

1/3384829/2022

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

No. Labr/ *996* / (LC-IR)/22015(16)/629/2019 Date: *16-11*. 2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/152-IR/I.R./11L-175/08 dated 03.02.2011 the Industrial Dispute between M/s. Murlidhar Ratanlal Export Ltd., Unit India Jute Mill, Serampore, Hooghly, PIN - 712201 and its workman Sri Joydeb Ghosh, 12A, Sashi Bhushan Ghose Lane, Mahesh, Serampore, Hooghly, PIN - 712201 regarding the issue 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, First Industrial Tribunal, West Bengal.

AND WHEREAS the First Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 29/09/2022 on the said Industrial Dispute vide memo no. 1518 - L. T. dated. 11/10/2022.

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,

salt
Joint Secretary
to the Government of West Bengal

1/33848272022

No. Labr/. 996/1(5)
/(LC-IR)

Date: 16-11- /2022.

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

- 11/11/2022*
Amranda
tes
16/11/2022
1. M/s. Murlidhar Ratanlal Export Ltd., Unit India Jute Mill, Serampore, Hooghly, PIN - 712201.
 2. Sri Joydeb Ghosh, 12A, Sashi Bhushan Ghose Lane, Mahesh, Serampore, Hooghly, PIN - 712201.
 3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
 4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
 5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

[Signature]
Joint Secretary

No. Labr/ 996/2(2)
/(LC-IR)

Date: 16-11- /2022.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 1518 - L. T. dated. 11/10/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

In the matter of an Industrial Disputes exists between M/s Murlidhar Ratanlal Export Ltd., Unit India Jute Mill, Serampore, Hooghly and their Workman Joydeb Ghosh, 12A, Sashi Bhushan Ghose Lane, Mahesh, Serampore, Hooghly.

G.O. No. 152-I.R./IR/11L-175/08, dated 03.02.2011

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

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

Date of Order: 29.09.2022

Case No.: VIII – 11/2011

This is a case initiated on receipt of a copy of Government Order No. 152-I.R./IR/11L-175/08, dated 03.02.2011 from the Labour Department, Government of West Bengal referring an industrial dispute between M/s Murlidhar Ratanlal Export Ltd., Unit India Jute Mill, Serampore, Hooghly and their Workman Joydeb Ghosh, 12A, Sashi Bhushan Ghose Lane, Mahesh, Serampore, Hooghly, for adjudication whether the dismissal of the Workman from his service w.e.f. 25.02.2003 by the management is justified and secondly what relief if any is the Workman entitled to before this Tribunal.

The case of the Workman as revealed from the claim statement in a nutshell is that the Workman Joydeb Ghosh since deceased was a Workman under the Company named Hooghly Mills Company Limited, Unit – India Jute Mill, Srerampur i.e. Opposite Party No. – 2 to be referred herein after and worked there continuously without a spot till 02.03.2003.

Then on 03.03.2003 the chargesheet was issued against the Workman alleging some false allegations over the incident allegedly occurred on 25.02.2003 followed by a suspension order against which the Workman submitted his reply on 06.03.2007 and thereafter the Workman prayed for subsistence allowance vide letter date 08.02.2007 but without any effect.

Thereafter, at the first time the Workman filed a suit before the Ld. Civil Court, Srerampur challenging the alleged chargesheet but finally the said suit was dismissed for default as the suit was defected on the ground of no jurisdiction.

Thereafter, the Workman filed a claim to recover the due subsistence allowance before the Ld. Payment and Wages Court, Kolkata when he was under suspension and the authority concerned placed the matter finally before the appropriate certified officer and the dispute in regard to the refusal of employment w.e.f. 25.02.2003 is also initiated by the Labour Department.

Thereafter, the concerned certificate officer submitted a letter on 14.01.2011 to the Labour Commissioner stating inter-alia that the owner of the Company M/s Murlidhar

Ratanlal Export Limited, Unit – India Jute Mill, Srerampur has denied to pay the claimed amount of subsistence allowance.

Be it mentioned here that the erstwhile Company i.e. Opposite Party No. – 2 was purchased by the present Company under reference M/s Murlidhar Ratanlal Export Limited who is now controlling and managing the business of the erstwhile Company by virtue of a sale deed and accordingly the present owner of the Company become responsible and liable to discharge their dues towards employees of erstwhile company and accordingly the then Conciliation officer sent his report to the Labour Commissioner, West Bengal along with the due form duly filled up by the Workman.

It is further submitted by the applicant Workman to the effect that the Workman has submitted a corrigendum to the Government of West Bengal praying for adding the name of the erstwhile Company Hooghly Mills Company Limited, Unit – India Jute Mill in the reference and since the matter was not settled before the Conciliation Officer, Government of West Bengal, the instant case has been referred to this Tribunal for adjudication of the matter and submitting its award to the State Government.

