

I/60689/2019

Government of West Bengal  
Labour Department, I. R . Branch

N.S. Buildings, 12<sup>th</sup> Floor

1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 835/(LC-IR)/7L-03/17

Date : 06/09/19.

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. 943 – IR dated 16.09.15 the Industrial Dispute between M/s Ludlow Jute Mills (Prop. Aekta Ltd.) currently named as M/s Ludlow Jute & Specialties Ltd. of Chengail, Dist. – Howrah and their workman Sri Sailapati Basu, Vill & P.O. – Birshibpur, Dist. - Howrah regarding the issues mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fifth Industrial Tribunal, Kolkata.

AND WHEREAS the Judge of the said Fifth Industrial Tribunal, Kolkata, has submitted to the State Government its award on the said Industrial Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

**ANNEXURE**

(Attached herewith)

By order of the Governor,

*[Signature]*

Deputy Secretary

to the Government of West Bengal

Date : 06/09/19.

No. Labr/835/1(5)/(LC-IR)

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

1. M/s Ludlow Jute Mills (Prop. Aekta Ltd.) currently named as M/s Ludlow Jute & Specialties Ltd. of Chengail, Dist. – Howrah.
2. Sri Sailapati Basu, Vill & P.O. – Birshibpur, Dist. - Howrah.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.

4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.

✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

*R5 06-9-19.*

Deputy Secretary

No. Labr./835/2(2)/(LC-IR)

Date : 06/09/19.

Copy forwarded for information to :

1. The Judge, Fifth Industrial Tribunal, Kolkata with reference to his Memo No. 976 – L.T. dated 19.07.2019.
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. Ludlow Jute Mills (Prop. Aekta Ltd.) currently named as M/s. Ludlow Jute & Specialties Ltd. of Chengail, Dist. - Howrah and their workman Sri Sailapati Basu of Vill. & P.O. – Birshibpur, Dist. – Howrah.

(Case No. VIII – 97/2014)

BEFORE THE FIFTH INDUSTRIAL TRIBUNAL: WEST BENGAL

P R E S E N T

*SRI TAPAN KUMAR DAS, JUDGE*

5<sup>th</sup> Industrial Tribunal, Kolkata.

(Dated 16<sup>th</sup> July, 2019)

A W A R D

This industrial dispute arose in between M/s. Ludlow Jute Mills (Prop. Aekta Ltd.) currently named as M/s. Ludlow Jute & Specialties Ltd. of Chengail, Dist. - Howrah and their workman Sri Sailapati Basu of Vill. & P.O. – Birshibpur, Dist. – Howrah and the same was referred before this Tribunal for adjudication under Section 10 of Industrial Disputes Act, 1947 vide G.O. No. 943-I.R./IR/7L-01/04(Pt. III) dated 16<sup>th</sup> September, 2015 upon the following issues :-

I S S U E S

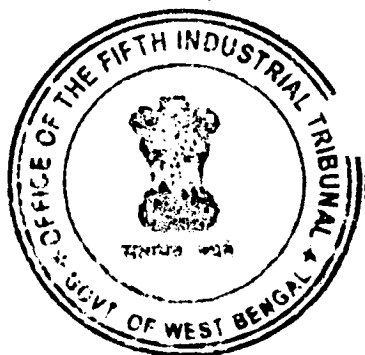
1. Whether the refusal of employment of the workman viz. Sri Sailapati Basu with effect from 10.10.2005 by the management of Ludlow Jute Mills is justified or not?
2. If not, what relief is he entitled to?

The preliminary hearing of the case on the point of maintainability is taken up and final order is delivered as follows :-

After receiving the above noted reference by this Tribunal, notices were issued upon the workman Sri Sailapati Basu and the management Ludlow Jute Mills asking them to appear in the proceeding.

It is relevant to mention that initially the case was referred to 4<sup>th</sup> Industrial Tribunal for adjudication of the above two issues vide order No. 1360 – I.R. dated 17.04.2014. Subsequently, the case was withdrawn from 4<sup>th</sup> Industrial Tribunal and transferred and referred to this Tribunal vide Order No. 9430-I.R. dated 16.09.2015.

