

I/126818/2021

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

No. Labr/...../721/(LC-IR)/22015(16)/306/2018 Date: 18-03-2021

ORDER

WHEREAS an industrial dispute existed between Bidhannagar Municipality Bidhannagar Municipal Corporation, Poura Bhawan, FD - 415 A, Sector - III, Salt Lake City Sector - 106, District - North 24 Parganas and Smt. Mita Purakayastha, BG - 91, Sector - I Salt Lake City, Kolkata - 700091 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filled an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, First Industrial Tribunal, Kolkata: specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Judge of the said First Industrial Tribunal, Kolkata 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, Kolkata 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

I/126818/2021

: 2 :

721/1(5)
No. Labr/...../(LC-IR)18-03-
Date : 2021

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

1. Bidhannagar Municipality / Bidhannagar Municipal Corporation, Poura Bhawan, FD - 415 A, Sector - III, Salt Lake City, Sector - 106, District - North 24 Parganas.
2. Smt. Mita Purakayastha, BG - 91, Sector - II, Salt Lake City, Kolkata - 700091.
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 Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

721/2(2)
No. Labr/...../(LC-IR)18-03-
Date : 2021

Copy forwarded for information to :-

1. The Judge, First Industrial Tribunal, Kolkata, with respect to his Memo No. 413 - L.T. dated 15.03.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the matter of an industrial dispute between Smt. Mita Purakayastha, residing at BG-91, Sector-II, Salt Lake City, Kolkata – 700 091, District - North 24 Parganas against her employer Bidhannagar Municipality, Poura Bhawan, FD-415A, Sector – III, Salt Lake City, Sector – 106, District – North 24 Parganas.

Case No. 02/2013 U/S 10(1b)(d) of the Industrial Dispute Act 1947

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

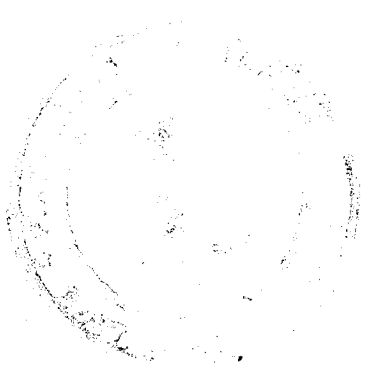
Date of Award : 26.02.2021

This case has been initiated on receipt an application dated 26.06.2013 under section 10(1b) (d) of the Industrial Dispute Act, 1947 as amended. From the applicant Smt. Mita Purakayastha against her employer M/s Bidhannagar Municipality / Municipal Corporation in connection with refusal of employment w.e.f. 29.07.2010 by her employer seeking declaration that the same is unjustified, bad in law and illegal with a prayer of reinstatement in service with full back wages and consequential statutory benefits.

The case of the applicant as made in her written statement dated 26.06.2013 in brief is that the applicant was initially appointed as Office Assistant of the opposite party, claiming that the opposite party is an industrial establishment within the scope and meaning of the provision of Industrial Dispute Act, 1947. on contract basis in the consolidated salary of Rs. 1500/- per month in terms of the order dated 07.08.2003 duly issued by the Executive Officer of the opposite party upon the terms and conditions of service including the condition of duty time of the applicant and it was stipulated therein that an off day once in a week would be fixed by the Ward Committee and she was to entitled to 7 (seven) days Casual Leave and Medical Leave in Half Pay for 8 (eight) days per year. The applicant reported to join her duties as Office Assistant on and from 08.08.2003. Then her contractual period was extended for another one-year w.e.f. 08.04.2004 with a consolidated pay of Rs. 1500/- per month and again a period of contract was extended till further in respect of her tenure continuation by the recommendation duly sent by the Councillor to the Chairman which was received by the office of the Chairman on 15.09.2005 supported by the similar order of appointment in a mechanical fashion by the Executive Officer of the opposite party on 19.10.2005 / 02.12.2005.