On the other hand the O.P. No.-1 i.e. M/s Murlidhar Ratanlal Export Limited, Unit – India Jute Mill, Srerampur, Hooghly has appeared and contested the case by filing written statement denying all material allegations against them and contending inter-alia to the effect that the written statement has been divided into 2(two) parts, namely Part-A and Part-B. Part-A deals with the case of the Company as well as the maintainability of the order of reference and Part-B deals with the written statement filed by the Workman.

According to Part-A, it is the case of the Company with the claim statement as filed by the concerned Workman is not maintainable either in law or in fact, absolutely misconceived and liable to be dismissed.

It is further stated by the Company that the Company had taken over the erstwhile Company namely M/s Hooghly Mills Company Limited, Unit – India Jute Mill, Srerampur by virtue of an agreement dated 20.06.2007 while the concerned Workman was an employee of M/s Hooghly Mill Company Limited, Unit – India Jute Mill, Srerampur and he was suspended by the said Company w.e.f. 25.02.2003. The Company also learnt that the Workman had instituted a title suit being No. 59/2003 before Ld. Civil Court, Srerampur, Hooghly against his erstwhile Company and the same was dismissed on 19.12.2006 holding that the jurisdiction of the Civil Court is impliedly barred and as such it is the claim of the present Company i.e. O.P. No. – 1 that the matter is barred by res judicate.

It is further claimed by the Company that long after the execution of agreement dated 20.06.2007 between O.P. No. – 1 and erstwhile Company namely Hooghly Mills Company Limited the Workman was suspended and therefore, present reference made by the Government of West Bengal is not applicable to O.P. No. – 2 and therefore, this Tribunal has no jurisdiction to try the case as the O.P. No. – 1 never

suspended the Workman who was never the employee of O.P. No. – 2 at any material point of time, which is clearly described in its letter dated 11.05.2010 addressed to the Assistant Labour Commissioner, Government of West Bengal. So, it is further claimed by O.P. No. – 1 that O.P. No. – 1 should be relieved from all the liabilities of the concerned Workman as per the relevant provision of the agreement dated 20.06.2007 (being 12.1 and 12.5 clause) where it is stated specifically that all liabilities upto the close of business as on 20.06.2007(except those specially taken over by the purchaser i.e. O.P. No. – 1) whatsoever known/unknown or contingent or in connection with the erstwhile Company or otherwise including trade liabilities and also the liabilities for payment of Provident Fund, ESI etc. shall be paid, borne and discharged by the vendor.

The Company further submits that the Tribunal may be pleased to hear and decide the preliminary issues raised by O.P. No. – 1 regarding maintainability of the order of reference and the jurisdiction of the Ld. Tribunal at the first instance.

That apart it is also submitted by O.P. No. – 1 that since the Workman Joydeb Ghosh has already attended the age of superannuation, the claim of the Workman is not maintainable.

Lastly the Company has concluded its submission with a prayer to hold that the order of reference is not maintainable, secondly the Tribunal has no jurisdiction to try the instant case, thirdly the Company i.e. O.P. No. – 1 would be relieved from the reliefs as claimed by the concerned Workman and to hold that the dismissal of the Workman is legal and justified and therefore, the concerned Workman is not entitled to any relief as prayed for.

It is also revealed from the record that during pendency of the instant case the concerned Workman attained the age of superannuation and therefore, he has prayed for relief only for paying full back wages along with all consequential reliefs thereto w.e.f. 25.02.2003 and the same was allowed by this Tribunal after contested hearing.

It is also revealed that during pendency of the case the erstwhile company i.e. Hooghly Mills Company Limited, Unit – India Jute Mill, Srerampur has added party to the instant case who also has appeared and filed their written statement denying all material allegations against them and contended inter-alia to the effect that the issues as referred to in the order of reference does not fall any of the Schedule as prescribed in the Industrial Disputes Act, 1947.

It is further submitted that the Company i.e. O.P. No. – 2 had already sold out its concerned unit of India Jute Mill situated at Srerampur, Hooghly in 2007 to the Company O.P. No. – 2 along with all its assets and liabilities and therefore, added party Company has no liability and /or nothing to do in regard to the instant case.

It is further submitted by O.P. No. – 2 that the Workman Joydeb Ghosh was a charge-sheeted worker duly issued on 03.03.2003 for committing some acts of misconducts followed by an order of suspension w.e.f. 25.02.2003.

It is also stated by the O.P. No. – 2 that suspension means cessation of employment but not dismissal or termination from the service and since the Workman Joydeb Ghosh was a suspended employee even in the year 2007, so, he should be considered an employee of O.P. No. – 1 the purchaser as per agreement dated 20.06.2007 and accordingly the O.P. No. – 1 has liability in the instant case.