Some and substance of the stand of the workman focused in his written statement dated 09.01.2015 is that the workman joined in the service in the month of March 1971 in this company namely M/s. Ludlow Jute Mills Ltd. and started working there as a time-keeper



in Finishing Department in "A" shift. It is the allegation of the workman that there was an agreement between the management and some workers on 17.11.1998 in respect of terms and conditions of the employment and that copy of agreement neither has been wall up nor was supplied to this workman Mr. Basu in spite of repeated request by him to the management.

It is stated that on 02.12.1998 dispute arose between the workman and the Manager, Finishing Department Mr. R.S. Saha and the workman was prevented from signing the Attendance Register in respect of joining his duty and it was told that he was suspended from the service. No written order of suspension was ever issued to him. Though the workman was willing to do his official duties but he was not allowed by the management. He had sent his complaint to the Chief Personnel Officer by registered post with A/D which was received by him. The Chief Personnel Officer directed him to join his duty by his letter dated 19.12.1998 and the workman went to office to report but he was not allowed to join his duty and was directed to do some extra job which was not within his allotted duty.

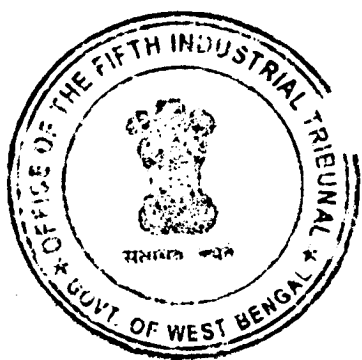
It is further alleged that the workman expressed his willingness to join his duty but on every occasion he was prevented to join and also prevented to put signature on the Attendance Register. On 15.01.1999 he submitted a written representation to the Chief Personnel Officer and requested him to allow to join his duty and also requested him to give specific date of reporting. He also requested in his representation that a copy of agreement be supplied to him. Thereafter he was asked again to join his duty and when he went there to join his duty, he was also directed to do extra job in terms of the agreement/settlement dated 17.11.1998. It is stated in the written statement that there were series of written correspondences between him and the management in this regard and thereafter the management issued show-cause notices dated 27.02.1999 (Charge sheet) with an allegation of unauthorized absence on duty since 02.12.1998. He was allowed to enter into the office campus only on 12.03.1999 to produce his written show cause answer. Thereafter on every occasion he wanted to join his duty but he was refused to get entry in the factory premises on the ground that he was charge-sheeted. It is further case of the workman that the management did not pay any heed with respect to his request to send his arrear dues and ancillary benefits from the management. He also approached the Assistant Labour Commissioner, Uluberia with respect to the above facts and he assured him to take necessary steps.

He has admitted in his written statement that domestic enquiry was started against him. He has made allegation in the written statement about the alleged defective procedure adopted by the enquiry officer and he was prejudiced for the bias approach and attitude of the enquiry officer. It is further stated in the written statement that copy of order of dismissal



dated 10.10.2005 was sent to him which he received on 22.10.2005 and he was not given any opportunity of being heard prior to his termination from service by the employer. He has raised dispute by his letter dated 10.12.2005 before the Labour Commissioner. The finding of the enquiry officer in the domestic enquiry is perverse and the dismissal order passed by the management is also perverse and is liable to be withdrawn and he should be paid his all back-wages from 02.12.1998 up till date. He raised dispute on 07.03.2006 before the Labour Commissioner and the matter was kept in abeyance. He filed writ application U/s. 226 before the Hon'ble High Court vide W.P. No. 460(W) of 2007. He raised a fresh dispute on 02.05.2007 before the Labour Commissioner and accordingly a conciliation proceeding was started and as conciliation proceeding failed so the Labour Department, Govt. of West Bengal made a reference on 17.10.2014. In his written statement he has prayed that an interim order regarding payments of all his back-wages be paid to him by an order of direction from this Tribunal.