Rendered continuous service for more than 7 (seven) years before her sudden verbal termination on 23.07.2010 on and from, the applicant further states that her salary was gradually increased for rendering her service to the opposite party and the last drawn salary in the month of June 2010 was Rs. 4960/- and the said salary was disbursed by the opposite party through remittance of amount in her bank account in each month with the West Bengal Cooperative Bank Limited, Poura Bhavan, Salt Lake Branch and she was provided with the identity card like the regular employees of the opposite party issued by the Executive Officer of the said opposite party. It is further stated that while the applicant had been working, the opposite party took resolution on 19.11.2008 that without the permission from the committee none of temporary staff / member can be terminated and inspite of that all of a sudden on 23.07.2010 the Councillor of the Ward arbitrarily and without issuing any written instruction collected the keys of the office from the applicant, thereafter the applicant went to report for duty but it was found that the office was locked and as a result the applicant had to wait outside the main gate of the office and while she was waiting outside the main gate on 29.07.2010 for reporting her duty the Chairperson of the Ward convey her verbally that her service was no longer required and she was instructed not to report for duty accordingly. The applicant states that finding no other alternative she sent a letter dated 29.07.2010 to the Executive Officer of the opposite party raising her protest against the illegal verbal termination with a further request to take a suitable measure to ensure her employment as her livelihood was at stake. The applicant sent another letter on 16.08.2010 to the Executive Office of the opposite party expressing her wretched condition arising out of her unjustified, illegal termination of service and requested to take immediate measures for reinstatement in her service. It is also stated by the applicant that during the period of her service she was never served with any show-cause or any chargesheet or any letter of warning or any enquiry being made against her and even there was no allegation before said verbal termination. No complaint assigned for her termination and no opportunity was given to her to submit any explanation against the same. Thus, the opposite party did not comply the statutory requirement in terms of section 25F of the Industrial Dispute Act, 1947. Then on 25.08.2010 the applicant prayed an intervention of the Labour Commissioner, Government of West Bengal for reinstatement with full back wages but due to adamant attitude of the opposite party the efforts made by the Deputy Labour Commissioner were in vain. It is further state by the applicant that on 09.12.2012 the Executive Officer of the opposite party called the applicant for hearing on the intervention of the Deputy Labour Commissioner. But the same was also gone in vain. She then sent a letter on 09.12.2012 to the Executive officer of the opposite party pointing out therein that the authority of the opposite party terminated her service illegally without having no allegation against her and prayed for reinstatement. During conciliation proceeding the



applicant sent another letter on 23.03.2012 to the Labour Commissioner regarding settlement of the dispute with a request to look into the matter. While the opposite party submitted their consent to the conciliation officer on 16.03.2013.

It is apparently mentioned by the applicant to the effect that the committee of the opposite party took the resolution with the concerned authority of the opposite party should take decision regarding the reinstatement of the applicant in their meeting dated 01.02.2013 and applicant then on 04.04.2013 replied to the letter of the opposite party. As no positive result found in the conciliation proceeding the applicant applied for the certificate which duly issued by the conciliation officer and on the basis of the same the applicant filed the instant case invoking the provision under section 10(1b)(d) of the Industrial Dispute Act, 1947 with a prayer to said aside the verbal order of termination of service of the applicant w.e.f. 29.07.2010 and pass order of reinstatement with full back wages for the period of further unemployment together with the consequential benefit and/or credit any other further relief which the Tribunal may deemed fit and proper in respect of this case.

After receiving the same in Form D2, the opposite party duly appeared in the instant case and submitted their written statement in reply on 07.01.2014, denying all material allegations raised against them stating inter-alia to the effect that the opposite party i.e. Bidhannagar Municipality / Corporation is though a legal body being subsidised and financed by the Government of West Bengal. it is not an Industrial establishment as understood under section 2K(ka) of the Industrial Dispute Act, 1947, not an industrial undertaking.

It is admitted that the applicant herein was that the applicant was appointed by the opposite party on contractual basis and her period of employment was extended from time to time on contractual basis and on any point of time she was not a regular employee of the opposite party and no provision of West Bengal Municipal Act 1993 and rules and regulation and / or procedure framed therein does not give the right to the applicant to be observed to the post of Office Assistant / Ward Assistant by automatic matter of course and therefore. a post which is not prescribed by the statute cannot be claimed as a matter of right by an indigenous person. It is claimed by the opposite party that on and from 23.07.2010 the applicant herein for unknown reason stopped attending her office of the opposite party and even on several verbal requests the applicant did not attended her job under the opposite party and therefore. no question can be raised regarding her termination.