It is further stated since after agreement dated 20.06.2007 all the records/documents pertaining to the instant case are lying in the custody of O.P. No. – 1, the purchasing Company and in absence of the same the O.P. No. – 2 the added party Company was not in a position to say/add any further in the matter and eventually it is prayed before this Tribunal to hold that O.P. No. – 1 i.e. the added party Company has no liability and/or to do nothing in the instant case and the Workman is not entitled to any relief against the above named added party Company.

During the pendency of the case it is also revealed that the concerned Workman namely Joydeb Ghosh died on 05.08.2016 and his only nominee Smt. Shilpi Ghosh being the wife of the deceased Workman has been substituted and has opted to contest the case on the ground as already relied upon by the then concerned Workman and accordingly she has prayed to the effect that she is entitled to all legal dues of her late husband and as such she is to be favoured with appropriate order accordingly.

ISSUES

Issues being determined and referred by a virtue of order of reference dated G.O. No. 152-I.R./IR/11L-175/08, dated 03.02.2011 by the Labour Department, Government of West Bengal.

- 1) *Whether the refusal of employment w.e.f. 25.02.2003 by M/s Murlidhar Ratanlal Export Limited, Unit – India Jute Mill, Srerampur, Hooghly to the Workman, Shri Joydeb Ghosh in disguise of the suspension is justified?*
- 2) *What relief if any Shri Joydeb Ghosh is entitled to?*

Be it mentioned here that admittedly the Workman Joydeb Ghosh was an employee of M/s Hooghly Mills Company Limited, Unit – India Jute Mill, Srerampur, Hooghly and he was issued a chargesheet dated 03.03.2003 for committing some acts of misconducts followed by an order of suspension w.e.f. 25.02.2003 and it is further admitted position of the case that by an agreement dated 20.06.2007 M/s Murlidhar Ratanlal Export Limited, Unit – India Jute Mill, Srerampur, Hooghly had purchased the erstwhile Company i.e. O.P. No. – 2 in the year 2007 when the said Workman was a suspended employee of O.P. No. – 1 i.e. Murlidhar Ratanlal Export Limited and this fact has been proved from the order of reference to the effect that Murlidhar

Ratanlal Export Limited had take part in the conciliation proceeding and therefore, he cannot bye-pass this case only by saying that the concerned Workman was not suspended by them or he was never an employee of their Company i.e. Murlidhar Ratanlal Export Limited.

Decision with Reason

In support to the case, the Workman Joydeb Ghosh since deceased has been examined himself as WW-1.

That apart Workman has filed the following documents which have been marked as exhibit as follows:

1. The copy of chargesheet dated 03.03.2003 in the shape of asking written explanation followed by order of suspension being issued w.e.f. 25.02.2003 when it is alleged that an incident of manhandling was occurred at about 03:40 PM with one T. N. Singh in present of Weavers, Sardar and helpers (but not named any one on the spot near Skg. Loom No. 6 & &). **Exhibit-1.**
- 2.A. Application u/s 24(1) of West Bengal Payment of Subsistence Allowance Act, 1969, demanded by the Workman a sum of Rs. 73,179.92 dated 28.04.2009. **Exhibit-2A.**
- B. Application as Exhibit-2.A., claiming of an amount of Rs. 56,888.04 dated 18.06.2009. **Exhibit-2B.**
3. Letter of Assistant Labour Commissioner, West Bengal, Srerampur, dated 22.05.2007 to M/s Hooghly Mills Company Limited to appear before the Assistant labour Commissioner on 06.06.2007 at 12:30 PM. **Exhibit-3.**
4. Report of Conciliation Officer under Subsistence Allowance Act 1969 to Labour Commissioner, West Bengal. **Exhibit-4.**
5. Letter dated 23.02.2011 by the Workman to the Labour Commissioner praying for attendance of Murlidhar Ratanlal Export Limited, who purchased the Hooghly Mills Company Limited during the pendency of the case before the Certificate Officer. **Exhibit-5.**
6. The receipt copy of application dated 15.02.2011 addressed to the Certificate Officer, SDO, Serampur. **Exhibit-6.**
7. Xerox of Identity Card of the Workman comprising two objects to show that he is used to work at Hooghly Mills Company Limited. **Exhibit-7.**
8. The Copy of Provident Fund Statement of the Worker issued by India Jute Mill, dated 31.03.2008. **Exhibit-8.**

9. Letter dated 15.05.2009 by Deputy Labour Commissioner, West Bengal to the Collector, Hooghly asking for recovery of subsistence allowance of Rs. 2,09,406.92 to the Workman by Hooghly Mills Company Limited under Public Demands Recovery Act. **Exhibit-9.**

On the other hand OPW has cited one witness named Mr. Sanjit Rathi, Commercial Manager of the Company to adduce moral evidence on behalf of the Company named M/s Murlidhar Ratanlal Export Limited (O.P. No. – 1) along with further witness named Sri Sajal Dutta, an ex-employee has also come to depose as CW-2 on behalf of O.P. No. – 1.