In the instant case the company has also filed its written statement wherein it has been divided in three (3) parts namely A, B and C. Part B of the written statement deals with the factual aspect in respect of alleged dispute between the workman and company. It has been stated in the written statement that the workman joined in service of the company as a clerk on 29.03.1971 and continued to work there till 1<sup>st</sup> December, 1998 and he absented from service unauthorizedly since 2<sup>nd</sup> December, 1998 in spite of repeated request from the end of the company to join his duty. The company has received communication from Mr. Basu on 13.12.1998 containing some allegations levelled against Sri R.S. Sah and management immediately by its letter dated 19.12.1998 denied the allegation and send the same to Mr. Basu with request to join his duty immediately in view of the settlement dated 17.11.1998 amongst various operating unions and the management. Copy of the said settlement also was sent to Mr. Basu on his demand but he did not join his duty till 27.02.1999. Having no other alternative the management issued show cause notice to him for his unauthorized absence in duty since 02.12.1998. Mr. Basu after receiving such show cause notice sought for time for submitting his reply and subsequently, he sent his reply vide his letter dated 12.03.1999 wherein he has stated that he was entrusted another job (duty) than what he had been doing previously. He also made allegation that his departmental head Mr. R. S. Sah asked him not to join his duty on 02.12.1998 and so he remained absent from his duty. The written explanation of Mr. Basu was not satisfactory from the consideration of the management and so a domestic enquiry in respect of the matter was initiated against him and Mr. Tarak Dutta, Advocate was entrusted to hold the domestic enquiry. Mr. Tarak Dutta started domestic enquiry from 06.02.2000 and continued till 18.02.2002.



As Mr. Tarak Dutta, Ld. Advocate could not continue with the domestic enquiry, so Sri Shib Sankar Roy, Ld. Advocate was engaged afresh to conduct the domestic enquiry and he started his such work on 14.02.2004 and concluded the same on 15.02.2005. Both the Enquiry Officer conducted the domestic enquiry following the principle of natural justice. The employee Mr. Basu were present at the time of enquiry and according to his prayer opportunity was given to him to bring his representative, co-employee at the time of enquiry but after several adjournments he did not avail the opportunity. The copies of day to day proceeding was handed over to the employee Mr. Basu by the enquiry officer. the management had examined its witness who were cross-examined by the employee Mr. Basu. He was absent on 11.01.2005 in the enquiry and then next date was fixed on 15.02.2005 and he was properly informed but he did not turn up and as such the enquiry officer proceeded the enquiry ex-parte on that date and concluded the same. The enquiry officer submitted report on 01.04.2005 and came to a conclusion that the charges of unauthorized absence levelled against the employee concerned were proved by sufficient materials on record. Disciplinary authority of the company attempted to serve the report of enquiry to the charged employee at his residential address by registered post but he avoided to receive the same on several occasions and finally on 30.09.2005 he received it and submitted his representation on 09.09.2005 to the management. Thereafter, the disciplinary authority considering his representation together with the enquiry report came to a conclusion that proved misconduct of the employee was grave and it warrants severe punishment but such punishment could not be imposed upon the employee concerned as he already abandoned his employment long before. It is further case of the management that the conciliation officer had lost sight of the dispute and erroneously submitted a failure report to the Appropriate Government without verifying the facts and circumstances of the dispute and referred the stale dispute framing a nonexistent issue which is neither maintainable nor sustainable. The management in part C of its written statement has categorically denied the allegations made against it by the concerned employee. Part A of the written statement of the management deals with the preliminary points both legal and factual aspects wherein it has categorically been stated that this case is not maintainable both in law and fact. The instant reference is misconceived, erroneous, highly belated and not sustainable in law and facts. The referred issue in the order of reference has got no existence as it is not the case of either of the parties to the effect that the employment of the concerned employee has been refused on 10.10.2005. It is further stated in the written statement by the management that in view of prayer made by the concerned employee in his written statement making out a case of alleged termination of service w.e.f. 02.12.1998 which cannot be adjudicated under the instance reference. The Tribunal draws jurisdiction from the order of reference and in view of the issue made under