It is also claimed by the opposite party that applicant during her contractual engagement had furnished wrong residential address as AH-515, Sector-II, Salt Lake, Kolkata – 700 091, which does not exist at all and in such circumstances, she could not be contacted for taking necessary steps for her long absence.

It is further claimed that the applicant during her period of engagement she found to be very indifferent towards the jobs assigned to her and she was never found to be dependable and number of complains would come against her to the concerned councillor regarding her discharge of duties and she was showing incompetency and negligence towards her duty that Shri Bijoy Chandra Basak had to be engaged to perform her duties vide ward committee's meeting of the opposite party dated 27.08.2010.

It is further claimed that these disputes raised by the applicant may be governed under section 2(OO)(bb) of the Industrial Dispute Act, 1947, which states that "termination of the service of the workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry is not retrenchment"

It is further claimed by the opposite party that the opposite party tried to amicably settle the dispute but the adamant nature of the applicant forced the dispute to be adjudicated before the Ld. Tribunal.

It is also claimed that since the applicant was a contractual employee whose period of engagement as even terminated, so this scope of conducting a department enquiry does come into question and as such the opposite party is at no fault.

It is also claimed since the applicant had herself voluntarily stopped attending her office no right to scope entertained by her and therefore no hire and fire practice carried on by the opposite party and as the period of engagement was over since it was not renewed. So the allegations are false, baseless, concocted and mala fide in nature.

It is also claimed by the opposite party that the applicant herein does not had any document to show her engagement or extension the period of contract which itself shows the negligent nature of the applicant.

Under all the aforesaid circumstances the applicant Smt. Mita Purakayastha is not entitled to get any relief as prayed for as the allegations against the opposite party are only made to serve her forms and frivolous intention to cause damage to the dignity of the opposite party Bidhannagar Municipality and as such each and every prayer of the applicant is liable to be rejected.



Considering the pleadings of the both parties following issues have been framed for proper adjudication of this case:

Issues

- 1) Is the case maintainable in its present form and law?
- 2) As this Tribunal has the jurisdiction to hear the case on its merit?
- 3) Was there any verbal termination of service of Smt. Mita Purakayastha by the management of Bidhannagar Municipality / Municipal Corporation w.e.f. 29.07.2010? If so, was the termination legal and justified?
- 4) Is the applicant entitled to any relief whatsoever under the Industrial Dispute Act? if so, what relief is she entitled to be?

Decision with reasons:

In support of the case the applicant Workman has examined herself as PW-I that apart has filed some documents which has been marked as Exhibit 1 to 25 respectively.

That the apart the applicant has filed some rulings of the Hon'ble courts as follows alongwith written notes of Arguments:

- 1) The case in between
Kachchh District Panchayat and Ors.
Vs.
Rmbhai Meghraj Gadhvi.

It is held that

"Letters Patent Appeal – Industrial Disputes Act, 1947 – Section 2(oo)(bb) – to deprive the workman form the status and privilege of the permanent workman, he was given orders of fixed terms for a long time of about five years, which was an Unfair Labour Practice – There was no need for the Institution to go on employing him on contractual basis on sanctioned post giving a false hope that he will be subsequently regularized on the said post."

Result : Appeal Disposed.

[2016-3-GLH-225]



2) The case in between

Ashok Kumar S/o Late Shri Narain Sharma

Vs.

Judge Labour Court Cum Industrial Tribunal, Ajmer & Ors.

It is held that

"Industrial Disputes Act, 1947 – Section 25F – Non-compliance of order of termination – The claim of the petitioner challenging his termination and seeking reinstatement in service was rejected – Sustainability thereof – Order of termination passed without notice in contravention of section 25F of Act – As the petitioner had been working on contractual basis and was not appointed in accordance with rules or through employment exchange – Direction issued for payment of compensation of Rs. one lakh instead of his reinstatement in service – Petition disposed of accordingly."

[2016-151-FLR-728]

3) The case in between

Municipal Council, Samrala

Vs.

