

File No.LABR-22015(16)/648/2018-IR-SEC-Dept. of LABOUR
Government of West Bengal
Labour Department
I.R. Branch
N.S.Buildings, 12th Floor
1, K.S.Roy Road, Kolkata - 1

No. Labr./22/(LC-IR)

Dated, Kolkata, 08.01.19

ORDER

WHEREAS an industrial dispute existed between M/S Vishwamitra India Consultancy Services Limited, 3rd Floor, Room No.305, 5, Mangoe Lane, Kolkata – 700 001 and their workman Mrs. Chaity Ghosh and others, Block-BI, Flat No.10, Sampa Mirza Nagar Housing(Phase-1), P.O. Sarkarpool, Kolkata-700 143 regarding the issues being a matter specified in Second schedule of the Industrial Dispute Act,1947(14 of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute Act,1947(14 of 1947) to the Judge, Seventh Industrial Tribunal Specified for this purpose under this Deptt.'s Notification No.101-IR dated.2.2.12;

AND WHEREAS the said Judge, Seventh Industrial Tribunal has submitted to the State Government its Award on the said Dispute.

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

ANNEXURE

(Attached herewith)

By Order of the Governor

Sd/-

**Deputy Secretary to the
Government of West Bengal.**

No.Labr./22/1(2)/(LC-IR)

Dated, Kolkata, 08.01.19.

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal with reference to his Memo No.1687-LT dtd.13.08.2018.
2. The Joint Labour Commissioner(Statistics), W.B., 6, Church Lane, Kol-1.

Sd/-

Deputy Secretary

(contd....2)

File No. LABR-22015(16)/648/2018-IR-SEC-Dept. of LABOUR

No.Labr/22/2(5)/(LC-IR)

Dated.08.01.2019

Copy with a copy of the Award is forwarded for information & necessary action to :

1. M/s. Vishwamitra India Consultancy Services Limited, 3rd Floor, Room No.305, 5, Mangoe Lane, Kolkata-700 001.
2. Mrs. Chaity Ghosh and others, Block-BI, Flat No. 10, Sampa Mirza Nagar Housing(Phase-1), P.O. Sarkarpool, Kolkata-700 143
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The Labour Commissioner, W.B., N.S. Building(11th Floor), 1, K.S.Roy Road, Kolkata-700 001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Deputy Secretary

*com
Part 1*

In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata

Case No.01/2A(2)/2016; u/S. 2A(2) of the Act 14 of 1947

Mrs. Chaity Ghosh and Anr., Block-BI, Flat No.10,
Sampa Mirza Nagar Housing (Phase-I),
P.O. Sarkarpool, Kolkata – 700143.

..... Applicant(s)

Versus

M/s. Vishwamitra India Consultancy Services Limited, 3rd Floor,
Room No. 305, 5, Mangoe Lane, Kolkata – 700001.

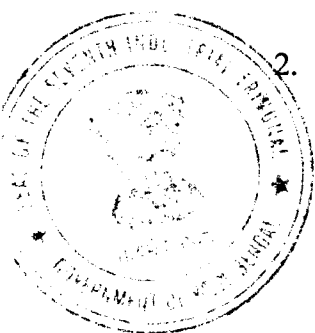
....OP/Company

A W A R D

Dated : 27-07-2018

1. The instant case came to be registered on 04.01.2016 upon an application under Section 2A(2) of the Industrial Disputes Act, 1947, referred to as the Act hereinafter, being filed jointly by Mrs. Chaity Ghosh and Mr. Amit Nandi against their employer M/s. Vishwamitra India Consultancy Services Ltd.with its office within jurisdiction of this Tribunal, alleging that their employer had terminated their services under the veil of forced refusal of employment, and that such termination of their services was unjustified and illegal and accordingly, prayers were made for directions, ordering reinstatement of the applicants in service with full back wages, for the entire period of such forced non-employment and consequential benefits.

2. On registration of such case, notice/summons together with copy of such application by the applicants, were sent by registered post to the OP/Company, at their given address, with a direction upon them to appear on the date fixed and file their written statement. Records further reveal that on the date so fixed 15.02.2016, the summons report was not received and neither did the



OP/Company appear and on the next date fixed 04.03.2016, the sealed envelope containing the notice along with copy of the application was received *undelivered* by this Tribunal from the postal department, with an endorsement '**unclaimed**' and accordingly, this Tribunal treated the same as **good and valid service** of the application on the OP/Company and since OP/Company did not appear, this Tribunal recorded a finding that the OP/company was not keen to contest this case and directed that the matter be fixed for **ex-parte** hearing.