That apart O.P. Company No. – 1 has filed the following documents which have been marked as Exhibit as follows:

1. Photocopy of agreement dated 20.06.2007 between OP No. – 1 and O.P. No. – 2 whereby the O.P. No. – 1 former took over the Jute Mill of O.P. No. – 2, Serampur. **Exhibit-A.**
2. Photocopy of show-cause dated 27.11.1993 issued by the Production Manager of the factory to the Workman Shri Joydeb Ghosh since deceased. **Exhibit-B** and the xerox copy of the final warning notice issued by the O.P. No. – 2 to the Workman since deceased on 16.05.2001. **Exhibit-B/1.**
3. The photocopy of certified Standing order of all Jute Industry. **Exhibit-C.**
4. The photocopy of chargesheet dated 03.03.2003 issued by O.P. No. – 2 against the Workman since deceased. **Exhibit-D.**
5. The photocopy of summon along with copy of Plaint of Title Suit No. 59/2003 filed by the deceased Workman against O.P. No. – 2 before Ld. Civil Judge (Jr. Division) 2nd Court, Serampur as **Exhibit-E.**
6. The photocopy of written statement filed by O.P. No. – 2 in aforesaid Title Suit. **Exhibit-F.**
7. The photocopy of written statement filed by the Hooghly Mills before the appropriate authority under the Payment & Wages Act for West Bengal area in the application No. 7 of 2003. **Exhibit-G.**
8. The photocopy of order dated 19.12.2006 passed in T.S. No. 59 of 2003. **Exhibit-H.**
9. The photocopy of letter dated 26.06.2007 issued by ALC West Bengal to O.P. No. – 2 in connection with alleged refusal of employment of the Workman Joydeb Ghosh since deceased. **Exhibit-I** and the photocopy of

letter of the Workman Joydeb Ghosh since deceased dated 21.06.2007.

Exhibit-I/1.

10. The photocopy of representation made by O.P. No. – 2 to Deputy Labour Commissioner, Serampur on 15.05.2007. **Exhibit-J.**
11. The photocopy of letter issued by Chief General Manager of O.P. No. – 1 in connection with subsistence allowance of Shri Joydeb Ghosh, Workman since deceased. **Exhibit-K.**
12. The photocopy of service record of Joydeb Ghosh, the Workman (since deceased) wherein the year of birth of deceased Workman has been noted as 1952. **Exhibit-L.**
13. The photocopy of Writ Petition bearing No. WP 11580(W) of 2012 along with its annexures. **Exhibit-M** collectively (with objection).
14. The photocopy of letter of postal initial receipts. **Exhibit-N & N/1.**
15. The photocopy of letter dated 19.05.2010 written by O.P. No. – 1 to the ALC, Serampur. **Exhibit-O.**

Now let us discuss and consider the evidence on record.

The Workman Joydeb Ghosh since deceased has categorically stated the case in his affidavit-in-chief, wherein he claimed himself as a permanent Workman of Hooghly Mills Company Limited in machine department.

PW-1 admitted that the title suit being No. 59 of 2003 as filed before the Ld. 2nd Court Civil Judge, Junior Division, Serampur was dismissed for default as that Court has no jurisdiction to try the same.

PW-1 claimed that he was favoured with the claim to recover the due subsistence allowance by Ld. Payment & Wages Court, Kolkata but the same was not paid either of the office.

It was also claimed that he was served chargesheet on 03.03.2003 upon the alleged incident occurred on 25.02.2003 followed by an order of suspension but ultimately no disciplinary proceeding was initiated against him but he was suspended w.e.f. 22.05.2007.

It is the admitted position that as per claimed dated 20.06.2007 in between O.P. No. – 1 and O.P. No. – 2, O.P. No. – 1 purchased the Company of O.P. No. – 2.

From his cross examination it is revealed that year of his birth is 1952 though he could not file any document in support of his date of birth.

PW-1 denied the fact that as per claimed dated 20.06.2007 between O.P. No. – 1 and O.P. No. – 2, he is not entitled to get relief from O.P. No. – 1.