Sukhwinder Kaur

It is held that

"Industrial Disputes Act, 1947 – Sections 2(oo)(b) and 25F – Termination of services of respondent – Whether amounted to retrenchment in violation of Section 25F of the Act – Respondent was engaged on contractual basis at a fixed pay of Rs. 1000/- p.m. and she worked from 8-11-1995 to 17-6-1996 – She was again engaged on contractual basis between 3-9-1996 to 23-5-1997 and then her services were terminated – Labour Court by an Award opined termination was not in conformity with provisions of Section 25F of the Act and directed reinstatement with 25% of backwages – High Court upheld the award – Appeal – Respondent was appointed on contractual basis and appointments were temporary ones and she accepted terms and conditions without demur – Executive Officer had power under the terms of appointment to dismiss her without notice – Section 2(oo)(b) of the Act was attracted in facts and circumstances of the case – High Court did not consider also the question whether appellant had any vacancy in respect of the post – impugned judgement was liable to be set aside – Appellant itself before High Court made a proposal to give



Issue No. 1 & 2:

These issues are taken together for discussion with reason for the brevity of my discussion. The applicant has stated that Bidhannagar Municipal Corporation is a semi government organization and it is an industrial establishment within the scope and manner of provision of Industrial Disputes Act, 1947 and therefore, the present case is well maintainable and this Tribunal has rightful jurisdiction to hear the case on its merit. On the other hand, the opposite party i.e. Bidhannagar Municipal Corporation has stated that the application filed under Section 2(A)(2) of the Industrial Dispute Act, 1947 does not have any merit for consideration as the alleged dispute and / or the Lis involved herein does not tantamount to a dispute under the First or the Third Schedule of the said Act as the applicant herein has alleged as a case of termination / dismissal of service / employment.

Since the case here is not a case of termination / dismissal and / or retrenchment the applicant herein hence is not entitled to maintain this application before this Learned Tribunal in the present form leave alone the reliefs as sort for herein.

A bare perusal of the First and the Third Schedule of the Said Act would demonstrate that the Municipality or the Municipal Corporation does not fall under the list of industries as mentioned therein and hence the reference itself is not in accordance with law.

I have gone through the rulings, section along with decisions of the Supreme Court AIR-1960-SC-675 where it is held that the municipality is an industry because sanitation and conservation is an undertaking which is comparable to Trade and Industry under the Industrial Dispute Act that apart the Company has directly admitted the position of the opposite party has an industrial establishment in their written statement by stating to the effect that the dispute has raised here by the applicant may be governed atleast on the basis under section 2(oo)(bb) of the Industrial Dispute Act, 1947 which proof that the opposite party is an industrial establishment under Industrial Dispute Act, 1947.

Under section 2(k) of the Industrial Dispute Act. industrial dispute means any dispute or difference between employers and employers or between employers and workmen or between workmen and workmen with the employment or non-employment or the terms of employment or with the conditions of labour of any person.



lump sum compensation in lieu of her appointment - In the interest of justice, Rs. 30000/- to be paid to respondent by appellant.

[2006(6) Supreme 181]

On the other hand, to defend the case the opposite party Bidhannagar Municipality / Municipal Corporation has brought Sri Sarit Bhattacharya, Joint Municipal Commissioner of the opposite party, who has been examined as OPW-I and that apart opposite party has filed some documents which has been marked as Exhibit A to E respectively and has cited some rulings as follows along with written notes of Argument:

- 1) A judgement of the Hon'ble Supreme Court of India in the case of State of Madhya Pradesh and another – versus – Dharam Bir reported in (1998) 6 SCC 165 where in the Hon'ble Supreme Court of India has held that the nature of appointment becomes relevant to consider the issue of regularization of permanency. It is held that it is not open to any employee to claim automatic alteration of status unless that result is specifically envisaged by some provision in the statutory rules and in the absence of any such provision, which is definitely absent in the facts of the present case, it is not open to any contractual employee to claim a status different from that which was conferred upon her at the stage of appointment.
- 2) Further, reliance has been made to the law laid down in the constitution bench decision of the Hon'ble Supreme Court of India in the case of Secretary, State of Karnataka and Ors. -versus – Uma Devi and Ors. Reported in (2006) 4 SCC 1, wherein the Hon'ble Supreme Court of India has considered the scope of contractual appointment in paragraph 43 to hold that once the term of contract comes to an end, no right whatsoever is created in such contractual appointee to seek any absorption, continuation or permanency. It was also held therein that: the theory of legitimate expectation cannot be pressed in service on behalf of the temporary contractual casual employee.
- 3) A judgement in respect of irregular appointments (not illegal appointments) as explained in S. V. Narayanappa (supra), R. N. Nanjundappa (supra), and B. N. Nagarajan (supra) have also been drawn to the notice of this Tribunal by written arguments.