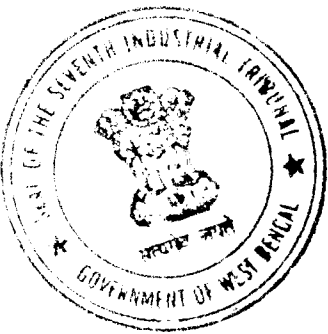
3. The applicants, Chaity Ghosh and Amit Nandi, as **PW-1** and **PW-2** respectively, testified in support of their case on 06.04.2016 by tendering their affidavit-in-chief(s), on oath, and both of them also identified documents, which were taken into evidence. The documents identified by PW-1 Chaity Ghosh have been marked **Exhibits -1 to 4**, while those identified by PW-2 have been variously marked **Exhibits- 5 to 9/1**, and all such documents and the contents thereof would be discussed hereinafter at relevant portions.
4. Since both the applicants had filed a joint-application under Section 2A(2) of the Industrial Disputes Act, 1947, this Tribunal would examine each of their cases separately hereinafter, with the view to determine if both or either of them are entitled to the relief(s), as prayed for or otherwise.

Case of Chaity Ghosh

5. Adopting the contents of the joint-statement of claim filed before this Tribunal in her affidavit-in-chief, Chaity Ghosh (as PW-1) further testified that her service particulars were stated in **Annexure-A** to such joint-statement of claim and also stated that since her case was identical in nature and against the same employer, she had filed the joint-petition with the other petitioner. PW-1 further stated that during her appointment, the OP/Company, with a motivated presumption and with a view to avoid its statutory obligations, offered her and others "**colourful**

designations” and her such designation did not match her nature of work, which was out-and-out manual and technical in nature, by using computer machine, as well as operational and clerical too. PW-1 further stated that she had no independent power to act as supervisory personnel nor did she have any managerial or administrative capacity, during her such employment with the OP/Company. In this regard, from the Schedule at Annexure-A of the application, which has been relied upon by PW-1 specifically, it would appear that the date of joining of Chaity Ghosh (PW-1) was 03.12.2010 and she was enrolled with the Provident Fund Organisation and was a beneficiary under the ESI Corporation also, through and under the establishment of the OP/Company. In the aforesaid context, PW-1 further stated that on 07.10.2015, without assigning any satisfactory reason, the OP/Company refused employment to the joint-applicant, following “hire and fire policy” which resulted in “forced idleness” of PW-1, and in that context, it was further stated she was still not gainfully employed elsewhere. PW-1 further stated that her salary was raised by the OP/Company from time to time and that the final salary drawn by her, before her such termination, was Rs.20,900/-. In the light of her said testimony, PW-1 prayed for reinstatement in service with her full back wages and other consequential statutory benefits, by setting aside her such unlawful termination by the OP/Company on 07.10.2015.

6. Having traversed the testimony of PW-1, and in the absence of any contra evidence thereto, it is clear that considering the nature of job and duties assigned to her, Chaity Ghosh would fall under the definition of ‘**workman**’ [Section 2(s) of the Act] and further, in the absence of any denial thereof, the OP/Company would be an employer carrying out “industry” [Section 2(j) of the Act] within territorial jurisdiction of this Tribunal, and clearly therefore the matter relating to **termination of services of Chaity Ghosh** would be an “Industrial Dispute” u/S. 2A(1) of the said Act, bringing the case under Section 7A of the said Act under



the jurisdiction of this Tribunal to adjudicate such dispute, as per the procedure prescribed by the said Act. This finding derives support from the ambit of the term 'workman' as laid down by the Hon'ble Supreme Court in its judgment passed in *Devinder Singh vs. Municipal Council, Sanaur*, reported in AIR 2011 SC 2532, at paras. 12-14 thereof.