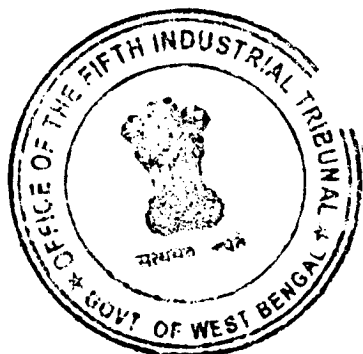


order of reference it is not the case of either of the parties to the effect that the employment of Mr. Basu was refused on 10.10.2005 and as such the dispute as referred in the order of reference has got no existence and so this Tribunal has got no jurisdiction to adjudicate the same. The employee concerned was never refused nor terminated on 10.10.2005 by the management. On the contrary he himself abandoned his employment long back and so the reference is bad and not maintainable in the eye of law. The Appropriate Government by framing terms of reference as "refusal of employment" has referred the matter retrenchment of Mr. Basu whereas it is settled law that the employee who had not worked for 240 days within a period of 12 months preceding the date of termination are not entitled to the benefits of retrenchment. Since there is no refusal of employment of Mr. Basu by the management, the instance reference is not maintainable in law. It is further case of the management that the Appropriate Government has referred the matter as refusal of employment of Mr. Basu w.e.f. 10.10.2005 whereas the prayer of the concerned employee made out in the written statement is his termination w.e.f. 02.12.1998 and in the body of written statement the concerned employee had made out a case of dismissal. The refusal of employment coming in the definition of "lock out" within the meaning of Section 2(1) of the Industrial Disputes Act has to be sponsored by sufficient numbers of workmen but the concerned employee is contesting the case in his individual capacity and therefore the reference is not maintainable. The management also raised technical objection to the effect that the written statement of the employee has not been verified in terms of sub-rule 3 of Rule 20B read with Rule 69 and 70 of Industrial Disputes Rules. It is further case of the management that on 10.10.2005 the employee was not a workman as defined U/s. 2(s) of the Industrial Disputes Act. So, the provision of Industrial Disputes Act is not applicable. That the date of birth of the employee was 18.10.1948 and according to certified standing order being followed by the company, the age of retirement was 58 years and so on calculation the date of retirement of the concerned employee was 17.10.2006 even assuming he was continuing in service. Therefore, on the date of instant reference Mr. Basu was not coming within the definition of workman and as such he is not entitled to get any protection of Industrial Disputes Act.

Finally, the management has prayed for determination of disposal of the preliminary objection made out in the Part A of the written statement and also has prayed for an Award in favour of the company.

#### **DECISION WITH REASON**

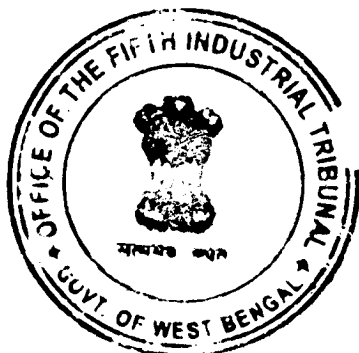
The issue what has been referred by the Govt. of West Bengal, Labour Department by its order dated 16.09.2015 is "whether the refusal of employment of the workman viz. Sri Sailapati Basu with effect from 10.10.2005 by the management of Ludlow Jute Mills is justified or not?"



So, it is clear that the dispute is “Refusal of employment of the workman by the management of the Mills on and from 10.10.2005” and this dispute or issue is required to be adjudicated by this Tribunal. This Tribunal has been empowered to deal with the issue itself only and it has not been empowered to travail beyond the issue. Both workman and the management have placed their respective stand in their respective written statement. Both the parties are very much binding upon their own stand canvassed in the written statement. The management of Ludlow Jute Mills raised the voice of non-maintainability of the case itself on the main legal ground that there was no case made out by either of the parties on refusal of employment of the workman by the employer on 10.10.2005 and so the dispute as referred in the order of reference dated 16.09.2015 has got no existence and so this Tribunal has got no jurisdiction to deal with this reference. In this connection, it is very much relevant to mention the observation of the Hon’ble Apex Court in the case of National Engineering Industries Ltd. – Vs. – State of Rajasthan & others 2000(1) SCC 371 that the Industrial Tribunal/Labour Court constituted under the Industrial Disputes Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of subject matter of reference and cannot travel beyond the same.