PW-1 claimed since Murlidhar Ratanlal Export Limited when purchased the Company of O.P. No. – 1 namely Hooghly Mills Company Limited, Unit – India Jute Mill, he was a suspended worker at the relevant point of time and therefore, he should be considered as a Workman of Murlidhar Ratanlal Export Limited upto his retirement and eventually after retirement he claimed only full back wages with consequential benefits as he attained the superannuation age as revealed through additional written statement.

On the other hand, O.P. No. – 1, Murlidhar Ratanlal Export Limited through CW-1 namely Mr. Sanjit Rathi was a Commercial Manager of the Company has admitted the case of the Company mootly on the point that the concerned Workman was never an employee of Murlidhar Ratanlal Export Limited on 22.06.2007 when the agreement was made in between Murlidhar Ratanlal Export Limited and Hooghly Mills Company Limited and as per said agreement Murlidhar Ratanlal Export Limited has no liability against the concerned Workman named Joydeb Ghosh since deceased.

CW-1 also claimed that there is no element of employer and employee relationship between the Murlidhar Ratanlal Export Limited and the concerned Workman for which this Tribunal could not have any jurisdiction to be invoked against his Company.

At the time of cross examination by the Ld. Counsel for the Workman and O.P. No. – 2, CW-1 could not state surely whether **Exhibit-9** was sent under registered post with A/D or not.

CW-1 also could not state whether any letter was sent either to Law Cell or Labour Department in connection with Joydeb Ghosh.

He admitted that as per Clause-J of the agreement (**Exhibit-A**) Murlidhar Ratanlal Export Limited has liability as regard to the payment of legitimate amount of any employee.

CW-1 also admitted that Workman Joydeb Ghosh since deceased was suspended by Hooghly Mills Company Limited.

CW-1 also could not state whether Joydeb Ghosh was paid subsistence allowance by Hooghly Mills Company Limited.

CW-1 also admitted that after the present reference neither the O.P. No. – 2 sent any papers in connection with Joydeb Ghosh nor O.P. No. – 1 demanded such papers from O.P. No. – 2.

CW-1 also admitted that he did not know the meaning of subsistence allowance.

CW-1 also could not able to show that at the time of purchase of Hooghly Mills by O.P. No. – 1, the concerned Workman Joydeb Ghosh since deceased was already dismissed or terminated from the service.

CW-1 also admitted that only Officer of Personnel Department could stated as to whether after raising the dispute by the concerned Workman Joydeb Ghosh since deceased before the Labour Commissioner or after the present reference to the Tribunal O.P. No. – 1 whether demanded or wanted to know as to the status of Joydeb Ghosh, the concerned Workman at the time of purchase of O.P. No. – 2.

CW-1 also admits that any employee who remain suspended is not treated as dismissed or terminated from service and employer and employee relationship subsists.

Thereafter another witness named Shri Sajal Dutta, an ex-employee of M/s Hooghly Mills Company Limited, Unit-India Jute Mill has come to depose on behalf of O.P. No. – 1 as CW-2.

CW-2 has stated at the relevant point of time i.e. before 20.06.2007 he was the Personnel Officer of O.P. No. – 2. He used to look after the matters relating to the labourers of the labour disputes and he also used to look after the legal matters.

He admits that on 20.06.2007 O.P. No. – 1 had purchased the Company of O.P. No. – 2 and thereafter he became the employee of M/s Murlidhar Ratanlal Export Limited due to option given by the new management.

He further states that some time after 20.06.2007 he resigned from the service of O.P. No. – 1 and again joined O.P. No. – 2 in its Garden Reach Unit and when he was working with O.P. No. – 2, he came to know from the record the present Workman used to work with O.P. No – 1 prior to taking over the said Company by O.P. No. – 1 on 20.06.2007 and said Workman was placed under suspension.

CW-2 cannot say whether the agreement between 2(two) Companies dated 20.06.2007 was registered or not.

CW-2 confirms the letter issued by Deputy Labour Commissioner for recovery of subsistence allowance in respect of present Workman for the period mentioned in the said letter after confronting the **Exhibit-9**, which relates to the recovery of subsistence allowance of Rs. 2,09,406.92 to the Workman by Hooghly Mills Company Limited under Public Demands Recovery Act.

CW-2 further admits that the present Workman Joydeb Ghosh was placed under suspension prior to issuance of chargesheet.

CW-2 claims that O.P. No. – 1 Company has/had no scope to hold any enquiry against Joydeb Ghosh till 2011 when the dispute was raised by said Workman before appropriate Government against O.P. No. – 1 Company.

CW-2 admits that he is not sure to say that Shri Joydeb Ghosh since deceased was working as Budli as per official record.

At the time of cross examination CW-2 has stated that he has no document with him right then to show that on 20.06.2007 he was an employee attached to O.P. No. – 2 Company though he claims that he shall produce the same on the next time.