7. In this context, from **Exhibit-2**, which is a copy of the Provident Fund statement of Chaity Ghosh, under the employment of OP/Company, for the period April 2011 till December 2014, it appears that such contributions were regularly made, month on month. Further, from **Exhibit-4**, which is a copy of the pay-slip of Chaity Ghosh for the month of June 2015, it would reflect therein that her date of joining service was 03.12.2010 and she was enrolled in ESI scheme and that apart, deductions at source were being made by OP/Company from her remuneration, for contribution towards Provident Fund and payment of Professional Tax. From such evidence as aforesaid, and in light of testimony of PW-1, it can be reasonably held that Chaity Ghosh would have served continuously, without break, from 03.12.2010 till her such termination on 07.10.2015 and in the absence of contra evidence, it is clear that such service of Chaity Ghosh would have been 'continuous service' in terms of provisions of Section 25B of the Act, including for the period of one year immediately preceding the date of termination of her service. In that context, the definition of '**retrenchment**' as under Section 2(ooo) of the said Act, West Bengal Amendment (17 of 2007) corresponding to Section 2(oo) of the Industrial Disputes Act 1947, would clearly apply on the fact-situation as has come out in the instant case, as the OP/Company had not issued any show-cause nor conducted any domestic enquiry and neither did the OP/Company terminate her services by way of some punishment, and hence termination of Chaity Ghosh clearly was a case of "**retrenchment**". It could be noted that the principle(s) laid down by the Hon'ble Supreme Court by judgement dated 16-01-1976 passed in

[01/2A(2)/2016]

The State Bank of India versus Shri N. Sundara Money (Civil Appeals Nos. 933 and 934 of 1975), reported in AIR 1976 SC 1111 : 1976 LAB. I. C. 769, and relied upon by the joint-applicant herein, in defining the ambit and implication(s) of the provisions of Section 2(oo) and Section 25F of the Act, would squarely apply to the fact-situation as has come out in the instant dispute.

8. Clearly therefore, the termination of services of Chaity Ghosh would be governed by the provisions of Section 25F of the Industrial Disputes Act, 1947, which lays down the condition(s) precedent for retrenchment of any workman, who has put in continuous service of not less than one year with any employer. In that view of the matter, there is nothing in the pleadings or in evidence of PW-1 that would suggest that the OP/Company had paid any compensation, including retrenchment compensation, to Chaity Ghosh prior to her such termination. In the light of the aforesaid discussion, this Tribunal finds no impediment in holding that the Chaity Ghosh was a 'workman', who had rendered services from 03.12.2010 till 07.10.2015, including for a period of one year immediately preceding the date of termination and hence, she rendered continuous service, in terms of section 25B of the Industrial Disputes Act, 1947 to the OP/Company and thus, her such services could not have been terminated without following the mandate of Section 25F of the said Act. Clearly, therefore, the **termination of the applicant Chaity Ghosh by the OP/Company on 07.10.2015 is not found to be lawful or justified** and further, such **termination is held to be bad in the eyes of law**, being in clear violation of express provisions of Section 25F and such other provisions of the said Act.

Case of Amit Nandy

9. Adopting the contents of the "joint-statement of claim" filed before this Tribunal in his affidavit-in-chief, Amit Nandi the joint-applicant further testified

[01/2A(2)/2016]

(as PW-2) that his service particulars were stated in Annexure-A to their “joint-statement of claim” and also stated that since his case was identical in nature and against the same employer, he had filed the joint-statement of claim with the other petitioner. PW-2 further stated that during his appointment, the OP/Company, in a motivated manner and with a view to avoid its statutory obligations, offered him and others “**colourful designations**” and his such designation did not match his nature of work, which was out-and-out manual and technical in nature, by using computer machine, as well as operational and clerical too. PW-2 further stated that he had no independent power to act as supervisory personnel nor did he have any managerial or administrative capacity during his such employment with the OP/Company. In this regard, from the Schedule at Annexure-A of the application, which has been relied upon by PW-2 specifically, it would appear that the date of joining of Amit Nandi was 01.07.2013 and that he was also enrolled with and contributed to the Provident Fund. In the aforesaid context, PW-2 further deposed that on 17.10.2015, without assigning any satisfactory reason, the OP/Company refused employment to the joint-applicant Amit Nandi, following “hire and fire policy” which resulted in his “forced idleness”, and in that context, he was still not gainfully employed elsewhere. PW-2 further stated that his salary was raised by the OP/Company from time to time and that the final salary drawn by him, at the time of such termination, was Rs.21,000/-. In the light of his said testimony, PW-2 prayed for reinstatement in service with his full back wages and other consequential statutory benefits, upon setting aside his unlawful termination by the OP/Company on 17.10.2015.