Their Lordship of the Supreme Court in the case Management of Express News Papers (P) Ltd. Madras Vs. – The workers & others reported in (1962) II LLJ 227 SC, has observed “since the jurisdiction of the Industrial Tribunal in dealing with industrial dispute referred to it U/s. 10 is limited by Sec. 10(4) to the point specifically mentioned in the reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by Industrial Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in casual manner after gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided.

From Para 2, 3, 4, 5 of the written statement of the workman, it transpire that he intended to join his duty since 02.12.1998 but the management did not allow him to join and he was prevented by Departmental Head, Mr. R.S. Sah to join his duty and he was also allotted some extra duty in addition to his previous duty as time keeper in the finishing department in ‘A Shift’. There was some exchange of written communication between workman and the Management in this regard and finally the management issued charge-sheet dated 27.02.1999 to him. So, the stand of the workman is that there was refusal of employment of the workman with effect from 02.02.1998 by the employer. The grievance of the workman against the management as sketched in his written statement is that he was



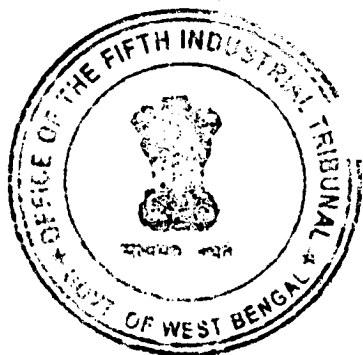
refused or prevented to join his duty by the management on and from 02.02.1998. Whereas on the other hand, it is clear stand of the management that the workman unauthorizedly absented himself from his duty on and from 02.12.1998 and he was repeatedly requested from the end of the management to join his duty but he did not join and as such, show-cause notice was issued to him on 27.02.1999 and his reply to the show-cause notice was not satisfactory, so domestic enquiry was initiated against him. It is clear case of the company that there was no occasion of refusal of employment of the workman on 10.10.2005 nor he was ever suspended or dismissed from service at any point of time rather the workman himself abandoned the service voluntarily.

So, the facts as appended in the written statement of either of the parties clearly beyond doubt speaks that there is no existence of dispute of refusal of employment of the workman w.e.f. 10.10.2005.

It is main allegation of the workman that the management has refused the employment of the workman on 02.12.1998 and it is specific stand of the management that workman absented himself from his duty unaurhotizedly from 02.12.1998. From the averment of the written statement of both the parties, it is become admitted position that the workman did not join his duty or did not work in his work place on and from 02.12.1998 whatever may be the nature and character of his absence either refusal of employment or unauthorized absence.

The workman argued the case himself and has submitted the fact that the work of the mill was suspended for a long period and thereafter the management and the workers sit together to dissolve the problems of the mill and arrived at a settlement by both sides on 17.11.1998 and in terms of settlement dated 17.11.1998, the Mill reopened at 6.00 a.m. on 28.11.1998 and the workers including Mr. Sailapati Basu joined duty on that date and performed his duty in normal course till 01.12.1998. Since 02.12.1998 he was prevented to sign on Attendance Register as well as to join his duty by the departmental head, Mr. R.S. Sah.

So according to Mr. Basu there was refusal of his employment by the management w.e.f. 02.12.1998. It is not the case of the workman that his employment was refused w.e.f. 10.10.2005. On the contrary, it is his specific case that he was illegally dismissed by the management on 10.10.2005 and he received such order of dismissal on 22.10.2005. He has referred the alleged order of dismissal dated 10.10.2005 "Annexure B-12". On careful scrutiny of the letter dated 10.10.2005 it does not appear that it is an order of dismissal issued by the management against Mr. Basu. On the contrary it speaks that it is a reply of the representation dated 09.09.2005 made by Mr. Basu to the Management. This letter dated 10.10.2005 further indicates in Page 4 that the order of dismissal from service though would





be the most appropriate punishment against proved mis-conduct in the Domestic enquiry against Mr. Basu, but it could not be issued as Mr. Basu has already abandoned his employment with the company voluntarily. So, it is clear that no order of dismissal was issued to him on 10.10.2005. Therefore, the question of refusal of employment of Mr. Basu by the management on 10.10.2005 also does not arise. On that date neither his employment was refused nor he was dismissed from the service as alleged by Mr. Basu.