So, in all probable question and manner it is well proved that the present dispute is an industrial dispute within the purview of Industrial Dispute Act, 1947.

Since the case has been initiated on receipt of application, dated 26.06.2013 under Section-2(1b)(d) of the Industrial Dispute Act, 1947 as amended not under Section 2A(2) of the Act as claimed by the opposite party, I am of firm opinion that this Tribunal has well jurisdiction to try the case and accordingly the points have been considered and decided in favour of the Workman.

Issue No. 3 & 4:

For the brevity of my discussion these two issues are taken together.

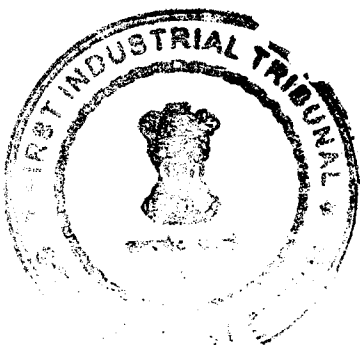
Now let us scan the evidence and documents of record to decide these issues.

PW-I i.e., Smt. Mita Purakayastha has more or less corroborated the case of the applicant and from her cross examination, it is revealed that she last worked under opposite party as Work Assistant and she was not allowed to join lastly on 29.07.2010.

She has admitted that her service was on contractual basis which started on and from 08.08.2003. She claimed that her bank passbook and the salary slip signed by councillor will substantiate that she was in continuous service under the opposite party. But she admitted that she did not file any copy of salary slip. However she has filed the bank pass book related to her account lying with West Bengal State Cooperative Bank Limited, which has been marked as exhibit-7 series. She also admit that she had not with her the xerox of the entries for the year 2009 in respect of the Bank A/c, though she has claimed she was working under the opposite party till 22.07.2010.

She also admitted that no separate appointment letter was issued to her for the year 2009 though she claimed that exhibit 7 series should establish that she received salary from the month of July 2008 to the month of November, 2009.

She also claimed that year to year her salary had been enhanced according to the pay structure of the employees of the opposite party.



She also admits that she did not write to the authority to issue to her fresh appointment letter from year to year. She used to perform as Work Assistant of all the 5 Blocks i.e., IA, BH, AH, BG and CG under the Ward of the opposite party Ward No. 11. It is revealed from her cross examination that she was entrusted with her duties to open the doors of the office and also to close the same on each working day and the keys of the office doors used to remain with her and used to open and close doors on scheduled hours on every day.

It is also revealed that Shri Dilip Ghosh, the then Councillor of the Ward No. 11 when the applicant PW-I was appointed till her expiry of her tenure and thereafter a separate person has been elected as councillor of the said Ward. But he could not say the changed ward No. after its number had been changed in pursuance of formation of the Corporation from Municipality.

Among the exhibited documents of PW-I, exhibit-1 goes to show that PW-I was issued a letter of appointment firstly on 07.08.2003 where from it is specifically stated that PW-I was appointed as an Office Assistant of Ward No. 11 of the opposite party on contract basis with effect from date on which she joins her office @ Rs. 1500/- per month as consolidated pay.

It was also stated in that appointment order that the appointment was purely temporary for the period of 01 (one) year only from the date she joins her duties.

Exhibit 4 goes to show that her period of service on contractual basis was extended w.e.f. 08.08.2009 on the same rate of monthly payment (exhibit 5 and 6).

So, it is proved that PW-I had been working as Office Assistant under the opposite party till 2005.