10. Having traversed the testimony of PW-2, and in the absence of any contra evidence thereto, it is clear that considering the nature of job and duties assigned to him by the OP/Company, Amit Nandi would fall under the definition of ‘**workman**’ [Section 2(s) of the Act] and further, in the absence of any denial thereof, the OP/Company would be an employer carrying out ‘**industry**’ [Section

[01/2A(2)/2016]

2(j) of the Act] and hence, the matter relating to termination of services of Amit Nandi would be an "Industrial Dispute" u/S. 2A(1) of the said Act, bringing the case under Section 7A of the said Act within the jurisdiction of this Tribunal to adjudicate such dispute, as per the procedure prescribed by the said Act. This finding derives support from the ambit of the term 'workman' as laid down by the Hon'ble Supreme Court in its judgment passed in *Devinder Singh vs. Municipal Council, Sanaur*, reported in AIR 2011 SC 2532, at paras. 12-14 thereof.

11. In this context, from **Exhibit-7**, which is a copy of the Provident Fund statement of Amit Nandi, under the employment of OP/Company, for the period August 2013 till December 2014, it appears that such contributions were regularly made, month on month. Further, from **Exhibit-8**, which is a copy of the pay-slip of Amit Nandi for the month of July 2015, it reflects that his date of joining service was 01.07.2013 and deductions at source were being made by OP/Company from his remuneration, for contribution towards Provident Fund and payment of Professional Tax. From the contents of the evidence as aforesaid, and in light of testimony of PW-2, it will be reasonable to hold that Amit Nandi would have served, without break, from 01-07-2013 till his termination on 17.10.2015 and in the absence of contra evidence, it is clear that such service of Amit Nandi would have been 'continuous service' under the OP/Company, in terms of provisions of Section 25B of the Act, including for the period of one year immediately preceding the date of termination of his service. In that context, the definition of 'retrenchment' as under Section 2(ooo) of the said Act, West Bengal Amendment (17 of 2007) corresponding to Section 2(oo) of the Industrial Disputes Act 1947, would clearly apply on the fact-situation as has come out in the instant case, as the OP/Company had not issued any show-cause nor conducted any domestic enquiry and neither did the OP/Company terminate his services by way of some punishment, and hence termination of Amit Nandi

clearly was clearly a case of “**retrenchment**”. It could be noted that the principle(s) laid down by the Hon’ble Supreme Court by judgement dated 16-01-1976 passed in **The State Bank of India versus Shri N. Sundara Money** (Civil Appeals Nos. 933 and 934 of 1975), reported in **AIR 1976 SC 1111 : 1976 LAB. I. C. 769**, and relied upon by the joint-applicant herein, in defining the ambit and implication(s) of the **provisions of Section 2(oo) and Section 25F of the Act**, would squarely apply to the fact-situation as has come out in the instant dispute.

12. Clearly therefore, the termination of services of Amit Nandi would be governed by the provisions of **Section 25F** of the Industrial Disputes Act, 1947, which lays down the condition(s) precedent for retrenchment of any workman, who has put in continuous service of not less than one year with any employer. In that view of the matter, there is nothing in the pleadings or in evidence of PW-2 that would suggest that the OP/Company had paid any compensation, including retrenchment compensation, to Amit Nandi prior to his such termination. Clearly, therefore, the termination of services of Amit Nandi would be hit by the provisions of Section 25F of the Industrial Disputes Act, 1947, which lays down the condition precedent for retrenchment of any workman. Hence, in the light of the pleadings as well as uncontroverted evidence of PW-2 in support thereof, and further in terms of the aforesaid deliberation, this Tribunal finds no impediment in holding that the Amit Nandi was a workman working for the OP/Company, who had rendered services, without break, from 01.07.2013 till 17.10.2015, being the date of termination of his services, including for a period of one year immediately preceding the date of such termination and hence, the workman has rendered continuous services as defined u/S. 25B of the said Act and his such services could not have been terminated without following the mandate of Section 25F of the said Act. Clearly, therefore, the **termination of the joint-applicant Amit Nandi** by the OP/Company Viswamitra company on 17.10.2015 is **not found to**

be lawful and/or justified and further, such termination is also bad in the eyes of law, being hit by the express provisions of Section 25F of the said Act.