CW-2 admits in his cross examination that no employee of O.P. No. – 2 was informed by O.P. No. – 1 relating to taking over of the management by the said O.P. No. – 1 Company from O.P. No. – 2 Company.

CW-2 also admits that he did not file any such written option as claimed by him that he was given an option by the management of O.P. No. – 1.

CW-2 claimed himself a reemployed employee by O.P. No. – 1 Company but could not produce any paper relating to said reemployment.

CW-2 denied the question put by Ld. Counsel for O.P. No. – 2.

Now at the time of argument Ld. Counsel for O.P. No. – 1 Company named Murlidhar Ratanlal Export Limited has stated that the concerned Workman Joydeb Ghosh since deceased was never an employee of the O.P. No. – 1 Company and therefore, there was no relationship between the present Workman and O.P. No. – 1 as employee and employer relation.

Ld. Counsel further argues that the Workman was suspended from service in 2003 while he approached the Tribunal in 2011 and as such the case is barred by law of limitation.

He further argues that by agreement dated 20.06.2007 O.P. No. – 1 has taken the O.P. No. – 2 Company and since the Workman has ceased to be an employee of O.P. No. – 2 Company and therefore, the reference in itself is bad in law and as per Clause – 12 of the above-mentioned agreement O.P. No. – 1 is not responsible in any manner for the claim as raised by the Workman Joydeb Ghosh since deceased.

Ld. Counsel further argues that though suspension is a temporary separation from work while termination or discharge means permanent dismissal and since O.P. No. – 2 Company has not conducted the Domestic Enquiry and remain the Workman has no long-term suspension, that suspension shall be treated as deemed termination.

Ld. Counsel further argues that since O.P. No. – 2 Company is still in existence have its head office at Kolkata the said Company should be responsible in this regard as

per Clause-12 of the agreement and Ld. Counsel also claims that O.P. No. – 1 Company cannot be made liable for back wages during the period of suspension as alleged and/or for subsistence allowance as alleged.

It is further argued that the present Workman was placed under suspension over the incident of 25.02.2003 where it is alleged that said Workman shouted at his superior and threatened him with dire consequence and also assaulted him and thereafter the Workman fled away from the Department and he also threatened of kidnapping the school going daughter and son of said superior (not named).

Lastly Ld. Counsel for the Company argued to the effect that in the instant case the Workman himself had accepted the suspension. Filed claim application for recovery of subsistence allowance under provision of West Bengal Pay and Subsistence Allowance Act 1969 and therefore there is no question of refusal of employment.

Thus the order of reference suffers from legal infirmity and even otherwise on merit no relief could be granted to the present Workman Joydeb Ghosh since deceased.

It is claimed by the Advocate for the Company that Hon'ble High Court by order dated 12.09.2012 passed in WP No. 11582(W) of 2012 stayed the recovery proceeding initiated by the then Workman Joydeb Ghosh towards subsistence allowance against O.P. No. – 2 Company was sought to be invoked against O.P. No. – 1 Company.

In the result the Award should therefore be pronounced rejecting the order of reference and the claim of the Workman being demanded by the Ld. Counsel for the Company.

In support of his case Ld. Counsel for the Company has cited the following judgements of the Apex Court and different High Courts:

- 1) 957 SCR 152 : AIR 1957 SC 264 : (1957) 1 LLJ : 477 (between Dharangadhra Chemical Works Limited vs State of Sourashtra & Ors.)
- 2) 1957 SCC Online Cal 102 : (1958-59) 63 CW1 141 : AIR 1958 Cal 68 : (1959) 1 LLJ 595 (Hukum Chand Jute Mills Ltd. vs Labour Appellate Tribunal).
- 3) (2006) 5 SCC 123 : 2006 SCC (L&S) 930 State Bank of Bikaner & Jaipur vs Om Prakash Sharma.
- 4) 2009 SCC Online Cal 2388 : (2010) 1 CHN 321 : (2010) 1 LLN 785 between the Secretary (Policy) Regional Director (Food) Employees Association vs. Food Corporation of India & Ors.
- 5) 2003(4) LLN 999 (between) Organon India Ltd. vs. State of West Bengal & Ors.

On the other hand, Ld. Counsel for the Workman has argued to the effect that Company under reference has admitted that Joydeb Ghosh, the concerned Workman (since deceased) was an employee of the erstwhile Company i.e. O.P. No. – 2, who placed evidence to the effect that all the documents regarding the present dispute were hand over to O.P. No. – 1 and since the Workman is only suspended worker, the Workman legally should be considered as the Workman of O.P. No. – 1 Company since after taking over the erstwhile Company on 20.06.2007, and therefore, they were well aware of the present facts regarding the suspension of the Workman.