Exhibit 20 is a letter issued by Smt. Anita Mondal the then councillor of Ward No. 4 of the opposite party, dated 12.03.2013 being addressed to the Executive Officer of the opposite party. It reveals that Smt. Mita Purakayastha i.e., PW-I was engaged in the year 2003 as Ward Assistant in Ward No. 11 temporarily on contractual basis and such contract was renewed from time to time till her tenure in 2005 and the tenure of Ward Assistant in other wards under opposite party on contractual basis was renewed from time to time till 2010. But she could not file any paper of renewal of contract regarding the PW-I for the period 2005-2010 to her (councillor).

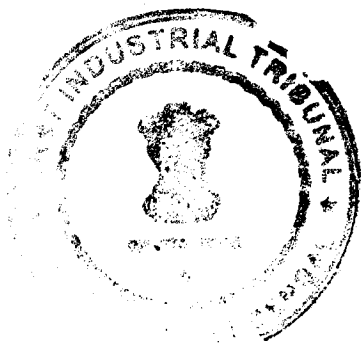
It is claimed that PW-I was asked by Smt. Anita Mondal who has not come to depose for the opposite party to produce documents in support of renewal of contract since 2005 but PW-I failed to do so. Smt. Anita Mondal has given her accusation for non-finding of the said assignment after 2005 though it is fact that the Bank statement reveals that PW-I worked at least till 2009. But it is admitted by Smt. Anita Mondal, the then Councillor of Ward No. 4 that PW-I suddenly stopped attending the office sometimes in July, 2010. So, it is undoubtedly proved that PW-I had been working under the opposite party on and from 08.08.2003 to sometimes in July, 2010.

Now the question remains to consider whether it is proved that PW-I stopped attending her place of office voluntarily and without assigning any reason or she was forced not to attend her duties after sometimes in July, 2010.

It is the contention of the PW-I that she was verbally conveyed by the Chairperson of the Ward Committee of the opposite party on 29.07.2010 to the effect that her service was no longer required and she was instructed not to report for duty accordingly followed by an incident happened on 23.07.2010 that the councillor of the ward of the opposite party arbitrarily and without issuing any written instruction collected the keys of the office from her and even then she went to report for duty but she found that office was locked and as a result whereof she had to wait outside the main gate of the office and she had intimated the fact to the Executive Officer of the opposite party on and from 29.07.2010 by sending a letter along with other letters which have been marked as Exhibit - 9 and 10. That apart she made representation to the Labour Commissioner, Government of West Bengal on 25.08.2010 (Exhibit 11) also sent letter on 25.09.010 (Exhibit 12).

It is also revealed from the Exhibited documents that Labour Commissioner has tried his level best to settled the dispute amicably but somehow, he failed to reach any positive conclusion when the instant case has been filed by the applicant through Labour Commissioner.

From the examination in chief, it is claimed by the opposite party through C.W.- 1, i.e., the Joint Municipal Commissioner of the opposite party that the applicant since she herself had voluntarily stopped attending the ward office, the workman cannot allege that her termination was an illegal termination or she required any notice in black and white to be served upon her.



It is revealed from the cross examination of the CW-I that the opposite party has filed the Exhibit-C from their side (it is exhibit 20, filed from the side of the PW-I) and claimed that since Smt. Mita Purakayastha, PW-I suddenly stopped attending her ward office in sometimes in July 2010 without assigning any reason they had to engage one Sri Bijoy Chandra Basak as Ward Assistant followed by a ward committee meeting dated 27.08.2010. But the maker of the Exhibit-C or Exhibit-20 whatever may be did not come before this Tribunal with any documents to show or any other person even CW-I did not produce any document to show that PW-I stopped attending her duties voluntarily and did not report this matter of her termination before 27.08.2010, when a meeting of Ward Committee was held to appoint another person named Bijoy Chandra Basak in place of the Applicant rather Exhibit-9 goes to show that PW-I was terminated illegally, verbally and without assigning any reason whatsoever. So, the allegation made against her as raised by Exhibit-C or Exhibit-20 are false and fabricated and have no leg to stand. That apart, the opposite party has claimed that PW-1 was requested on several occasions to join her duty but she did not pay any heed to the same. This admission of the O.P. goes to show that the allegation made by Exhibit-'C' is false and fabricated otherwise the O.P. could not ask the PW-1 to join her duty and therefore, the reason shown by O.P. claiming valid step for termination of PW-1 cannot be entertained. If that be so, then according to Section 25F of Industrial Disputes Act, 1947 it is a willful violation of the employer in respect of termination of any employee without notice and assign any reason or without rendering any compensation for the said termination.