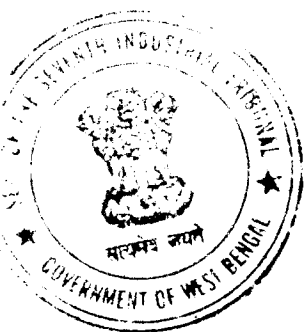
13. Having found that the termination of the employment of Chaity Ghosh w.e.f. 07.10.2015 and that of Amit Nandi w.e.f. 17.10.2015, to be unlawful and unjustified, this Tribunal would now proceed to examine as to the nature and extent of relief(s) that the abovenamed two workmen would be entitled to. Law, in this regard, has been laid down in various pronouncements of the Hon'ble Supreme Court, applying to various fact-situations. Discussing the law laid down through various pronouncements, the Hon'ble Supreme Court, while rendering the judgment dated August 12, 2013 in Civil Appeal No.6767 of 2013 *Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors.*, as reported in (2013) 10 Supreme Court Cases 324, was pleased to hold, *inter alia*, at para 38 thereof, as follows :

38. The propositions which can be culled out from the aforementioned judgments are:

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not

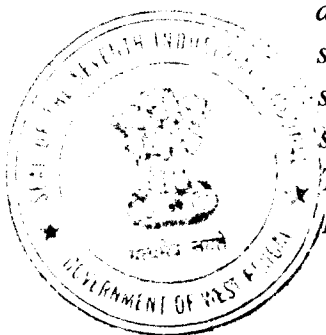


employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6. In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works (P) Ltd. v. Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53].



[01/2A(2)/2016]

38.7. The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal [(2007) 2 SCC 433 : (2007) 1 SCC (L&S) 651] that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 : 1979 SCC (L&S) 53] , [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman.

Relief (s) for Chaity Ghosh

From **Exhibit-1**, which is a copy of letter of appointment issued to Chaity Ghosh on 01.11.2012, it appears that the OP/Company, recognizing her contribution to the OP/Company since her joining on 13.12.2010, had appointed her Region in-charge was posted her at the Region Office, Kolkata and even though, at clause 5(b) thereof, the term probation occurs, yet there is nothing to show that Chaity Ghosh was continuing on probation with the OP/Company. Further, from **Exhibit-2**, which is a statement of account issued by EPF Organisation, Ministry of Labour & Employment, Govt. of India, updated till 31.03.2015, it would appear that Chaity Ghosh was a permanent employee under OP/Company, and was contributing her share to the Provident Fund authorities, month on month. Further from the **Exhibit-4**, which is a copy of pay slip of Chaity Ghosh for the month of June, 2015, her ESI enrollment number is also evident and it reflects that deductions were also been made on account of Professional Tax from her monthly remuneration. It has also been deposed by PW-1 that Chaity Ghosh was unemployed since her termination by the OP/Company, and it appears that she was 33 years old at the time of deposing in 2016. Clearly therefore, evidence on record points to the fact that the applicant Chaity Ghosh was a **permanent employee** of the OP/Company who had put in nearly **five years of service**, and due to such **wrongful termination** she is yet **un-employed** at her age of **about 35 years** now. That apart, from **Exhibit-3**, which is a copy of the demand of justice sent by the applicant by registered post (**Exhibit-3/1**), it would be clearly evident that Chaity Ghosh had highlighted the alleged

refusal of employment by the OP/Company from 07.10.2015 and had made a prayer that she be reinstated with full back salaries / wages and other legal dues for the period of “forced idleness” by way of such her non-employment, which was created due to sudden action by the OP/Company.

In light of the aforesaid deliberation, and in absence of any contra-evidence, as well as in the light of the principles laid down by the Hon’ble Supreme Court as aforesaid, this Tribunal is of the considered view that the ends of justice shall be served if the termination of service, by refusal of employment by the OP/Company w.e.f 07.10.2015, of Chaity Ghosh is declared unlawful and unjustified, and is accordingly set aside with further directions that Chaity Ghosh shall be reinstated in her service with payment of full back wages, from 07.10.2015 till date, and all consequential benefits, by M/s. Vishwamitra India Consultancy Services Ltd., the OP/Company herein.