Prayer of the employee Mr. Basu made in his written statement clearly indicates that he was very much aware of the fact that he was not continuing his service from 02.12.1998 and as such he has only prayed for an order of payment of all back wages and benefits. He has claimed that he was terminated from service on and from 02.12.1998.

Charges levelled against him by the management in the domestic enquiry was that "misconduct by unauthorized absent". According to the report of such domestic enquiry, said charge was well proved by the management. The workman participated in the major portion of the period of said enquiry. He subsequently ventilated his objection against the enquiry report on the ground of biasness act of the enquiry officer and violation of principle of natural justice.

But on careful scrutiny of the enquiry proceeding and its report, it appears that first Enquiry Officer Mr. T. Dutta allowed workman to take assistance of co-workman as his representative in the proceeding but workman did not avail the opportunity to bring his co-workman as representative in spite of taking several adjournments. It further appears that in presence of workman, management's first witness Mr. R. S. Sha was examined on 20.05.2001 and 15.07.2001. Subsequently said witness left his job with the company and as such he was not under control of the company and so the said witness could not be produced for cross-examination. Second Enquiry Officer took his first sitting on 14.02.2004 but the workman was absent in spite of notice served upon him. On subsequent date i.e. 30.06.2004, 14.07.2004, 29.07.2004 workman was absent without intimation though each date he was notified.

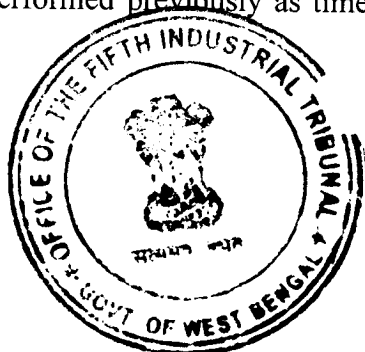
On 17.08.2004 he was present and management examined its witness B. Bhattacharya. The evidence of first witness Mr. R. S. Sha was expunged by the Enquiry Officer as management could not produce him for cross-examination. There was no prayer from the end of the workman to keep the evidence of Mr. R.S. Sha on record as it is on the ground that there was some admission of the said witness favorable to the workman. So, prima facie there was no illegality or irregularity on the part of the Enquiry Officer in expunging the evidence of 1<sup>st</sup> witness. On 15.09.2004, S. Bhattacharya was cross-examined by Mr. Basu, the workman. On 22.09.2004 06.10.2004, 18.10.2004 the workman was absented himself in the proceeding without step. So hearing was adjourned one after another



date for the sake of principle of natural justice. On 24.11.2004 the workman was present and the witness A. K. Adak for the management was examined and partly cross-examined by the workman. On 14.12.2004 workman again was absented and hearing was adjourned for the same. Then on 05.01.2005 the witness A. K. Adak was further cross-examined. Next date was fixed on 11.01.2005 and on that date workman was absent without step. Next date was shifted to 15.02.2005 with a notice to workman giving clear caution that enquiry will be held ex-parte in case of his failure to remain present. So, when he again remain absent on 15.02.2005, the Enquiry Officer proceeded to take up enquiry ex-parte. There is no illegality or irregularity in holding the enquiry ex-parte on the part of the enquiry officer especially considering the whole reluctant approach and conduct of the workman in respect of the fast progress of the enquiry. It cannot be said after perusal of the proceeding and its report that the reasonable opportunity was not given to the workman to adduce his part of evidence. On the contrary, it clearly reveals that he intended to stall the progress of enquiry or in other words to delay the progress of it at his choice. From four corners of proceeding and its report, it does not in any way indicate that the enquiry officer acted with any biasness or violated the principle of natural justice. When a person claims justice he must come with his bonafideness and clean hand. It is easy to raise voice of biasness and violation of natural justice but there should have some reasonable cause behind it showing bonafideness but in the instant case, it is absent from the end of workman and so the plea of biasness and violation of principle of natural justice as is taken by workman cannot be said convincing.

