction of the management. During his cross examination on a specific question put to him for the opposite party the witness replied that no appointment letter was given to him but a requisition slip was issued to him by the company. The workman denied the suggestion that he used to work as ‘Badli’. In support of the case as made out in the written statement filed by the opposite party, the CW1 has stated that the applicant, Sri Tanmoy Mitra used to work as Badly in the company. The witness further stated in his evidence-in-chief that the workman once wrote a letter to the company alleging that rival union was not allowing him to join his duties and the company given a reply to the same. The xerox copy of the said reply dated 11.01. 2012 has been marked as exhibit-B. During his cross



examination the witness has stated that he is working in the Mill since 1975 and he knows the applicant/workman, Tanmoy Mitra since he was working in the Mill. CW2 has stated in his evidence-in-chief that he joined the company about two and half months back and he heard the name of Tanmoy Mitra, the present applicant/workman. He has stated further that besides official record he has no other knowledge about the matter in dispute of the present proceeding. He has stated further that so long Tanmoy Mitra worked in the mill, he used to work as special 'Badly'. During his cross examination he has stated that the company has not produced any document to show that Tanmoy Mitra used to work as special 'Badly'. CW3 has also stated in his evidence-in-chief that he joined the company on 10th September 2017 and he has not seen the workman, Tanmoy Mitra. However, he acquainted with his name from official records. He has further stated that the applicant used to work as 'badli'.

On considering of the aforesaid oral and testimony of the witness we get that WW1 has categorically stated that he was appointed by the company in the month of November 1988 and since then he served the company with entire satisfaction of the management. Such statement as made by WW1 has not categorically been challenged during his cross examination. The witness denied a suggestion put to him during cross examination that he used to work in the company as 'badli'. CW2 in his evidence-in-chief has stated that present workman used to work in the Mill as special 'badli'. So, it is abundantly clear from the testimony of the Company's witness examined for the opposite party that the present applicant/workman used to work in the Mill of the company. But none of the witness has stated the exact date from which the present applicant/workman started performing such duties in the Mill. The WW1 has stated that he was obstructed to enter into the premises of the company Jute Mill to join his duties on and from 24th May 2011. During his cross examination the witness has stated that he worked as factory mechanic in the Jute Mill and his token no. 3744 and last working day in the Mill was 22.05.2011. He has stated further that 23.05.2011 was closing day. During further cross examination he has stated that on 24.05.2011 when he had been to join his duty, he was refused to join his duty and the management did not allow him to join his duty on that date. In view of such oral testimony of the witnesses it has abundantly established that the applicant/workman working in the Mill since the date as claimed by him i.e. from the month of November 1988 and he worked there continuously thereafter and was prevented from joining his duties on 24.05.2011.

Now as per the case put forward by the opposite party/company in the written statement that the present applicant/workman used to work as 'badli'.



The witness examined for the company has also stated so in that regard. However, during cross examination the CW2 Sri Vivekananda Sarkhel has stated that he has no knowledge whether Sri Tanmoy Mitra was a permanent employee of the company. He stated further that Sri Mitra used to work in Sack Sewing Department of the Mill. The CW1 during his cross examination has stated that the management used to maintain Labour Attendance Book wherein the attendance of Tanmoy Mitra and other labours were/are being maintained. He has stated further that without proper verification of the record it is not possible for him to say whether the attendance register is preserved by the company or not. He has stated during further examination that he has no personal knowledge regarding the manner of service of Tanmoy Mitra and he cannot say whether there is any document to show that Tanmoy Mitra used to work as 'badli'. So, from the statement of CW1 it is clear that the management of the Mill maintained Labour Attendance Book in respect of Sri Tanmoy Mitra and other labours. In such situation had the management of the Mill produced such Labour Attendance Book, it could be ascertained by this tribunal as to under what capacity the applicant/workman used to work. But no such attendance register has been produced. Therefore, considering the materials available and the testimony of the witnesses it can surely be concluded that the applicant/workman used to work in the Mill of the opposite party since the month of November 1988 continuously and till 24th May 2011 when he was prevented to join his duties. Now according to the case is put forward by the applicant/workman which has come out in his evidence-in-chief that he was obstructed to enter into the premises of the Company's Jute Mill when he went to join his duties on and from 24.05.2011 only because he was belonging to rival union. During his cross examination he has stated that he was obstructed to join his duty both by the member of the union and also by the management.