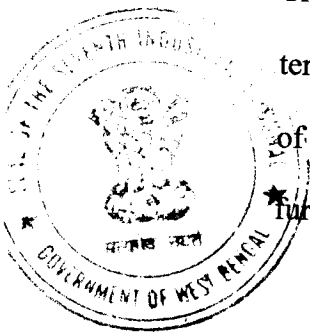
Relief(s) for Amit Nandi

From **Exhibit-5**, which is a copy of the offer letter issued by the OP/Company on 01.07.2013 to Amit Nandi, it appears that his services were marked to be on probation for six months initially and his confirmation was subject to assessment of his performance thereafter, though the total period of **probation would not exceed one year**. Further, from **Exhibit-6**, which is a letter of re-designation with increments issued to Amit Nandi by the OP/Company on 05.03.2014, it appears that from that date onwards, the applicant was re-designated as Assistant Manager, IT, at the Head Office and upon review of his experience and performance under the company he was also granted an increment, whereupon his gross salary rose by almost Rs.3000/- per month. Further, from **Exhibit-7**, which is a copy of the account statement of Amit Nandi, under the establishment of the OP/Company, as issued by the Employees’ Provident Fund Organization upto 31.03.2015, it would appear that immediately upon joining the OP/Company, the applicant had started getting deductions made in favour of the

[01/2A(2)/2016]

Provident Fund and such contributions continued till upto 31.03.2015. In this context, it would appear from **Exhibit-8**, which is a copy of the pay slip of the applicant, issued by the OP/Company for the month of July, 2015 that the applicant was also paying professional tax and further his date of joining therein appears to be 01.07.2013, clearly indicating that he had served continuously for a period of over two years and he had continuously received increment on account of his services rendered. Further, in terms of his appointment letter (**Exhibit-5**), he had served for a period of over one year from his initial appointment, and hence he would have been a permanent employee of the OP/Company on the date of his wrongful termination. It has also been deposed by PW-2 that Amit Nandi was unemployed since his illegal termination by the OP/Company on 17.10.2015, and that he was 38 years old at the time of deposing in 2016. Clearly therefore, evidence on record points to the fact that the joint-applicant Amit Nandi was a **permanent employee** of the OP/Company who had put in over **two years of service**, including successful probation period, and due to such **wrongful termination** he is yet **un-employed** at his age of **about 40 years** now. That apart, from **Exhibit-9**, which is a copy of the demand of justice that was sent by the Amit Nandi to the OP/Company by registered post (**Exhibit-9/1**), it comes out that the joint-applicant had raised the issue of “refusal of employment without assigning any reason there-for w.e.f. 17.10.2015” and he had also prayed before the OP/Company to reinstate him with full back wages and other legal dues for such period of “forced idleness” by way of non-employment, which was created by the OP/Company.

In light of the aforesaid deliberation, and in absence of any contra-evidence, as well as in the light of the principles laid down by the Hon'ble Supreme Court as aforesaid, this Tribunal is of the considered view that the ends of justice shall be served if the termination of service, by refusal of employment by the OP/Company w.e.f 17.10.2015, of Amit Nandi is declared unlawful and unjustified, and is accordingly set aside with further directions that Amit Nandi shall be reinstated in his service with payment of full



[01/2A(2)/2016]

back wages, from 17.10.2015 till date, and all consequential benefits, by M/s. Vishwamitra India Consultancy Services Ltd., the OP/Company herein.

HENCE

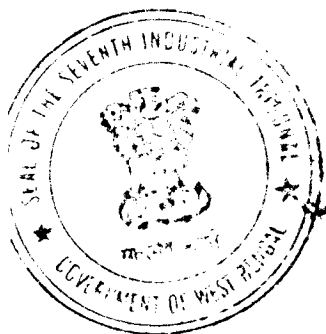
IT IS

O R D E R E D

- a) That, the termination of service, by way of refusal of employment by the OP/Company w.e.f 07.10.2015, of Chaity Ghosh is declared unlawful and unjustified, and is accordingly set aside with further directions that Chaiti Ghosh shall be reinstated in her service with payment of full back wages, from 07.10.2015 till date, and all consequential benefits, by M/s. Vishwamitra India Consultancy Services Ltd. the OP/Company;
- b) That, the termination of service, by way of refusal of employment by the OP/Company w.e.f 17.10.2015, of Amit Nandi is declared unlawful and unjustified, and is accordingly set aside with further directions that Amit Nandi shall be reinstated in his service with payment of full back wages, from 17.10.2015 till date, and all consequential benefits, by M/s. Vishwamitra India Consultancy Services Ltd., the OP/Company;

The aforesaid shall constitute the Award of this Tribunal passed in the instant Case No. 01/ 2A(2)/ 2016, which shall stand disposed of, **ex-parte**.

Dictated & Corrected by me



st/-
Judge

Industrial Tribunal

st/-
(Avani Pal Singh)
Judge
Seventh Industrial Tribunal,
Kolkata
27-07-2018