All the rulings as cited by the parties to the case have decided in the same tune to the effect that when a person had been working on contractual basis and had not been appointed in accordance with the rules or by invited application through the employment exchange, there would not be any direction in his/her reinstatement in service because of the fact the person was appointed on contractual basis and his/her appointment in every occasion was temporary one and the person accepted terms and condition without demur.

In our case it is admitted position of the case that the petitioner was appointed on contractual basis and her appointment was temporary one and she accepted terms and conditions without demur. That is to say the applicant was aware that her service could be terminated at any time even then it is proved that the applicant had worked for over 7 (seven) years in a row i.e. from 08.08.2003 to some times in July, 2010. So, the applicant can not demand the reinstatement of her service as she expected that she would be permanent in future because she worked under the O.P. continuously from 08.08.2003 to sometimes in July, 2010.



It is also proved that she was terminated without any issuance of notice though the opposite party had claimed that the petitioner had voluntarily stopped attending her duties and she had given a false address to the opposite party for which and for the said reason she was neither to be communicated nor there was such reason to communicate him about her termination but sorry to say the opposite party cannot prove this claim that petitioner herself stopped attending or petitioner had any point of time given the false address to the opposite party.

Rather it is proved that the petitioner reported the dispute of her termination by Exhibit-"9" before 27.08.2010 when the Word Committee meeting was held for engagement one Shri Bijoy Chandra Basak as Ward Assistant in place of the present petitioner. If that be so the present petitioner was well available to the opposite party for discharging her duties. She should be given a fair chance to work as office assistant even on contractual basis before Shri Bijoy Chandra Basak which is not illegal but certainly irregular. So, it is proved rather I am of firmed opinion that the termination of present petitioner without any information was intervention of Section 25F of the Industrial Dispute Act, 1947. It is fact the petitioner had worked for more than 7 (seven) years with the opposite party and was drawing wages @ 50/- per month initially which was increased day by day to the tune of Rs.165/- per day and therefore, I direct the opposite party to pay the compensation of Rs. 4,00,000/- (Rupees four lakhs) only to the petitioner, which would be just adequate in my consideration and the compensation would be disbursed to the petitioner within a period of 4 (four) months from the date of the Award, failing which the opposite party would be liable to pay interest thereon @ 9% per annum.

Therefore, considering the facts and circumstances of this case and also in view of my discussion and findings made above the applicant Workman has been able to prove her case successfully and I further hold that she should not only be entitled to get opportunity of being appointed as office assistant individually on her own footing as the opposite party is irregularly had appointed one Shri Bijoy Chandra Basak in place of her service but also entitled to get compensation of Rs. 4,00,000/- (Rupees four lakhs) as decided above.

Thus, all the issues are disposed of, accordingly.

In the result the case succeeds.



Hence it is

ORDERED

That the case being No. 02/2013 under Section 10(1b)(d) of the Industrial Dispute Act, 1947 be and the same is allowed on contest against O.P. Company i.e. Bidhannagar Municipality / Bidhannagar Municipal Corporation without any order as to cost. The O.P. Municipality / Corporation namely Bidhannagar Municipality / Bidhannagar Municipal Corporation is hereby requested to give opportunity to the applicant Workman namely Smt. Mita Purakayastha to work under the opposite party like her substitute workman as her substitute was appointed upon a false plea and allegation given to the applicant that she stopped attending herself from her duty which has not been proved in any manner whatsoever and the O.P. is also directed to pay him a compensation of Rs. 4,00,000/- (Rupees four lakhs) only on the condition that the same would be disbursed within a period of 4(four) months from the date of this Award. failing which the opposite party would be liable to pay interest @ 9% per annum till the realization of the due amount and the applicant Workman will also be at liberty to put the Award in execution as per law.

This is my **AWARD**.

The Award be sent to the Government.

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)
Judge

2010/05/13
FIRST INDUSTRIAL TRIBUNAL
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