Ld. Counsel further argues that mere suspension does not mean in any way or in any manner whatsoever that the present Workman (since deceased) is or was (even after dismissal or forceful termination) not the Workman of the present Company i.e. O.P. No. – 1 or his right has been ceased to exist and accordingly the reference cannot be stated as bad in law.

Ld. Counsel for the Workman also argues to the contrary of the view being placed by Ld. Counsel of O.P. No. – 1 that “long term suspension shall be treated as deemed termination”.

According to the Ld. Counsel for the Workman long term suspension has been created artificially by the Company O.P. No. – 1 with the help of erstwhile Company who according to their evidence had already handed over all the records or documents or papers regarding the dispute between deceased Joydeb Ghosh the concerned Workman and the Company i.e. O.P. No. – 2 and that has been unchallenged by O.P. No. – 1 during the whole proceeding.

Even, the Workman was not paid any farthing regarding his subsistence allowance being ordered by the Certificate Officer of the concerned District. So “the principle of long-term suspension shall be treated as deemed termination” is not applicable in this present case in any manner whatsoever.

Furthermore, Ld. Counsel also has stated that the O.P. No. – 1 Company cannot prove by any means that they have no relation with the present Workman and therefore they cannot be made liable for back wages during the period of suspension or for paying subsistence allowance as alleged being payable to the Workman.

Ld. Counsel also has firmly stated that over the issue/ over the incident dated 25.02.2003 has not been proved by any Company or by any authority whatsoever and no step is taken to prove it by any authority or any Company rather having knowledge of the incident i.e. alleged fact dated 25.02.2003 the O.P. No. – 1, took no step or effort to unearth of the truth which goes to show that they had always try to avoid to face the trouble which was their obligatory duty to solve the problem of the suspended Workman Joydeb Ghosh and therefore, in no way it can be said that the reference suffers from any legal infirmity and as such Ld. Counsel for the Workman has claimed and submitted that after superannuation of the Worker the

present Worker Joydeb Ghosh since deceased, his legal heirs being substituted are entitled to the relief as prayed for along with compensation being suffered by them.

In support of his submission Ld. Counsel has relied upon some rulings as follows:

- 1) The case between S. Sarala Kumari and Ans. Vs. Govt. of India and Ors. (Judgement delivered on 06.10.1994 in Writ Petition No. 7437 – 7570/1993 by Hon'ble High Court Andhra Pradesh). (*In which status of suspended Worker was explained*).
- 2) SCC Online (2015) 16 SCC Page 415 between Prem Nath Bali vs. Registrar High Court of Delhi and Another. (*Where it is held that it is the duty of the employer to explain the delay for which suspension of the Worker lasted for long period without any fault of the Workman*).
- 3) FLR 1991 Page 628 (between O. P. Saxena vs. State of Uttar Pradesh and Others.) passed by Hon'ble Allahabad High Court. (*n the point of unfair, unjust, unreasonable order of suspension where the suspension lasted for 7 (seven) years without any fault of the Workman*).
- 4) 2003 SCC Online Kar 760 : ILR 2004 Kar 2761 : (2005) 4LLJ (Supp) 111 between Karnataka State Road Transport Corporation vs. Abdul Azeez. (*On the point of limitation from seeking the remedy under appropriate Section of the Industrial Dispute Act*).
- 5) Case between M/s ITC Infotech India Limited vs Mr. Venkataramana Uppada. Judgement delivered by Hon'ble Karnataka High Court. (*In which 730 days delay was condoned – ordered upheld*).
- 6) (2000) 2 SCC Page 455 : 2000 : SCC (L & S) Page 283 regarding scope of judicial review in regard to the reference of dispute under Section 10 of Industrial Dispute Act.

Now, from the pleadings of the parties, it is revealed that the present Workman Joydeb Ghosh since deceased was an employee of O.P. No. – 2 Company. He was placed under suspension on 25.02.2003 over the issue of misconduct upon the officer of Company management.

Thereafter, he was issued a chargesheet for conducting a departmental enquiry over that issue. Thereafter O.P. No. – 2 Company did not take any step to conduct the departmental proceeding against the said Workman Joydeb Ghosh since deceased. Not even the management filed any FIR regarding the alleged incident being occurred on 25.02.2003 in which the Workman Joydeb Ghosh since deceased was placed under suspension.

It is revealed from the record that the concerned Workman was not offered any subsistence allowance from the management of the O.P. No. – 2 Company at the relevant point of time for which the Workman filed an application before the concerned authority under the Payment of Wages and Subsistence Allowance Act, wherefrom it is ordered in favour of the Workman Joydeb Ghosh upon the management of the O.P. No. – 2 Company for payment a lum sum of Rs. 2,09,406.92 being due and the same was also ordered by the Certificate Officer of

Government of West Bengal. In spite of the fact neither any payment was made by the then management of O.P. Company No. – 2 nor any departmental proceeding was initiated or conducted against the said Workman.