Here it is relevant to point out the contents of show-cause reply dated 12.03.1999 (Annexure B-6) written by Mr. Basu to the G.M. of M/s. Ludlow Jute Mills wherein he has stated "I was asked to do work other than the work I was entrusted to do". In further down he has stated "In order to avoid further trouble, I did not join office in spite of my desire to do. I am always ready and willing to join my duty and do the work as I was doing before". He also in the last para has stated "My absence are not unauthorized and acts of misconduct.....". So from this reply of the employee it is clear that it was very much within his knowledge that he was absent from his duty since 02.12.1998. The cause of his such absence is that his duty was allotted as not only time keeper of spinning department but also to take attendance of workman of export department and he was not willing to do such duty of taking attendance of workman of export department.

This new safe mode and manner of duty for workman was introduced and prepared and allotted as per settlement dated 17.11.1998 by and between Management and union. Other employees accepted the new safe mode and manner of duty allotted to them but the present employee Mr. Basu differs and he is stick to his stand that he is only willing to do duty as he performed previously as time keeper of finishing department and so absented



himself from duty. This is an arrogant attitude and approach on the part of the employee which is not beneficial in any way for himself or for the whole workers community. It should not be forgotten that the works of the mill was suspended for a long period and it was started functioning again for the benefit of the workers and the management under a settlement dated 17.11.1998.

Ld. Advocate for the management has argued and pointed out that the employee Mr. Basu in no way is entitled to get the benefit of retrenchment as he was not coming under the purview of the definition of workman. He did not work for a period of 240 days in a year preceding his alleged termination, dismissal and / or refusal employment w.e.f. 10.10.2005. In support of his such contention he has relied upon the decision of Hon'ble Supreme Court in Range Forest Officers – Vs. – S.T. Hadimani reported in 2002 LAB IC 987 and Gloster Ltd. – Vs. – State of West Bengal reported in 2013(4) CHN (CAL) 488. In the Range Forest Officers' case Hon'ble Apex Court has observed that initial onus is lying upon the workman to show and establish by cogent materials namely pay slip or wages slip that the workman worked for 240 days in the year preceding his termination from service. In Gloster Ltd. Case Hon'ble Parent High Court has observed in Para 7 that the employee shall be deemed to be in continuous service for a period of one year if the workman has actually worked 240 days during the period of 12 calendar months preceding the date to which the calculation is to be made.

I have already mentioned earlier that it is to be adjudicated in the present reference case by this Tribunal is whether there was any refusal of employment of Mr. Basu w.e.f. 10.10.2005 by the management of the mill. It is not the issue under order of reference as to whether there was any refusal of employment of Mr. Basu w.e.f. 02.12.1998. Admittedly Mr. Basu did not work in the mill from 02.12.1998. Mr. Basu alleges that his employment was refused from 02.12.1998 by the management and so he could not work. On the other hand, the management described that Mr. Basu absented himself from the date on and from 02.12.1998 and his such absence was unauthorized. So it is admitted position that Mr. Basu did not work in the mill during the period 02.12.1998 till 10.10.2005 i.e. more than 240 days from 10.10.2005. So his entitlement of benefit of retrenchment has got no leg to stand upon in view of above cited decision by the management.

According to the office record, the date of birth of Mr. Basu was 18.10.1948. The age of retirement in view of certified standing order is 58 years. So had Mr. Basu been in service of the company after 01.12.1998, he would have been retired on 17.10.2006. Therefore, Mr. Basu was not coming with the definition of 'workman' U/s. 2(s) of the Act and from this angle, he is not entitled to get any protection of Industrial Disputes Act and so the reference itself is not maintainable.