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



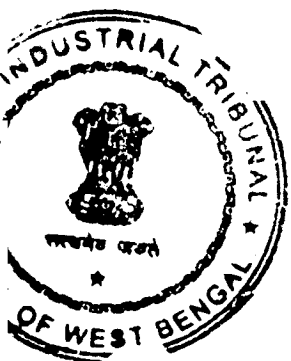
by the Joint Secretary of a registered Trade Union requesting the Mill authority to allow the applicant and his two other co-workmen to join their duties. Exhibit-2 series are the written representation of the applicant and his two other co-workmen before the Officer -in-Charge of Belghoria Police Station. From the contents of those documents it is seen that both the union and 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 workmen namely, Pradip Biswas and Biswanath Saha filed a writ petition before the Hon'ble High Court, Calcutta for an order and/or direction so that they may resume their duties and the Hon'ble High Court directed the concerned police authority to arrange safe entry of those workmen in their respective service. The Hon'ble High Court also directed the police authority to submit report before the Hon'ble Court about their resumption of duties. He has stated further that ultimately, they could not join their respective service and a report was submitted before the Hon'ble High Court by the police authority. During cross examination the WW1 has stated that before the institution of the case he filed a writ petition before the Hon'ble High Court. From the materials on record I find that the applicant/ workman on 10.01.2017 filed a list of documents with a copy to the other side. Amongst those documents I find that there is a xerox copy of the report submitted by Officer-in-Charge, Belghoria Police Station on 03.10.2014 in connections with WP no. 21423 (W) 2013 (Pradip Biswas and others Vs. State of West Bengal and others). In the claim petition identical WP no. has been mentioned. From the said report submitted by the Officer-in-Charge, Belghoria Police Station it appears that in concluding portion of the report it is stated that for the non-cooperation of the managing authority of the Jute Mill the three petitioners could not join to their work. 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 two other workmen to the Mill and arrange for their entering inside and they waited for a considerable hours in side the Mill but the management of the Mill did not allow them to join their duties. In exhibit-2/2 there is mention about the GD no. 738 dated 16.10.2004 of Belghoria Police Station affixing thereon a seal of the Police Station.

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. 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 exhibit-B 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 exhibit-B 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 workman/applicant the reference of which find place in exhibit- B 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 I the 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 to the company 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 have corroborate the case of the workman and as such I am of the view further that it would be appropriate to drawn an adverse presumption against the opposite party/company in that regard. 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. 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 his duties on and from 24.05.2011.

Then as per case set up by the opposite party/company in the written statement the applicant was '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 November 1988 and since then he served the company with entire satisfaction of the management. The applicant has further stated that he was obstructed to enter into the Mill when he went to join duties on and from 24th May 2011. 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. Nothing could be



produced by the opposite party/company that there had been any break in service of the applicant in the Mill since the date of joining in the month of November 1988. No documents could be produced by the management of the company to show that the applicant/workman used to work as 'badli'. It is discussed earlier that CW1 during cross examination has stated that the management used to maintain Labour Attendance Book wherein the attendance of Tanmoy Mitra and other labours were/are being maintained. But no such attendance book has been produced. Considering the aforesaid evidences/materials there is no manner of doubt to come to a conclusion that the applicant/ workman worked in the company since the month of November 1988 till 24.05.2011.

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 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 '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 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 WW1/applicant that he has categorically stated in his evidence-in-chief that he was appointed by the company in the month of November 1988 and since then he served the company with the entire satisfaction of the management. He has further stated that he was obstructed to enter into the Jute Mill of the company when he had been to join his duties on and from 24th May 2011 because he belongs to rival union. During his cross examination it has come out that he worked as factory mechanic in the Jute Mill and his last working day was 22.5.2011 and 23.05.2011 was closing day. He then stated during cross examination that on 24.05.2011 when he went to join his duty the management did not allow him to join. The company, namely, opposite party, on the contrary has come up with the case that on that 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 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 has no personal knowledge regarding the manner of the service of Tanmoy Mitra. He has admitted further that the management used to maintain labour attendance



book wherein attendance of Tanmoy Mitra and other labours were maintained but no such document has been produced. In my considered opinion had any such record been produced. This tribunal could ascertain under what capacity the applicant used to work in the company. The opposite party has relied on exhibit-B which is the 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 'Badly' 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 in the matter.

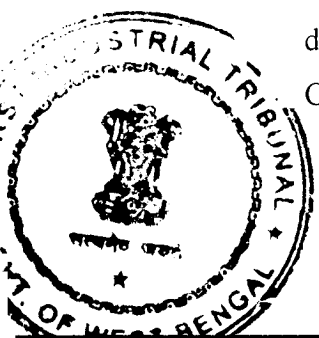
Admittedly nothing has been paid to the workman by the company in terms of Section 25F of the Industrial Disputes Act, 1947. From the case law as relied upon by the Ld. Advocate for the applicant it appears that the Hon'ble Court pleased to observe that Section 25F (a) and (b) of the Industrial Disputes 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 and 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 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 I nothing to show that before instituting the instant proceeding the applicant raised any industrial dispute before the conciliation officer which 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 institution of 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.

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 Tanmoy Mitra 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 Tanmoy Mitra, 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