Thereafter on 20.06.2007 O.P. No. – 2 Company sold their Company namely Hooghly Jute Mills company Limited, Unit – India Jute Mill, (wherein the said Workman was an employee) to the O.P. No. – 1 Company namely Murlidhar Ratanlal Export Limited and it is also evident from the written statement by the authority of O.P. No. – 2 Company that O.P. No. – 2 Company has handed over all the papers relating to the dispute in between the present Workman Joydeb Ghosh since deceased and the O.P. Company No. – 2 and that was unchallenged at the time of evidence i.e. to say the O.P. No. – 1 Company never challenged this piece of evidence at any point of time or denied that the O.P. No. – 1 Company did not get the records or relating papers or documents regarding the dispute in between O.P. No. – 2 Company and Shri Joydeb Ghosh since deceased.

It is also revealed from the deposition of Company's witnesses, wherein CW-2 has admitted to the effect that mere suspension cannot be stated that the relation between employer and employee has been ended, as it is the settled principle of law and if that be so since the present Workman Joydeb Ghosh since deceased was a suspended employee of O.P. No. – 2 Company and after taking over by the other Company i.e. by O.P. No. – 1 Company the statues of the employee-employer relation cannot be ended, rather it should be presumed that the relation of employee-employer is being existed between the Workman and the employer specially when the reference has been sent to this Tribunal for adjudication on the issue as mentioned in the reference whereby it is stated whether the dismissal of present Workman Joydeb Ghosh since deceased by the O.P. No. – 1 Company is justified or not ? And accordingly it should also be presumed that O.P. No. – 1 Company has well knowledge about the facts of the Joydeb Ghosh, the then worker of O.P. No. – 2 Company to the effect that the Workman Joydeb Ghosh has been placed under suspension by the erstwhile Company and therefore, the present Company O.P. No. – 1 cannot by-pass their obligatory duty regarding dispute of the present worker Joydeb Ghosh only by saying that he was never an employee of O.P. No. – 1 Company.

Above all the following 2 things should be kept in the mind:

- 1) It is fact that Joydeb Ghosh filed a Civil Suit on same same issue and the same was dismissed since the Ld. Civil Court has decided that the Court has no jurisdiction to try the suit and if that be so this cannot take away the right of the Workman to file a case before the appropriate authority of the Labour Department.
- 2) It is also fact that Workman has attained the age of superannuation in the year of 2010 and he has rightly informed the matter before this Tribunal to take appropriate steps regarding his relief and that has already been favourably ordered in favour of the Workman.

In view of the above facts and circumstances coupled with reasonable discussion I am of firm opinion that the citations being placed by Ld. Counsel for the Company are not applicable in the present case as it is well proved, that the Company under reference or the added party both are industry as per Industrial Dispute Act and that the present Workman Joydeb Ghosh since deceased is or was the Workman of those Companies and the relation of employer employees is still exist between them and the Company under reference was well aware about the present Industrial Dispute regarding the alleged suspension followed by refusal of employment or forcible termination of the Workman Joydeb Ghosh since deceased and this Tribunal did not or does not exceed any jurisdiction as entrusted upon it by the law itself being applicable to.

On the other hand, I am of firm opinion of the rulings of the Hon'ble Courts being placed by the Ld. Counsel for the Workman are well applicable to the instant case and accordingly it is proved without any reasonable doubt that the present Workman named Joydeb Ghosh since deceased legally entitled to the reliefs as prayed for and since after his demise his heir being legally substituted is also entitled to reliefs as prayed by the Workman Joydeb Ghosh since deceased.

In sum, the instant case under reference succeeds.

Hence, it is

Ordered

that the case being No. VIII – 11/2011 be and the same is allowed on contest with Cost of Rs. 10,000/- (Rupees ten thousand) only against the Company. The heir of the Workman named Shilpi Ghosh is entitled to full back wages earned by her husband Joydeb Ghosh (since deceased) from the date of termination dated 25.02.2003 upto his date of retirement along with all consequential benefits. The present substituted applicant shall also get a compensation of Rs. 2,00,000/- (Rupees two lakhs) only for her mental agony. The Company shall pay all the payments as ordered within 03 (three) months from the date of this Order, i/d the applicant shall execute the order as per existing provision of law.

This is my Award.

Let the Award be sent to the Government of West Bengal.

Sd/-

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)
Judge

FIRST INDUSTRIAL TRIBUNAL
KOLKATA

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

FIRST INDUSTRIAL TRIBUNAL
KOLKATA