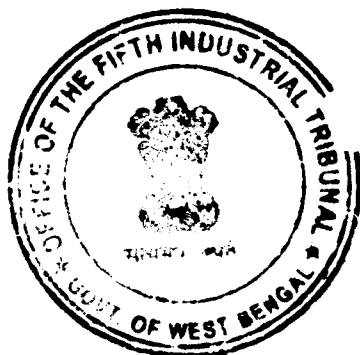
In the decision reported in AIR 2000 SC 839 – Nedungadi Bank Ltd. – Vs. – K. P. Madhavan Kutty & Ors., the Hon’ble Supreme Court has observed in Para 6 that “law does not prescribe any time limit for the appropriate government to exercise its powers U/s. 10 of the Act. It is not that this power could be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised power in this case after lapse of about 7 years of order of dismissing the respondent from service. At the time, the reference was made under industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject matter of reference U/s. 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. ....In fact, it can be said that there was no dispute pending at the time when the reference in question was made”.

In the present case, the date of dispute mentioned in referral issue is 10.10.2005 and said dispute was referred on 17.10.2014.

It is clear from the foregoing discussion and case and counter case of both the parties that at the time of passing the order of reference on 17.10.2014 there was no existence of dispute between the parties. There is no explanation about such delay in making the reference. In this view of the matter and having regard to the facts and circumstances of the case I have no hesitation to hold that above order of reference is not maintainable in the eye of law as well as in fact. Especially when the dispute has referred in the order of reference is not in existence at all between the parties and therefore the present case in no way is maintainable.

It is relevant to note at this stage to avoid all confusions regarding mode and manner of passing a final order of the case taking preliminary point or issue.

Rule 20H of the Industrial Disputes Rules, 1958 deals with the procedure of final hearing of a case either on taking of the preliminary point or after taking of final evidence adduced by both the parties. Under this rule both the parties remain present in the proceeding and hearing of the case. This rule does not provide rather is silent about passing of any “contesting award”. Rule 21 speaks the procedure where one party is absent at the time of final hearing. This is rule also does not specifically speaks about passing of any “ex-parte award” by the Tribunal. Rule 22 speaks about the procedure to be adopted by the Tribunal when both the parties failed to appear before the Tribunal at the time of hearing and it provides “.....may submit an award to the State Government on the footing that the industrial dispute under reference is no longer in existence” meaning thereby a no dispute award. A contesting award normally is passed by the Tribunal on the strength of Rule 20H.



An Ex-parte Award normally is passed on the strength of Rule 21 and a No Dispute Award normally is passed on the strength of Rule 22.

A reference made U/s. 10 cannot be rejected and/or dismissed as it would not amount to an Award. The Tribunal is supposed to pass an Award. The definition of the term "Award" in Section 2(b) of the Act clearly stipulates determination of the industrial dispute or any question, relating thereto, referred to the Tribunal. There can be no determination of a dispute much less to industrial dispute unless there is adjudication. The determination may be interim or final but mere dismissal of reference on the ground of non-maintainability can by no stretch of imagination be said to be determination of a dispute. Thus, a reference made U/s. 10 cannot be rejected. Once an order of reference has been made, the Tribunal is bound to decide the same.

So, considering the above three Rules as a whole and its spirit, I have no hesitation to hold in this instant case that this Tribunal is empowered to pass a final order on the ground of non-existence of dispute at the time of order of reference as well as at the time of passing the final order.

In the light of my above observation, I find and hold that there is no existence of dispute between the parties and so the case is liable to be finally disposed of.

Hence,

It is ordered,

That the industrial dispute under order of reference vide G.O. No. 943-I.R./IR/7L-01/04(Pt. III) dated 16<sup>th</sup> September, 2015 is not maintainable in the eye of law as there is no existence of such dispute at the time of reference as well as at the time of passing this order.

Accordingly, the case is disposed of on contest and this order is to be treated as an Award.

Dictated & corrected by me.

*Sd/—*  
Judge.  
Judge,  
5th Industrial Tribunal  
Govt. of West Bengal

*Sd/—*  
(Tapan Kumar Das)  
Judge  
Fifth Industrial Tribunal  
Kolkata  
16.07.2019

Judge,  
5th Industrial Tribunal  
Govt. of West Bengal

